



SURROGACY & EXPLOITATION OF POOR WOMEN - ANALYZING THE COMMERCIAL VS. ALTRUISTIC SURROGACY DEBATE

Siddhi Pawar*

ABSTRACT

As an approach to assisted reproduction, surrogacy sits at the complicated nexus of law, ethics, and socioeconomic realities. Its commercial form has sparked discussions about the exploitation of financially vulnerable women, even if it provides a route to parenthood for people who have infertility or biological limitations. Commercial surrogacy is frequently criticised in India and throughout the world for treating women's bodies as commodities, turning reproductive work into a market exchange, and exacerbating socioeconomic disparities. Due to their financial needs, women from low socioeconomic backgrounds may engage in surrogacy without fully comprehending its medical, emotional, and legal ramifications, which raises significant questions about informed consent and autonomy. In contrast, supporters argue that commercial surrogacy may offer significant economic gains and financial empowerment when properly regulated. Altruistic surrogacy, in which compensation is restricted to medical expenditures and profit is prohibited, is portrayed as an ethical alternative aimed at minimising exploitation. However, it also has its own difficulties, such as decreased access for future parents, emotional stress in social or family interactions, and the possibility of subtle coercion when family members serve as surrogates. The paper examines the controversy between commercial and altruistic surrogacy from ethical, feminist, socioeconomic, and legal viewpoints, using comparative insights from the UK, India, and the United States. It assesses whether current laws actually safeguard surrogate mothers or just exacerbate their vulnerabilities. In the end, it asks if framing the problem as a binary choice answers the underlying need for a rights-based approach that places reproductive autonomy, dignity, and protection for women at the forefront, especially those from marginalised populations.

*LLB, SECOND YEAR, MIT WPU, SCHOOL OF LAW.

Keywords: Commercial Surrogacy, Altruistic Surrogacy, Exploitation, Inequality, Socio-Legal Perspective.

INTRODUCTION

Surrogacy, which is defined as an agreement in which a woman carries and gives birth to a child for prospective parents, has become a complicated and contentious practice in the worldwide reproductive sector. Its quick development has raised ethical, legal, and socioeconomic issues, particularly in nations with cheaper healthcare and more lenient legal systems. Although surrogacy offers a potential route to parenthood for people with infertility, same-sex couples, or those who are unable to carry a pregnancy, its practice, especially in its commercial form, raises issues of exploitation, commodification, and unfair power dynamics between intended parents and surrogate mothers.¹

Between the early 2000s and the mid-2010s, commercial surrogacy thrived in India due to low-cost medical care, knowledgeable fertility specialists, and little early oversight. As a result, India was dubbed the "surrogacy hub" of the globe. But legislative action was sparked by increasing reports of contractual conflicts, insufficient postnatal care for surrogates, and the targeting of low-income women. Based on protecting women's dignity and preventing exploitation, the Surrogacy (Regulation) Act, 2021, outlawed commercial surrogacy and only permitted altruistic arrangements, limited to close family.²

The altruistic model, though morally driven, may inadvertently lead to new forms of coercion, according to critics, since familial and social pressures can override genuine consent. In addition, banning monetary compensation other than medical expenditures may erode surrogate mothers' agency by disregarding their right to bargain for reasonable remuneration for reproductive labour. Whether the regulation of surrogacy should prioritise prohibition or ensuring informed consent, fair compensation, and strong safeguards has once again sparked controversy.

The world's jurisdictions are still split from a global viewpoint. Some US states permit compensated arrangements under controlled circumstances, while the Surrogacy Arrangements Act 1985 in the UK only allows altruistic surrogacy. These contrasting frameworks illustrate the conflict between safeguarding women against exploitation and respecting their

¹ A Kumar, 'Surrogacy in India: Ethical and Legal Dimensions' (2015) 12(1) Indian Journal of Medical Ethics.

² The Surrogacy (Regulation) Act 2021

reproductive autonomy. Feminist research stresses that the matter cannot be reduced to a straightforward commercial-altruistic binary; rather, it necessitates an intersectional understanding of gender, class, and global inequalities in reproductive labour markets.

