

## **Building Families: A Closer Look at Surrogacy**

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### **Abstract :**

The term "surrogacy" refers to situations in which infertile couples depend on a third party lady to bear their kid on their behalf. In 1980, surrogacy was first made available. and was made legal in India in 2002. As the year went on, however, the GOI discovered certain shortcomings and abuses of commercial surgery. In response, the ICMR implemented several rules designed to stop the abuse of surrogacy. The law underwent a number of revisions as time went on. The Indian government outlawed the practice of commercial surgery in 2015 and prohibited foreign nationals, or NRIs, from engaging in it. As per the UN survey conducted in 2012, India was dubbed the Cradle of the World and proclaimed the "World Capital of Surrogacy." The well-known case of "Baby Manjhi Yamda vs. Union of India," in which travel documents were required for a Japanese-born child conceived and delivered by an Indian surrogate mother, exposed a number of problems with the surrogate bill and ultimately resulted in further rules under the act. The most recent Surrogacy Regulation Bill concentrated on facts, such as changing the definition of infertility and outlawing commercial surrogacy. Only close relatives of the couple could serve as surrogate mothers, and the bill also addressed post-delivery surrogacy. 36

months The most recent Surrogacy Regulation Bill emphasised certain facts. These included a revision of the definition of infertility, a ban on commercial surrogacy, and a definition of the post-delivery period of 36 months, during which the couple would be responsible for any medical complications resulting from the surrogate mother's pregnancy. India still has a long way to go in reducing the prevalence of malpractices and the abuse of surrogacy, despite all the changes made to the statute.

**Keywords:** GOI , World Capital of Surrogacy .

## **1. OBJECTIVES OF THE STUDY :**

The practice by which a woman carries and gives birth to a child on behalf of another individual or couple—known as intended parents—is called surrogacy. Commercial surrogacy is the term used when carriers receive payment for serving as surrogates. The goal of this work is to evaluate the current global landscape as well as the legal, ethical, social, and cultural aspects of commercial surrogacy.

1. Evaluating Health and Medical Aspects: Examining the medical and health-related aspects of surrogacy, including the safety and well-being of both the surrogate mother and the child.
2. Societal Perspectives: Understanding how surrogacy is perceived and accepted in different societies, including cultural, religious, and social perspectives.

3. Economic Implications: Investigating the economic aspects of surrogacy, considering costs, compensation, and financial implications for all parties involved.

## **2. Introduction :**

When a woman donates her body to bear a child on behalf of a couple who are unable to conceive or carry a child themselves, this practice is known as surrogacy. The person or people who take on the role of a child's legal parents are known as the intended parents originated via surrogacy.

Two varieties of surrogacy exist:

1. Conventional Surrogacy: This is a case of artificial insemination leading to pregnancy in a surrogate who shares genetics with the child. Although this was once
2. Host surrogacy- Is now a typical practice in the majority of surrogacy agreements .The utilisation of donor eggs or the intended mother's eggs in IVF is known as host surrogacy. As a result, the surrogate mother is genetically unrelated to the child and does not use her own eggs.

The three steps involved in "hosting" a surrogacy .

## **3. Review the Literature:**

The issue of surrogacy has been debated for a very long time in a variety of domains, including the legal, ethical, and social sciences. This idea is spreading quickly over the globe. It has many problematic circumstances because there are some who support it and those who oppose it.

Legalisation of surrogacy differs from nation to nation. Numerous nations, including the United Kingdom, Ireland, Denmark, Belgium, certain US states, India, Russia, and Ukraine, permit

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surrogacy in one way or another. From a legal framework, nothing has been done about it by Indian legislation. This idea is accepted by many who are not fortunate enough to have children, yet it is criticised by many others. Those who support it want it to be legalized, so everyone can have the joy of having a kid for the sake of the family's and the country's future development. After reading through numerous publications and examples, the researcher discovered that some people have supported surrogacy throughout history and up to the present day. The question that comes up is whether legalizing surrogacy will violate laws controlled by nature.

