



A Journey From Womb To World: Ethical and Legal Dimensions of Surrogacy in India

*Dr. Rabia Gund Advocate**

*B. Com. LL. B., LL.M., UGC-NET, Ph.D., (Double Gold Medalist.), is an Advocate at Pb & H High Court, Chandigarh and an Assistant Professor at University Institute of Legal Studies, Panjab University, Chandigarh.

Abstract:

Surrogacy, enabled by advancements in Assisted Reproductive Technologies (ARTs) such as in-vitro fertilization (IVF), offers a vital route to parenthood for couples facing infertility, individuals with medical constraints, and members of the LGBTQ+ community. While it enhances reproductive choice, surrogacy also raises significant ethical and legal concerns, including issues of autonomy, informed consent, exploitation, commercialization of reproductive labour, and the rights of the child. Globally, the scenarios vary widely, from outright bans to permissive commercial models-creating challenges in cross-border cases involving citizenship and parentage. In India, the Surrogacy (Regulation) Act, 2021, alongside the Assisted Reproductive Technology (Regulation) Act, 2021, restricts the practice to altruistic surrogacy, aiming to curb exploitation and ensure safeguards, though gaps remain in enforcement and balancing protection with autonomy. This article analyses surrogacy through ethical and legal lenses, reviews key judicial precedents, and proposes a right-based regulatory approach that upholds dignity, autonomy, and child welfare in the context of evolving social realities and technological advancements.

Introduction:

Surrogacy, in its simplest terms, is an arrangement in which a woman agrees to conceive, carry, and give birth to a child for another person or couple, known as the intended parents. While the concept of a “surrogate mother” has existed for centuries in various cultural and mythological narratives, it is in the last four decades that surrogacy has emerged as a tangible, medically viable, and socially significant pathway to parenthood.

The practice gained momentum alongside advances in assisted reproductive technologies (ARTs), particularly in-vitro fertilization (IVF), which enabled the separation of genetic motherhood from gestational motherhood. This development fundamentally reshaped traditional notions, biological connection, and family formation. Today, surrogacy is not merely a medical procedure, it is a global phenomenon involving complex intersections of law, ethics, economics, and human rights.

Understanding Surrogacy:

Surrogacy is a reproductive arrangement in which a woman, known as the surrogate mother, agrees to conceive, carry, and deliver a child for another person or couple, referred to as the intended parents. The arrangement may be formalized through legal contracts, governed by specific legislation, or, in the absence of a legal framework, guided by informal agreements, though the latter often leads to disputes over rights and obligations.

Surrogacy may be classified into several types based on the genetic relationship between the surrogate and the child, as well as the financial arrangement involved:

- **Traditional Surrogacy** – The surrogate uses her own egg, fertilized by the sperm of the intended father (or a donor) through artificial insemination. The surrogate is thus the **genetic mother** of the child. This form is less common today due to legal complications regarding parental rights and the emotional complexity of the surrogate's genetic link.
- **Gestational Surrogacy** – The surrogate carries an embryo created via **in-vitro fertilization (IVF)** using the gametes of the intended parents or donors. The surrogate has **no genetic connection** to the child. This method is predominant in regulated jurisdictions as it reduces parentage disputes.
- **Altruistic Surrogacy** – The surrogate receives **no financial compensation** beyond the reasonable expenses related to medical care, travel, and loss of wages during pregnancy. It is legally permitted in countries such as UK, Canada, and India (under the Surrogacy Regulation Act, 2021).
- **Commercial Surrogacy** – The surrogate is compensated beyond medical expenses, effectively making surrogacy a form of paid reproductive labour. While it has been practiced widely in countries such as Ukraine, Georgia, and certain U.S. states. It is banned in many jurisdictions due to ethical concerns over exploitation and commercialization.

Medical Process Overview

Surrogacy relies heavily on advanced reproductive technologies, primarily **in-vitro fertilization (IVF)**, which enables the fertilization of an egg outside the human body. The process typically involves:

- **Medical Evaluation** – Comprehensive screening of the surrogate and intended parents to ensure physical fitness, absence of infectious diseases, and compatibility for embryo implantation.
 - **Ovarian Stimulation (for Egg Provider)** – The egg provider, either the intended mother or a donor undergoes hormonal stimulation to produce multiple eggs.
 - **Egg Retrieval and Fertilization** – Eggs are collected and fertilized with sperm (from the intended father or a donor) in a laboratory setting.
 - **Embryo Culture and Transfer** – The resulting embryos are cultured for a few days and one or more are transferred into the surrogate's uterus using minimally invasive procedures.
 - **Pregnancy and Monitoring** – The surrogate's pregnancy is monitored through regular medical check-ups, ultrasounds, and prenatal care.
 - **Delivery and Legal Handover** – Upon birth, the child is handed over to the intended parents as per legal agreements and relevant statutory requirements for birth registration and parentage recognition.
-

Factors Driving the Expansion of Surrogacy:

Several factors have contributed to the increased prevalence and acceptance of surrogacy arrangements:

- According to the World Health Organization (WHO), infertility affects about 1 in 6 people around the world. You can find it here: <https://www.who.int/news/item/04-04-2023-1-in-6-people-globally-affected-by-infertility>
 - In many cases, surrogacy is the only way to become a biological parent, especially when medical conditions (like not having a uterus, having repeated miscarriages, or having pregnancy complications that could kill you) make pregnancy impossible or unsafe.
 - Advances in Assisted Reproductive Technology: New technologies like IVF, embryo freezing, preimplantation genetic testing (PGT), and better hormonal therapies have made surrogacy easier to get, more effective, and safer for the mother and baby.
 - Changing Family Structures: The growing acceptance of single parenthood, same-sex marriages, and LGBTQ+ rights has changed what it means to be a family. For a lot of people in these groups, surrogacy is a way to become a parent without having to adopt.
 - Global Mobility: The rise of cross-border surrogacy arrangements has made it possible for intended parents to look for places with good legal, medical, and economic conditions. However, this has also created new legal problems.
 - Economic Considerations: In some areas, commercial surrogacy provided a way for women from poor backgrounds to make money, which created a supply and demand dynamic in the reproductive market.
-

Rising Need for Regulation:

The exponential growth of surrogacy both domestic and transnational has raised pressing concerns regarding the protection of all the parties involved: the surrogate, the intended parents, and most importantly, the child.