The commercial vs. altruistic surrogacy discussion is placed in the larger context of reproductive justice in this article. Using socio-legal analysis, feminist ethics, and comparative law, it asks if existing legal frameworks actually address the vulnerabilities of surrogate mothers or merely alter their nature. By engaging with empirical studies, legislative documents, and examples from various jurisdictions, the research seeks to advance a rights-based policy approach that guarantees surrogate mothers, especially those from disadvantaged economic backgrounds, dignity, autonomy, and fair treatment.

THE INDIAN LEGAL LANDSCAPE PRE AND POST 2021

India's legal regulation of surrogacy has historically developed through a patchwork system that includes court rulings, standards established by professional organisations, and sporadic legislative actions. The Indian Council of Medical Research (ICMR) Guidelines for Assisted Reproductive Technology Clinics (2005), which allowed commercial surrogacy but mandated informed consent, contractual clarity, and medical supervision, were the primary guides for regulation before the passage of a complete law. However, because these guidelines did not have legislative authority, implementation varied greatly among states and was mostly voluntary.

The contours of surrogacy law were significantly influenced by judicial decisions made during this time. The Supreme Court acknowledged the validity of surrogacy agreements in India in *Baby Manji Yamada v Union of India* and emphasised the need for regulation due to the lack of a legislative framework.³ In a similar vein, the Gujarat High Court addressed the issue of nationality for children born via surrogacy to foreign parents in *Jan Balaz v Anand Municipality*, highlighting the difficulties of cross-border surrogacy.⁴ The growth of fertility tourism and a flourishing commercial surrogacy industry was spurred by this legal vacuum, along with India's comparatively cheap medical expenses and the availability of women prepared to serve as surrogates as a result of socioeconomic vulnerabilities.

³ *Baby Manji Yamada v Union of India* (2008) 13 SCC 518 (SC)

⁴ *Jan Balaz v Anand Municipality* (2009) AIR Guj 21

In this context, the Surrogacy (Regulation) Act of 2021 represented a significant change in strategy. Altruistic surrogacy is the only kind allowed by the Act, which forbids all forms of for-profit surrogacy.⁵ Altruistic surrogacy is defined as agreements in which the surrogate is only paid for medical bills and insurance coverage, and does not get any financial remuneration.³ It imposes stringent qualification requirements for prospective parents, including Indian citizenship, marriage for at least five years, and no surviving biological children (with few exceptions). A surrogate may only be a married woman between the ages of 25 and 35 who has at least one child of her own.⁶ The law also establishes the National Surrogacy Board and State Surrogacy Boards, requires surrogacy clinics to be registered and licensed, and imposes criminal penalties for violations, such as fines of up to ten lakh rupees and sentences of up to ten years in jail.⁷

However, there are a number of issues. First, the stringent eligibility requirements exclude certain groups, such as single people, live-in couples, LGBTQ+ individuals, and foreign nationals, which raises constitutional concerns under Articles 14 and 21 of the Indian Constitution about equality, autonomy, and the right to family life. Second, the outright criminalisation of commercial surrogacy without offering alternative economic protections for women may push the practice underground, increasing health risks and decreasing legal recourse for surrogates. Third, the law's reliance on administrative agencies for enforcement raises questions about its effectiveness, particularly in rural areas where healthcare infrastructure and monitoring mechanisms are still lacking.⁸

EVALUATING THE SURROGACY REGULATION ACT, 2021

Presidential approval was granted to the Surrogacy (Regulation) Act, 2021, on December 25, 2021, bringing it into effect and regulating the practice and process of surrogacy in India. Based on the recommendations made by the Select Committee established in November 2019 and led by MP Bhupender Yadav, the Act includes a number of changes. The 2019 Bill was significantly changed to include Indian divorced and widowed women between the ages of 35 and 45 as eligible for surrogacy, eliminate the previous restriction that married couples must have been infertile for at least five years, and instead require a medical certificate from a

⁵ Surrogacy (Regulation) Act 2021, s 3

⁶ Surrogacy (Regulation) Act 2021, s 4–6

⁷ Surrogacy (Regulation) Act 2021, s 14–16.

⁸ Rajesh Kumar, 'Surrogacy Regulation in India: Navigating Between Autonomy and Protection' (2022) 45(2) Indian Journal of Medical Ethics 120.

