

## Review Article

# Surrogacy in India: ethics versus incentive

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### ABSTRACT

The word surrogacy has its origin among the Latin term “surrogatus” which suggests a lady acts as a substitute for a pregnant woman. Surrogacy has been in practice form last thirty years. The surrogacy regulated by business can be classified as then, altruistic surrogacy and commercial surrogacy. The paper aim to conduct systematic review on surrogacy. The literature review was conducted using PubMed and alternative search engines. Further, additional information concerning the constitutional articles was collected from search engines like legal service of India, [prsinndia.org](http://prsinndia.org), [icmr.nic.in](http://icmr.nic.in), Press Information Bureau, Wikipedia, IJCM and Indiankanoon. In India, surrogacy is legally recognised since 2002. This paper looks into various aspects of surrogacy. Factors faced by the surrogate mother such as exploitation, psychological conditions, human rights, dignity and respect, feminism and religious issues are explored. The paper discuss the economic benefit is mostly enjoyed by the medical practitioners. The Indian government tried to curb the problems by updating the law to overcome the challenges but with time government introduce the surrogacy bill in 2016 which addressed many issues and still in 2020 it address various aspects of surrogacy to prevent the exploitation.

**Keywords:** Ethics, Political economy, Commodification, Surrogate mother, Surrogacy

### INTRODUCTION

The word surrogacy has its origin among the Latin term “surrogatus” which suggests a lady acts as a substitute for an additional woman. Therefore, surrogacy is a meeting usually supported by a legal agreement within which a surrogate mother agrees to give the birth for another person or who can become the parent (s) of the kid. There was the requirement of surrogacy owing to the subsequent reasons: physiological issues and same-sex couples.<sup>1</sup>

### DISCUSSION

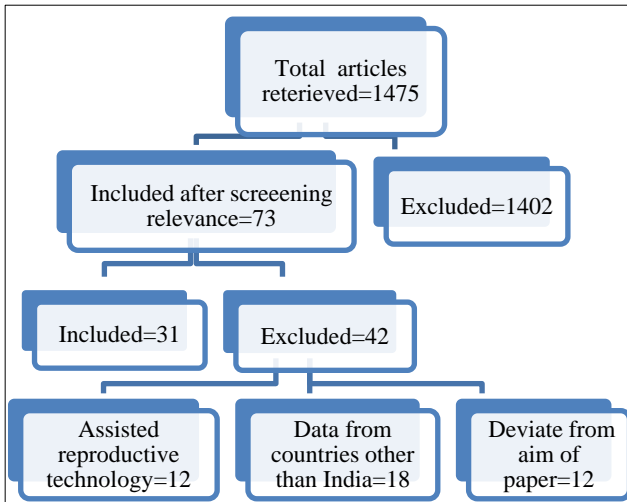
Surrogacy is not a new method and is being practised from last 30 years. The first mention of surrogacy is found in “the book of genesis.”<sup>2</sup> This book includes the story of

Abraham and Sarah. This story provides the data concerning the normal surrogacy.

If we tend to classify the surrogacy regulated by business bases then - altruistic surrogacy – the monetary dealing is discouraged during this arrangement between the parties. Commercial surrogacy- the money dealing is completed reciprocally of the service performed.<sup>1</sup>

The systematic review of literature was conducted for the surrogacy. It was conducted using PubMed and alternative search engines. The combination of keywords such as ethics, political economy, commodification, surrogate mother and surrogacy was used. Further, to screen additional information concerning the constitutional articles the search engines like legal service of India, [prsinndia.org](http://prsinndia.org), [icmr.nic.in](http://icmr.nic.in), Press Information Bureau,

Wikipedia, IJCM and Indiankanoon. The studies with key findings that specialize in the commercialization of the kinship in India were included elaborated in Figure 1. The literature searched retrieved 1475 articles. Once excluding duplicates and scanning through the title and abstract, supported relevancy to subject of India 73 articles were shortlisted based on the relevance. After scanning through abstracts of 73 articles, only 31 were included in review and 42 were excluded. Among the 57 articles excluded, 18 were discussing with other countries, 12 deviate from the subject and 12 were targeting assisted reproductive technology.