Reference - <https://en.wikipedia.org/wiki/Surrogacy>

### **4. Research Design :**

This is based on secondary data , According to a 2012 survey, 50% of the 25,000 infants born to surrogate mothers in India in 2012 were for couples from outside the country. In 2012, the surrogacy market in India was valued at over \$400 million annually, with about 3000 clinics functioning throughout the country.

Surrogacy is completely illegal in some countries like Germany, Italy, and Norway.

Some countries like India and Ukraine allow commercial surrogacy, while others like the UK, France, and Australia only permit altruistic surrogacy.

The United States has a patchwork of laws, with some states prohibiting all surrogacy and others allowing various forms with specific regulations

### **5. RESEARCH METHODOLOGY :**

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Research on surrogacy typically involves a multidisciplinary approach. Common methodologies include qualitative interviews with surrogate mothers, intended parents, and healthcare professionals, as well as quantitative surveys to gather statistical data on various aspects of surrogacy arrangements. Ethical considerations, legal frameworks, and the psychological impact on all parties involved are often explored in-depth. Researchers may also analyze medical records, legal documents, and policy frameworks to provide a comprehensive understanding of surrogacy practices.

### **Kinds of Surrogacy**

1. In genetic/partial surrogacy, the male spouse of the couple wishing the child (the commissioning father) fertilises the woman's egg either through artificial insemination or, less frequently, through natural sexual relations. In this instance, the commissioning mother serves as the child's social and legal mother, while the surrogate mother is the child's genetic mother. Partial or traditional surrogacy are other names for this kind of surrogacy. In a total surrogacy, the commissioning father's or the donor's sperm are used to fertilise the surrogate's egg.
2. In mandatory or gestational surrogacy, the commissioning couple's egg and semen (or those of anonymous donors) are acquired, and the resulting embryo is then put into the surrogate or carrying mother. In this case, the child and the surrogate mother are genetically unrelated. Full Surrogacy is another name for this kind of surrogacy.

### **6. Analysis :**

**Strengths:** Provides a valuable option for individuals or couples unable to conceive, offers financial opportunities for surrogates.