District Medical Board in support of either or both members of the intending couple or intended woman.⁹ Additionally, the law extends the insurance coverage for surrogate mothers from the prior 16 months to 36 months and substitutes the more comprehensive word "willing woman" for the earlier controversial "close relative" requirement.¹⁰ Additionally, it calls for the formation of similar boards at the state level and the National Assisted Reproductive Technology and Surrogacy Board.¹¹

The Bill stipulates that surrogacy operations should only be performed for altruistic reasons. A medical certificate confirming proven infertility in either one or both partners was required for them to have access to surrogacy. Only under certain conditions could the proper authority grant an eligibility certificate: the couple intending to marry must have been married for at least five years, both must be citizens of India, the wife must be between 23 and 50 years old, and the husband must be between 26 and 50 years old. Additionally, the intending couple could not have any living biological child, whether biological, adopted, or born through surrogacy, unless the child had a life-threatening illness or a physical or mental handicap.

A surrogate mother was defined by the Bill as a woman who, in accordance with the specified qualifying criteria, carried a child that was genetically related to the intended pair through the implantation of an embryo in her womb. In particular, the surrogate mother had to be a married woman between the ages of 25 and 35 during the implantation procedure, and she also had to have at least one biological child of her own. She was only allowed to serve as a surrogate once in her life, had to be related to the intended couple, and was not permitted to utilise her own gametes during the surrogacy procedure.

Additionally, the legislation stipulated that surrogacy operations could only be performed legally by surrogacy clinics licensed under its terms. It forbade anybody from advertising, promoting, or otherwise inducing women to act as surrogates, including medical practitioners, gynaecologists, registered clinics, and others. Furthermore, it made it unlawful to sell, import, buy, or trade human embryos or gametes for surrogacy purposes, as well as to abandon, exploit, or disown a surrogate child. These offences were punishable by a fine of up to 10 lakh rupees and a term of imprisonment of up to 10 years.¹²

⁹ Surrogacy (Regulation) Act 2021, s 2(zd) and s 4(iii)(c)

¹⁰ *ibid*, s 4(iii)(a)–(b)

¹¹ *ibid*, Chapter VIII.

¹² Surrogacy (Regulation) Act 2021

SOCIO-ECONOMIC DIMENSIONS OF EXPLOITATION

Before the prohibition of commercial surrogacy by the Surrogacy (Regulation) Act 2021, the majority of Indian surrogate mothers came from economically disadvantaged backgrounds, frequently driven by severe financial need. According to studies, the majority of surrogates were women who saw surrogacy as a way to support their children's education, pay off bills, or find affordable housing.¹³ These women typically had little formal education and few job prospects and hailed from rural or peri-urban regions. Due to their socioeconomic fragility, they were at a disadvantage when negotiating with the commissioning couples, who were frequently affluent, well-educated, and urban, resulting in a considerable power differential. As a result, clinics, agents, and prospective parents had disproportionate control over the terms of engagement, such as pay, housing, and medical choices.

These inequalities were made worse by the medical procedures connected to surrogacy. To increase the likelihood of conception, surrogates were sometimes subjected to numerous embryo transfers during a single cycle, which raised the risk of multiple pregnancies, miscarriages, and ovarian hyperstimulation syndrome (OHSS) caused by hormonal treatments. Even though elective cesarean deliveries were more common among surrogates due to clinics' preference for them due to scheduling convenience and perceived safety for the intended child, there were still higher surgical risks for the surrogate.¹⁴ Aside from physical health concerns, surrogates sometimes experienced emotional distress as a result of being kept in clinic-supervised hostels during pregnancy and being away from their families for a long period of time.