**Figure 1: Details of literature search conducted.**

Undoubtedly, surrogacy is successful in introducing the new member within the family of infertile couple. In India, surrogacy is legally recognised in 2002. It seems to be one of the best option for infertile couple but there are so many intricacies involved. The process of surrogacy involve the various people that are required to perform their role. However, within the hierarchy of exploitation the surrogates from less potent background is more likely to become the victim of exploitation. Further, this issue become more dominating for the surrogate with inability to communicate in English or able to read and understand the consent form, unaware concerning the rights of the surrogate.<sup>3</sup> The technology is gripping its roots within the country resulting in taking away the lens of idealism from the mind of law makers. More legal problems raised and by passing the law government tried to address the legal problems faced by the victims but all the efforts failed. The main reason that the efforts went to vain is that the inability to follow the law strictly. Several unethical practices like sex determination, or reducing the foetus. Additional clash within the thought method of the various stalk holders on the theme of surrogacy, several unfertilized couples had fought for the nationality of the baby.<sup>4</sup> All the articles highlighted three main aspects – exploitation of surrogate, economic and legal aspects quoted from the 31 articles included in review 14 discussed the exploitation, 7 elaborated economic and 10 highlighted legal issues.

### ***Exploitation of the surrogate***

Due to lack of regulated framework in India surrogates are subjected to unethical medical treatment, poor living conditions and exploitation. The fundamental reasons for the exploitation of Indian girls are poverty and lack of education.<sup>5</sup> Due to which the women is even exploited by the intended parents as they are not aware to their rights.<sup>6</sup> Surrogacy is the way out for Indian women to enhance monetary status.<sup>7</sup> The surrogate mothers are paid much less as compare to the harm caused by the medical procedure.<sup>8</sup> Moreover, in country like India surrogate mothers are cuffed and abused. This can be as a result of Indian girls' loose dignity once changing into surrogate mothers. Sadly, and most significantly, the laws that are created for the safety of ladies are not being enforced properly.<sup>6</sup>

### ***Psychological conditions***

In country like Republic of India, the sole criteria adopted for choice of surrogate mother is fertility of the mother. Psychological counselling is the issue that is as vital as fertility issue however, is neglected.<sup>6</sup> Surrogate women are thought about as a 'puppet' and are forced to act as 'ideal employee'.<sup>9</sup> As the procedure commences, doctors are aware about the social stigma so created it obligatory to remain in hostels. Additionally to the current several surrogates got to follow the rule like they are not even allowed to wander within the congested surrogate hostels without the permission. Any solely 'Sundays' are allowed to meet the family and kids.<sup>10</sup> In January 2015 at the tenth world conference of ethics, medical ethics and health law, bring out the fact and take into account the jails follow additional basic ethics for prisoners than the doctors do for his or her surrogates.<sup>5</sup>

### ***Human rights***

In country like India, doctors are thought equal to God, means intended parents in India blindly trust the doctors however doctors take the most of this advantage and often break the rules that ultimately affects the health of the patient.<sup>11</sup> A great perplexity is seen for the surrogates for taking the decision independently or by the wish of preferred ones.<sup>8</sup> Due to lack of academic background, surrogate mothers are unaware of their human rights and are unable to apply their legal power.<sup>5</sup> By giving the excuse of sophisticated medical terms several doctors do not inform the rights of surrogates. Persistently these helpless surrogates feel neglected and consider themselves as artifact within the real terms.<sup>11</sup>

### ***Dignity and respect***

When the surrogate is even deprived with the fundamental necessities her prime priority is to fulfil even by lowering the self-respect.<sup>14</sup> The clear proof of disrespecting mother is when people take into account the surrogate a 'commodity'. This disrespect not solely of the women body but conjointly the motherhood.<sup>12</sup>

### *Feminist*

It's believed that although entire role is contend by the women however the right to enter within the surrogacy method is within the hands of husband.<sup>11</sup> But, some feels that the choice should be in the hands of the ladies as a result of her body is being employed up within the process.<sup>13</sup> In the country like India, when men are thought-about as the bread wage earner of the family dictates the process of surrogacy and the female seek permission from them to enter the process of surrogacy despite the very fact that the whole procedure goes within her.<sup>15</sup>

### *Religious issues*

According to the Hindu methodology varied incidents support the surrogacy from the bygone era. Along with this Hindu deeply believe in law of karma and take into account the kid as the fruit of the destiny worn out previous life. Therefore the physiological state is taken into account as the product of same.<sup>16</sup> The faith favours the surrogacy once the gametes belong to supposed intended parents because the deep affiliation of relation is given a good significance within the religion.<sup>17</sup> Moreover, in Indian culture, the folks are distressed concerning their grey hair age and consider the children as essential because children when become grown up adults will take care of their aged people.<sup>18</sup>