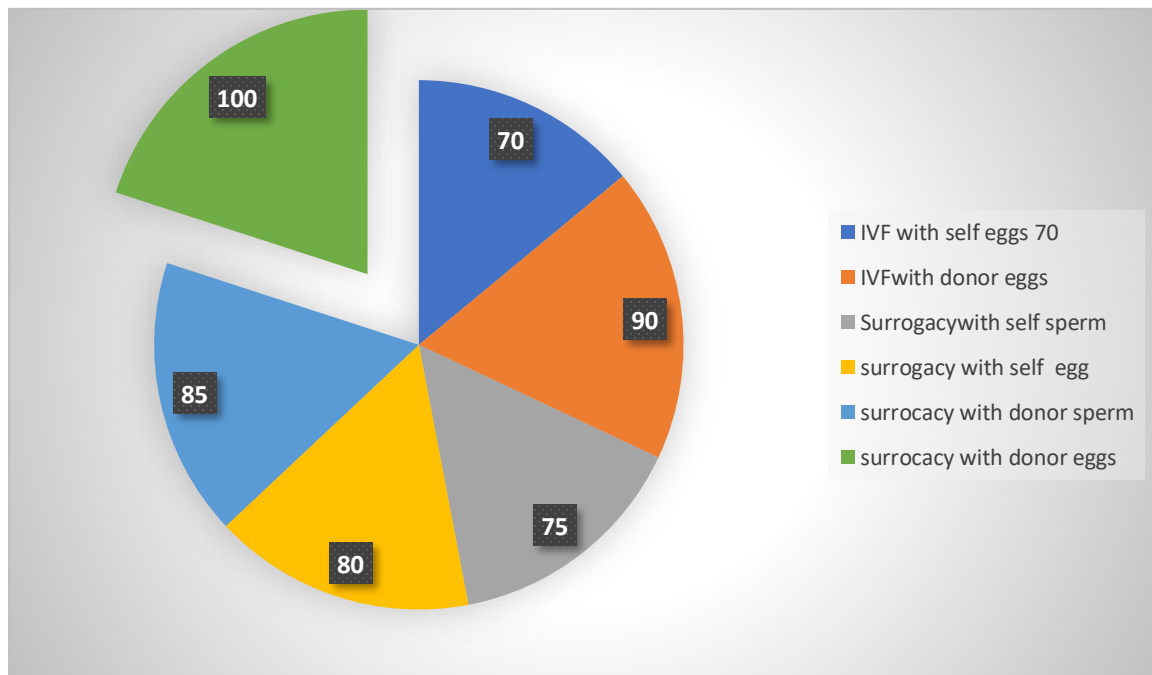
## Surrogacy

**Weaknesses:** Ethical concerns, potential for exploitation, legal complexities vary across regions.

**Opportunities:** Advancements in medical technology, increased awareness and acceptance.

**Threats:** Legal and regulatory challenges, negative public perception, potential for commercial exploitation.

### **Success rate of surrogacy**



### **Historic Years for Surrogacy**

1980: Michigan Attorney Noel Keane penned the initial surrogacy agreement.

The first successful gestational surrogate pregnancy in the United States was borne by a lady in 1985.

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Melissa Stern, popularly known as "Baby M," was born in the United States in 1986. Melissa's real mother and surrogate, Mary Beth Whitehead, declined to give Melissa's custody to the couple she agreed to surrogate for.

1990: In California, intended parents Mark and Crispina Calvert were rejected custody of the child by gestational carrier Anna Johnson. In *Calvert v. Johnson*, the couple filed a custody lawsuit against her, and the court affirmed their parental rights. Thus, it established the legal definition of the genuine mother as the woman who, in accordance with the terms of the surrogacy agreement, plans to conceive and nurture a child.

### **6.1 Ethical Guidelines :**

**Ethical Review Boards:** Establish or adhere to ethical review boards to ensure that surrogacy arrangements prioritize the well-being and autonomy of all parties involved. Ethical considerations should guide decision-making throughout the process.

**Informed Consent:** Prioritize informed consent at every stage, ensuring that both intended parents and surrogates fully understand the implications, risks, and responsibilities associated with surrogacy.

### **6.2 Medical Protocols:**

**Medical Screening:** Implement rigorous medical screening for both intended parents and surrogates to assess physical and mental health, reducing the likelihood of complications during pregnancy and ensuring a healthy environment for the child.

**Fertility Clinics:** Collaborate with reputable fertility clinics that adhere to medical standards and guidelines. Regularly review and update medical protocols to incorporate advancements in reproductive technologies

### **6.3 Public Education and Awareness:**

**Education Programs:** Develop educational programs to increase public awareness about surrogacy, addressing misconceptions, and promoting understanding of the ethical, legal, and emotional aspects involved.

A well-rounded strategy for surrogacy should prioritize the rights, well-being, and dignity of everyone involved, aiming for a balance between legal, medical, ethical, and social considerations. Regular reviews and adjustments to the strategy will contribute to its effectiveness over time.

## **7. Facts and Figures**

Possibly after I last updated my understanding in January 2022, surrogacy numbers have changed. Roughly 750,000 infants have been born in the United States as a result of assisted reproductive technology (ART), which includes surrogacy. The surrogacy market is predicted to increase and was valued at approximately \$112.80 billion globally in 2019. Although they have improved over time, in vitro fertilization (IVF), which is frequently linked to surrogacy, has varying success rates. Some clinics estimate success rates of 40% or greater for specific age groups. For the most up-to-date information, always verify the most recent, region-specific statistics.



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Surrogacy itself doesn't directly affect disease transmission. However, careful screening of both the surrogate and intended parents is crucial to prevent the transmission of infectious diseases. Medical professionals conduct thorough health assessments to ensure a safe environment for the surrogate, the intended parents, and the child. Adhering to proper medical protocols minimizes the risk of disease transmission throughout the surrogacy process.

### **8. Results**

A woman who is a widow or divorcee between the ages of 35 and 45, or a pair, which is defined as a lawfully married woman and man, may use surrogacy if they have a medical condition that makes it necessary for them to do so, according to the Surrogacy (Regulation) Act, 2021.