The care given to surrogates was, crucially, mostly restricted to the duration of the pregnancy. After the child was given over to the intended parents, surrogates were frequently released without adequate long-term medical follow-up, health insurance coverage, or psychological counselling. According to a study conducted by Sama, a resource organisation for women and health, many women reported ongoing gynaecological issues, emotional suffering, and societal stigma after surrogacy, all without institutional help to address these difficulties. The surrogacy

¹³ Amrita Pande, "'At Least I Am Not Sleeping with Anyone': Resisting the Stigma of Commercial Surrogacy in India' (2010)

¹⁴ World Health Organization, Multiple Embryo Transfer and Associated Risks (WHO 2020)

industry's profit-driven nature, which places the needs of commissioning parents above the health of the surrogate, is brought to light by this dearth of postnatal care and recovery.¹⁵

SURROGACY: A SOCIAL & ETHICAL DILEMMA

Even though surrogacy is permitted by law and supported by medicine, it still carries a significant amount of social and ethical stigma in many cultures. The fundamental conflict in surrogacy lies in its challenge to deeply held cultural ideas regarding motherhood, the family, and the female form. Instead of being praised for making the creation of life possible, a surrogate mother is frequently the target of social suspicion and moral condemnation. She is viewed by many members of the community as having "rented" her womb, commercialised her body, and violated the holy link that is generally connected with motherhood.¹⁶

When money is exchanged for pregnancy, some believe, surrogacy comes close to organ selling or even baby selling.

- Thomas Frank

Two interacting forces, socioeconomic stratification and patriarchal morality, give rise to the stigma. Although patriarchal societies regard motherhood as a woman's greatest responsibility, it is only allowed within the sanctity of marriage and biological parenting. By separating gestation from genetics and motherhood from caregiving, a surrogate breaks this up. In contrast, the majority of surrogates are from low-income backgrounds, which results in an evident class gap between affluent prospective parents and underprivileged women who carry their children. This imbalance frequently supports the story of exploitation, treating the surrogate as nothing more than a vessel and failing to acknowledge her agency and input.

From an ethical perspective, surrogacy raises issues about the commercialisation of the human body, the "sale" of children, and the blurring line between altruism and business. Society still associates altruistic surrogacy with deviance, secrecy, and shame, so it is not exempt from moral policing. A surrogate may experience feelings of guilt and worry that she has "given away" her kid, while sometimes her family will shun her, and the community will speculate on her reasons.

¹⁵ SAMA Resource Group for Women and Health (n 5)

¹⁶ <https://cup.columbia.edu/book/wombs-in-labor/9780231169905/>

The stigma extends beyond surrogates alone; prospective parents, especially women, are also silently criticised for "outsourcing" pregnancy, frequently being labelled as selfish or unnatural. Children born via surrogacy may experience issues with their legitimacy and identity as they grow up.¹⁷ Because of this, surrogacy is not just a medical or legal matter; it is a significant social break that disrupts societal norms about kinship, gender, and respect.

For surrogacy to overcome stigma, it must be viewed as an act of reproductive choice and solidarity rather than a transaction of wombs. Centuries of moral judgment cannot be erased by legal recognition alone; rather, a cultural change is necessary that recognises surrogacy as a legitimate means of family formation, respects the autonomy of women who choose it, and protects against exploitative systems. In the interim, surrogacy will continue to bear the dual burden of being both a life-giving arrangement and a socially stigmatised behaviour.

Surrogate Motherhood is an ethical complexity,

Many factors are implicated in its causality.

Addressing ethical challenges is a necessity,

Protection of rights could reduce vulnerability.

- Ragini Kulkarni

FEMINIST PERSPECTIVE ON SURROGACY

Feminist discussions of surrogacy have been divided for a long time, mirroring wider conflicts between liberty, exploitation, and structural inequalities. Radical feminism sees surrogacy mostly as a kind of patriarchal exploitation that commodifies women's reproductive abilities. In this light, the surrogate's body is transformed into a place of market exchange, where pregnancy is broken up into a service that has no emotional or maternal bond. The so-called "choice" of surrogates is fictitious, according to radical feminists, since it is the result of structural constraints such as poverty, debt, and limited opportunities, rather than true autonomy. This reduction of women's reproductive labour to a contractual transaction reinforces traditional gender hierarchies, where women, especially poor women, are

¹⁷ Maya Unnithan, 'Reproductive Technologies and the Politics of National (Re)production in India' (2013) 25(1) Culture, Health & Sexuality 87

instrumentalised for the benefit of wealthier, often urban, couples.¹⁸ Therefore, from their perspective, commercial surrogacy is simply an improved version of patriarchal dominance over women's bodies and not an emancipatory choice.