### *Economic*

In the year 2002, commercial surrogacy got official approval from the Indian government. For many infertile couple, India became the destination to welcome a new member within the family thence referred to as because the 'capital' of surrogacy.<sup>19</sup> Within a decade, 3000 fertility clinics were established around the India and with the turnover of \$400 million each year it became one among the quickest growing trade and so boost the bio-economy.<sup>20</sup> There are many reasons why the supposed intended parents feel reluctant to adopt the surrogate in their own country. The explanations will be rigorous law and order, rule out surrogacy, overpriced and altruistic.<sup>21</sup> The inflow of business is seen as a result of once the factors of un-educated, unregulated rules, low value labour, medical technology is coupled an ideal 'baby vessel' is manufactured.<sup>22</sup> Many medical practitioners earn immoderate profit and have erected the business empire by providing all the luxuries below one roof. From providing accommodation to foreigners until the custody of the baby. Apart from this several clinics give the personalised choice for the supposed folks so they'll set the facilities like certain diet or the new technical skills that she might learn throughout the pregnancy for the surrogate mothers according to their 'own wish'.<sup>14</sup> Undoubtedly, unfertilized couple contributed exponential growth within the economy. Foreigners have blind faith on science therefore so as to fulfil the expectation of 'yes' the medicos are below high pressure and it becomes the only way to retail and attract more infertile couple.<sup>23</sup> The data suggest that the living standards of poor fertile surrogate is low which

encourage them to sign the contract. With inflow of cash women will fulfil their dreams like sensible education for kids, new start-up business. Hence, this cannot solely profit the required surrogate however conjointly aid to elevate the gross domestic product per family unit.<sup>24</sup>

### *Legal issues*

India approved surrogacy within the year 2002, however the rules was designed by the ICMR who after analysing the drawbacks set the bounds for the industrial surrogacy. However, within the year 2005 and 2008 law makers tried to propose the rigid tips that was contributed with the discussion and debates with the legal organisation. The approach was simply to create the principles that were addressing only the eligibility criteria not the long run issues.<sup>20</sup> These days several fraudulent activities are being practiced that isn't solely threatening but also influence the honour of the nation.<sup>25</sup> Aside from this, involvement of the intercessor within the cash flow from the intended parents to surrogate mothers leads to various problems with social, medical and ethical.<sup>5</sup>

In 2016, India got the title of 'baby farm' and therefore the government was under constant pressure to erase the title. The government came up with the new guidelines of surrogacy bill 2016 all the rules was quoted below the assisted reproductive technology (ART). The government was as against the unethical application of technology. With the complete ban on the commercial surrogacy, the government was making an attempt to eradicate the most important role contend by the money within the method of surrogacy and curb to exploitations of the victim. Additionally to the current, the government aims to prevent the commodifying the kinship. The insurance plan and medical expense was introduced that was the positive point and depicts the farsightedness of the government as the surrogate body have to recover through the caesarean and got to face the copious side effects of the pregnancy. However on the contrasting side, the medical business has been discouraged by giving no seat to international infertile couples. Several medical guidelines were conjointly introduced so the unethical practice will be stopped and therefore the life will be given the higher value. The contract terms were reinforced additional and therefore the drawback faced by post birth also are reduced. Overall, the new bill came up with the various aspects addressing the varied problems.<sup>29</sup>

### *Sex choice and foetus reduction*

According to the corporate social responsibility, 2012 reports India was using the sex determination on regular basis for cross border couple as several have clearly gave hint of the baby they're aiming to have.<sup>25</sup> Many times individuals outside within the operation theatre already knew the gender of the baby. This created an image of baby as 'commodity' into the pinnacle of people.<sup>20</sup> Although Indian constitution defend the rights of living with dignity and health however much this approach is smashed once

the surrogacy is accounted.<sup>26</sup> Despite of article 23, that freeze the human trafficking beside this the plot of surrogacy consider ‘foetus’ not less than an object to sale and purchase.<sup>27</sup> Considering the baby a product leads to infringement of the children rights perpetually. The injustice faced by the little angles weren’t only by this basis but conjointly on nationality issue, abandoning of babies.<sup>28</sup>

According to medical termination of pregnancy, there are certain terms of termination that the doctor cannot modify. The ART bill of India country interdict the insertion of over three embryos throughout the method, however the doctors being selfish transfer over the desired, which ends up within the multiple pregnancy. Everything is within the hands of doctors and according to the wish of intended parents, doctors cut back the number of embryos, the main reason of the insecurity which lead it to do is the ‘image’ of the clinics because it will clearly disgrace the clinics reputation which may be ruined by the intended parents if they do not act according to that way.<sup>29</sup>