The targeted pair must be a lawfully wed Indian couple; the lady must be between the ages of 25 and 50, and the guy must be between the ages of 26 and 55. Neither partner may have had a prior biological, adoptive, or surrogate child.

Additionally, it outlaws commercial surrogacy, which carries a 10-year prison sentence and a fine of up to Rs. 10-lakhs.

Only selfless surrogacy, in which no money is exchanged and the surrogate mother is genetically related to the intended parents, is permitted by law.

The results of surrogacy can vary widely and depend on several factors, including the health of the surrogate and intended parents, the quality of medical care, and the legal and emotional aspects of the arrangement.

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In successful cases, surrogacy can bring joy to intended parents who may have faced challenges in conceiving and starting a family. However, like any medical procedure, there are risks involved, and outcomes may not always be positive.

It's crucial for all parties involved to carefully consider and discuss expectations, legal aspects, and potential emotional challenges before embarking on a surrogacy journey. Seeking professional guidance and having clear agreements in place can contribute to a more positive outcome.

### **9.Indian Surrogacy: Present Situation**

In India, foreigners have been able to use commercial surrogacy since 2002. From November 3, 2015, the Health Ministry of India issued a notification prohibiting surrogacy for foreign citizens, including OCIs and PIOs, citing a provision in the draft ART Bill, 2014. All other commercial surrogacy practices in India are prohibited by the Surrogacy (Regulation) Bill 2016, which was approved by the Cabinet and is currently awaiting parliamentary approval. Additionally, the proposed Bill restricts surrogacy to Indian couples who are medically indicated for surrogacy and are infertile and have been married for at least five years. The Bill forbids surrogacy agreements for foreign nationals as well as homosexuals, live-in couples, single parents, OCIs, and PIOs. Additionally, the intended spouse cannot have any surviving children by biological means, adoption, or surrogacy, according to the Surrogacy Bill. Additionally, it stipulates that any intending couple or individual who seeks assistance from a surrogacy clinic, laboratory, registered medical professional, gynaecologist, paediatrician, human embryologist, or any other person for commercial surrogacy or to conduct surrogacy procedures for commercial purposes faces the possibility of imprisonment for a maximum of five years and a fine of up to

Rs. 500,000 for the first offence, and up to Rs. 1,000,000 for any subsequent offence. There are numerous errors in the statute, and a number of social, legal, and medical organizations are recommending changes.

### **10. Future scope :**

The surrogacy industry is a well-established global one, with discussion threads on travel and vacation websites (Travel Daily News, 2023). Given that one of the factors that contribute to the demand for cross-border surrogates is the ease of accessing surrogacy domestically one could argue that if domestic surrogacy is well-regulated and serves the interests of all parties, then there may be less need for cross-border arrangements.

It is only a matter of time until people turn to cross-border solutions when surrogacy is outlawed or restricted for some groups (as is the case with legal parenthood for IPs, citizenship rights for the child, and/or surrogacy access denied to them) (Hammarberg et al, 2015; Jackson et al., 2017). A "demography of permanently infertile couples moving around depending on which country or state permits transnational gestational surrogacy" (Tanderup, 2023) is brought about by differing regulations in both surrogacy destinations and home nations (González, 2020).

### **11. Conclusions:**

The Surrogacy (Regulation) Act, 2021 is a well-thought-out and thorough law, but its execution must be successful. Surrogacy is a year-long process, so it's not so simple, even though there's a fear that it will disappear and that the PC-PNDT Act will be compared. Due to the ban on foreigners travelling to India for commercial surrogacy and the lack of willingness among many women to assume the risk for a meagre financial reward, the company has faced setbacks.

Currently, the successful execution of the Act will determine the legal result.

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The combination of science, society, services, and individuals that make surrogacy possible results in a situation where both the infertile couple and the surrogate mother win out—the former gets to fulfil their ultimate dream, while the latter gets the appropriate compensation.

To give a womb for rent" refers to nurturing the fertilised egg of another couple in your womb and giving birth to the child with a specific intention, the intention being either money or service, or because of altruistic reasons. Surrogacy is the union of science, society, services, and person that make it a reality. Surrogacy leads to a win-win situation for both the infertile couple and the surrogate mother.

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