In contrast, liberal feminism places a strong emphasis on the values of physical autonomy and the freedom of contract. Prohibiting commercial surrogacy, from this vantage point, deprives women of the ability to make decisions regarding their reproductive labour and compromises the very autonomy that feminism aims to advance. Liberal feminists contend that the law should uphold a woman's choice to engage in a surrogacy arrangement in return for payment if she agrees to it with complete knowledge and sufficient safeguards. They believe that, rather than outright bans, the emphasis should be on reinforcing legal frameworks that guarantee informed consent, equitable compensation, health safeguards, and contract enforceability. According to liberal feminism, surrogacy can be a way for women to have agency, earn money, and take charge of their reproductive labour, but only if systemic protections are in place.¹⁹

The most nuanced perspective on surrogacy, particularly in the Indian setting, however, comes from intersectional feminist critiques. Intersectionality emphasises how the experiences of surrogates are influenced by the intersection of class, caste, and gender. The majority of surrogates in India before the ban came from underprivileged or marginalised rural communities, whereas the commissioning parents were mostly affluent, urban, and belonged to higher castes. This structural imbalance replicates socioeconomic hierarchies in the private sphere of reproduction, thereby perpetuating rather than eradicating current disparities. Furthermore, the restrictions placed on surrogates to hostels during pregnancy, the control exerted by middlemen, and the absence of postnatal care highlight how caste and class place surrogates as "vessels" whose well-being is subordinate to the intended child. Intersectional feminists contend that both radical and liberal viewpoints frequently disregard these complex realities, where the exploitation of women is inextricably linked to systemic poverty, caste oppression, and global inequalities in reproductive labour markets.²⁰

¹⁸ <https://frauenkultur.co.uk/wp-content/uploads/2020/05/Andrea-DWORKIN-Right-Wing-Women-The-Politics-of-Domesticated-Females-19831.pdf>

¹⁹ Kalindi Vora, *Life Support: Bio capital and the New History of Outsourced Labor* (University of Minnesota Press 2015).

²⁰ Sonia Allan, *Donor Conception and the Search for Information: From Secrecy and Anonymity to Openness* (Routledge 2017).

As a result, feminist evaluations of surrogacy cannot be limited to a dichotomy of prohibition versus freedom. A comprehensive framework must recognise the exploitative potential identified by radical feminists, the autonomy concerns raised by liberal feminists, and, crucially, the structural inequalities highlighted by intersectional feminism. The problem remains in the Indian setting, where the Surrogacy (Regulation) Act 2021 currently only allows altruistic surrogacy: does this change actually address exploitation, or does it simply push transactions underground while still depending on unpaid reproductive work performed by women?

COMPARATIVE LEGAL FRAMEWORK

Due to legislative priorities, ethical discussions, and cultural norms, the legal regulation of surrogacy varies greatly by jurisdiction. The Surrogacy (Regulation) Act 2021 governs surrogacy in India, banning commercial surrogacy and only allowing altruistic agreements. According to the law, only Indian heterosexual couples who are married and, in certain circumstances, single women who are divorced or widowed are eligible for surrogacy.²¹ Foreign nationals are prohibited from using the service, and cross-border agreements are expressly prohibited. In 2024, the legislation was changed to allow the use of a single donor gamete if medically essential, as long as at least one gamete comes from the intended couple.²²

On the other hand, the Netherlands has one of the most stringent regulatory frameworks. It is against the law to advertise or encourage surrogacy agreements, and commercial surrogacy is a crime. In practice, altruistic surrogacy is tolerated, but there is no complete regulatory framework for it. A 2023 government bill suggested establishing a regulated system with restrictions on compensation and more legal certainty, but this measure has not yet been passed in 2025.

Surrogacy is permitted in the United Kingdom, but only on a non-commercial, expense-only basis. Regardless of genetic relationship, the surrogate (and her husband, if married) is recognised as the legal parent at birth under current law. A parental order, which may only be issued following a judicial assessment of the arrangement and any payments made, is the sole method of transferring parentage. Although this guarantees judicial oversight, it also causes a break in parental identification soon after birth. In 2023, the Law Commission proposed a novel

²¹ Surrogacy (Regulation) Act 2021

²² <https://timesofindia.indiatimes.com/india/government-allows-donor-egg-sperm-in-surrogacy/articleshow/107923539.cms>

"pathway" for pre-conception agreements that would enable prospective parents to be identified from birth, but this has not yet been put into legislation.