*Surrogate mothers*

The written agreement relation is obtainable below the social control and validity of the Indian contract act (1872). The contract is the halve its rules and regulations which should not be broken but several incidents prove that

surrogate mother demands more cash and impose a lot of issues for the new parents by creating false claims or by forced occasional visit or in many cases refuse to transfer the custody to the parents which will cause more problem for the parents to get the baby.<sup>30</sup>

*Intended parents and citizenship*

The foreigner not only have to confront with the communication barriers, but also battle the problems associated with the credentials and particularly the citizenship of couple who resides within the nation that rebuff the surrogacy.<sup>31</sup> The difficulty rises once the couple belongs to the country that fends off with the surrogacy idea.<sup>25</sup> Despite of the constant amendment of the ART bill, it fails to deal with the matter of surrogacy till the case of baby Manji Yamada came forward that displayed the gap of the bill internationally. The main issue of the case was that the intended couple flew from the Japan and enter the surrogacy process by the Indian women. However the couple went through matrimonial discord at the eighth month of the pregnancy. After the birth of the baby girl, the father wants to keep the baby with her but no Indian law could help him to get the custody of the baby. The insufficient baby wasn't only combating the problem of citizenship however conjointly with the Japanese guardian name on the birth certificate.<sup>32</sup>

**Table 1: Landmarks in evolution of surrogacy cover to table.**

Year	Landmark
1980	The lawyer named Michigan Noel Keane first introduced the surrogacy contract
1985	In America a first successful gestational pregnancy was carried by the lady
1986	In America, Melissa Stern, also called "baby M," was born; however, the custody of baby was refused by the surrogate and biological mother to the intended couple
1990	The intended parents Mr. and Mrs. Calvert lived in California were refused by the Anna Johnson the surrogate for the couple; the couple sued her for authority (Calvert V. Johnson), and the court maintained their parental rights. In doing so, it lawfully characterized the genuine mother as the one who, as indicated by the surrogacy arrangement, expects to make and bring up a child

**Table 2: Enlist all the guidelines and laws pertaining to surrogacy in India.**

Year	Highlight
2005	Passed the guidelines by ICMR that was made within the year 2002
	Commercial surrogacy: the surrogate should be paid for the service
	Donation of surrogate mother gametocyte is illegal
	She should transfer her parentage rights <sup>33</sup>
2008 ART (regulation) bill	Restrict the art clinics for revealing the knowledge of surrogate
	Oocytes can be donated by surrogate
	Foreigner’s got to appoint the native guardian throughout the method
	It permits people and unwed couples to possess the baby <sup>34</sup>
ART bill 2013	Surrogacy was restricted for foregin gay couples and single guardians <sup>35</sup>
ART (regulation) bill, 2015	Banned foreigner’s <sup>36</sup>
Surrogacy bill 2016	Rule for couple
	Bann for foreigners for commercial surrogacy
	Altruistic surrogacy
	Clear no to homosexual or couple in live in relation

Continued.

Year	Highlight
	Only NRI's, overseas citizen of India, people of Indian origin and married Indian couple can participate in the surrogacy
	Permitted the parentage right irrespective of abnormalities of kid
	Rules for surrogate mother
	Widowed or divorced women are allowed to be surrogate
	Age – 23 to 35 years
	Woman must have her own child
	Woman can act as surrogate once in her life time
	No sex determination <sup>36-39</sup>
<b>Surrogacy [regulation] bill 2019</b>	For couple
	Must be married for 5 years
	Age limit for wife is 23 to 50 years and for husband 26 to 55 years
	No extant child or if any he must be stricken by the fatal illness
	Must show 'certificate of eligibility' and 'certificate of essentiality for surrogate mothers
	Compensation of 16 months
	Close relatives
	Married women with atleast single child <sup>40</sup>
<b>Surrogacy bill 2020</b>	'Willing women' can become surrogate
	Divorced or widowed women can take advantage of this
	Insurance coverage in extended upto 36 months
	The bill gave the opportunity to the NRI's, Indian married couple and Indian single surrogate <sup>41</sup>

## CONCLUSION

By reading the literature it is ended that the in search of hope, several infertile couples found India the appropriate destination for obtaining the baby, however thanks to poor guideline implementation, cash offered and unethical observe had raised the question on surrogate and surrogacy. This causes to envision the relationship no but simply a part of nine months to ripe the fruit. The government is incessantly making an attempt to deal with the problems faced by the Indians by doing amendments within the surrogacy bills.

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