Greece is notable among European countries for allowing surrogacy under judicial supervision, even for prospective parents from other countries. Altruistic gestational surrogacy (where the surrogate is not genetically related to the child) is permitted by Greek law, but it must first be approved by a court before the embryo transfer can take place. Since 2014, non-residents have been eligible for this legal certainty, which has helped make Greece a centre for surrogacy worldwide.

Additionally, South Africa has a stricter judicial oversight of surrogacy. According to Chapter 19 of the Children's Act 38 of 2005, only altruistic surrogacy is allowed, and all contracts must be ratified by the High Court before conception. Commissioning parents must live in South Africa, which means that foreign intended parents are effectively excluded from the system. After the court verifies the arrangement, though, this structure grants significant legal certainty, since parenthood is immediately transferred to the intended parents from birth.²³

Lastly, Russia has historically had one of the most liberal surrogacy regimes, allowing commercial surrogacy for intended parents from both inside and outside the country. The enactment of federal legislation significantly altered this situation. No. 538-FZ, issued on December 19, 2022, prohibits surrogacy for foreign nationals and stateless people. Currently, surrogacy is only available to single Russian women with medical needs and married Russian couples, while foreigners are completely prohibited.²⁴

These jurisdictions, taken as a whole, demonstrate the variety of policy options available for surrogacy. India, South Africa, and the UK have stringent altruistic models aimed at preventing exploitation; the Netherlands is currently debating reform while banning commercial arrangements; Greece allows pre-birth judicial certainty, including for foreigners; and Russia, which was once a popular destination for surrogacy, has now shut its borders to non-citizens. The enduring conflict between reproductive autonomy, child welfare, and the fear of commercial exploitation that influences surrogacy laws around the world is highlighted by this comparative study.

²³ Children's Act 38 of 2005 (South Africa), ch 19

²⁴ <https://prsindia.org/billtrack/prs-products/international-comparison-of-surrogacy-laws-2713>

THE DEBATE- COMMERCIAL V. ALTRUISTIC SURROGACY

The main point of contention in the debate about global surrogacy is whether it should be allowed as a commercial transaction or just be available for altruistic surrogacy. The competing ethical, legal, and socioeconomic justifications used by supporters and detractors of both models demonstrate the intricate connections between reproductive autonomy, gender equality, and institutional inequality.

Commercial surrogacy: The argument in favour of commercial surrogacy is based on reproductive autonomy and economic prospects. They argue that if women are entitled to make choices about their bodies, such as whether to have an abortion, use contraception, or engage in sex work, then they should also have the right to bargain for their reproductive services in exchange for pay. Furthermore, surrogacy is portrayed as a legitimate and potentially life-altering economic option, especially when it brings in enough money to help families escape debt or poverty, in situations where poverty and unemployment limit women's financial agency. Furthermore, supporters claim that regulated commercial surrogacy legalises transparency in contracts, access to medical protection, and the enforceability of rights for all parties.

Critics of commercial surrogacy, on the other hand, see it as an inherently exploitative practice that commodifies women's reproductive abilities and children's lives. The unequal involvement of disadvantaged women as surrogates for affluent, frequently foreign, prospective parents highlights the underlying power imbalance in these agreements. Women frequently shoulder the physical and emotional burdens of pregnancy with little negotiating power, while middlemen who keep a sizable portion of the payment often recruit surrogates. Additionally, critics point out the "assembly line" nature of fertility clinics, where several embryo transfers, cesarean births, and hormone therapies are normalised, sometimes without sufficient long-term health care. Therefore, commercial surrogacy is viewed more as a representation of reproductive labour exploitation, supported by structural inequities, than as a source of empowerment.

Surrogacy out of altruism: Altruistic surrogacy is presented as the morally "purer" option, in which the surrogate consents to carry a child for altruistic, familial, or kinship reasons and financial recompense is not permitted, because there are ostensibly no financial rewards. This paradigm is believed to lessen the likelihood of commodification and prevent affluent

commissioning parents from exploiting it. Additionally, it aligns with cultural and religious sensitivities in many communities by maintaining the symbolic value of motherhood as a gift rather than a commodity.

However, selfless surrogacy is still susceptible to critique. The lack of monetary compensation does not necessarily eliminate coercion, according to detractors. Women, particularly daughters, sisters, or daughters-in-law in communities with deeply ingrained gendered responsibilities, may be forced into becoming surrogates under the guise of altruism, making their "choice" no less restricted than it would be in commercial systems. Additionally, altruistic surrogacy considerably restricts access: when financial incentives are taken away, the number of willing surrogates reduces significantly, pushing demand underground into shady or unlawful markets. Critics also emphasise the possibility of disguised commercialisation, where payments are made informally under the guise of "expenses," resulting in opaqueness rather than transparency.²⁵

POLICY RECOMMENDATION

Regulated Pay: The Law should establish a regulated system with uniform, transparent payments via escrow accounts rather than prohibiting compensation. Fairness would be guaranteed, and commoditization would be avoided, by compensation limits and disclosures. This acknowledges the surrogate's work without treating her as a commodity.

Required Independent Legal Counsel and Counselling: Before signing agreements, surrogates must get separate psychological and legal advice. Voluntariness should be confirmed during several consent sessions that are separated by time. This protects against covert coercion and promotes informed decision-making.

Insurance and Healthcare: Comprehensive antenatal, prenatal, and postnatal care must be provided by clinics, along with obligatory long-term health insurance. As enforceable rights, coverage must cover transportation, food, and mental health services. By doing so, accountability for vulnerable women is transferred to accountable organisations.

Handling Intermediaries: There should be harsh criminal and civil sanctions for uncontrolled brokers who take advantage of surrogates. Clinic licensing and auditing criteria must establish

²⁵ <https://www.worldwidesurrogacy.org/blog/commercial-surrogacy-vs-altruistic-surrogacy>

open payment trails. This breaks up the profiteering ring and shields women from trafficking-related behaviour.

Socioeconomic Restoration: Surrogate women in state programs must have access to microcredit, social security, and job training. By increasing economic possibilities, this lessens manipulative coercion. Rehabilitation makes sure that surrogacy empowers rather than ensnaring.

Access without discrimination: Reconsider stringent eligibility criteria that exclude single parents, LGBTQ families, and other groups. Maintaining robust anti-exploitation protections, access should be increased. Modern family forms must be respected by law without compromising safety.

Open Registries and Grievance Procedures: Every surrogacy arrangement must be documented in confidential registries with privacy protections. Grievances related to unpaid compensation or coercion should be handled by an impartial ombudsperson. This improves monitoring and guarantees women's access to remedies.

Data Collection and Monitoring: Clinics should provide outcome reports and health information for independent assessment. Reviews based on facts should gradually adjust policy. By continuously monitoring them in this way, surrogate voices remain at the centre of the legislative process.

CONCLUSION

The conflict between altruistic and commercial surrogacy is a reflection of society's most fundamental conflicts between autonomy and vulnerability, dignity and despair, choice and compulsion, rather than a straightforward battle of legal frameworks. The Surrogacy (Regulation) Act, 2021, which aims to outlaw commercial agreements and thereby end exploitation, has transformed India into a fully altruistic framework, but it runs the risk of pushing the practice underground, depriving surrogates of both protection and fair compensation. Unfettered commercialisation, as seen in some parts of the globe, simultaneously turns motherhood into a transactional service and commodifies women's bodies.

Instead of an absolutist dichotomy, the way ahead is through an evidence-driven, rights-centric framework that sees the surrogate as a worker with agency but also as someone subject to inequalities in society. Consequently, regulation should integrate safeguards against exploitation with assurances of equitable pay, health protection, and post-surrogacy rehabilitation. Reproductive liberty and social justice can only be reconciled by taking such a balanced perspective.

Ultimately, surrogacy forces us to consider the difficult issue of how to establish a legitimate and ethical framework in which women's bodies are not treated as commercial commodities or sacrificial vessels, but rather as places of dignity, autonomy, and equal citizenship. The solution necessitates a shift in law, policy, and public debate away from moral panic and paternalism and toward a model of compassionate regulation that empowers women rather than policing them.