Without legal framework, surrogacy can become vulnerable to:

- Exploitation of surrogates- particularly in economically unequal situations.
- Legal disputes over parentage- especially in cross-border contexts where nationality and citizenship laws differ.
- Commodification of reproduction- treating children and gestation as marketable services or products.
- Lack of accountability in medical practices- including inadequate screening and counselling.

The necessity for regulation is not solely about controlling the practice but ensuring ethical integrity, human dignity, and the safeguarding of rights. Countries have responded in significantly different ways ranging from outright bans to liberal commercial models creating a patchwork of global legal approaches that sometimes conflict with each other.

Ethical Perspectives:

Surrogacy is a morally complicated issue because it involves both strong personal desires to be a parent and larger societal questions about human dignity, freedom, and fairness. The principle of autonomy is at the center of the ethical debate. In bioethics, this means that people should be able to make their own choices about their own bodies. From this point of view, surrogacy is a valid way for women who want to have children for other people and for intended parents who want to grow their families to make reproductive choices. But the autonomy argument is made more difficult by the fact that many surrogates may not be doing it out of pure altruism, but rather because they need the money. In societies with a lot of inequality, the "choice" to become a surrogate may not be a real choice but rather a way to deal with money problems. This makes us wonder if such consent is really voluntary. Another big moral problem is the fear of exploitation. Women who are commercial surrogates, especially those with low incomes, may have to follow strict rules about where they can go, what they can eat, and how they live their daily lives while they are pregnant. This makes the process feel like a type of reproductive labor with little personal choice. This brings up the bigger debate about commodification, in which critics say that putting a price on pregnancy could turn both the act of carrying a child and the child itself into market goods. Supporters say that regulated, consensual arrangements don't have to be dehumanizing, and they point to other accepted forms of paid bodily labor, like egg donation, as proof that dignity and payment can go hand in hand. The rights and well-being of the child must also be taken into account in any ethical evaluation. When it comes to cross-border surrogacy, identity, legal parentage, and nationality are especially important. This is because different laws can leave children in legal limbo or

even stateless. Disagreements, like intended parents refusing to take care of a disabled child, can also cause serious emotional and developmental harm. Some feminists see surrogacy as a way to give women more power and freedom over their bodies, while others see it as a way to reinforce the exploitation of women's bodies by men and capitalism. Post-colonial critiques also point out the power imbalances in global surrogacy markets, where women from poorer countries often do the reproductive work for richer people from developed countries.

Religious and cultural frameworks also affect the discussion of ethics. Some Hindu traditions may allow surrogacy to fulfill family and religious duties, but most Islamic interpretations do not because they want to protect the sanctity of marriage and family lineage. Different Christian groups have different views on surrogacy. The Catholic Church is against it because it separates procreation from marital intimacy. Some Protestant groups, on the other hand, are more open to it. Different branches of Judaism have different ideas about this, but sometimes regulated gestational surrogacy is allowed with religious oversight. Cultural attitudes are also very different. Some societies see surrogacy as a generous act, while others are suspicious or morally against it.

Legal Perspectives-Global View:

The rules about surrogacy vary greatly from one place to another. This is because people have very different ideas about what is right and wrong, what is good for society, and what risks are involved. The law isn't clear-cut because there isn't a global agreement. For instance, one country might have a legal and enforceable agreement while another country might not. When you look at liberal commercial systems, restrictive altruistic models, and outright bans, the differences are even clearer. In Canada, the UK, and Australia, for example, surrogacy is only legal if the surrogate doesn't get paid. In this case, the law usually says that the surrogate can't be paid anything other than reasonable costs that are directly related to the pregnancy. Contracts can be valid in theory, but enforcing them, especially clauses that require the surrogate to give up the child, is often limited because the policy favors the surrogate's right to change her mind. These systems are supposed to make it less likely that someone will abuse their power while still allowing people to use surrogacy to start a family. Some places, like Ukraine, Georgia, and some U.S. states (like California and Illinois), do allow commercial surrogacy and see contracts as legally binding and enforceable. These models usually have clear legal rules that explain what the surrogate and the intended parents can and can't do. They also have pre-birth orders that make the parents' legal status clear before the baby is born. People who agree with this way of doing things say it makes things clearer, stops fights, and respects the freedom of adults who agree to it. Critics, on the other hand, say that commercial surrogacy can still keep economic inequality going, because wealthier intended parents benefit from the reproductive work of women who aren't as well off. France, Germany, Italy, and Spain are just a few of the countries that have chosen to completely ban all types of surrogacy, commercial or not. People don't want to turn things into things that can be bought and sold because they think it's wrong, and they also worry that they don't know who the parents are. In these places, any surrogacy agreement is not valid. Intended parents may have to go through the adoption process to get legal recognition, even if one of them is the child's biological parent. It is very hard to do surrogacy across borders because there are no international rules that everyone follows. People who want to be parents go to countries with more relaxed laws and call it "surrogacy tourism." This can make surrogacy easier for people who live in places with strict laws, but it has also caused a lot of legal problems. Children born through cross-border surrogacy may have to wait longer or not get citizenship at all, which would make them stateless. The well-known case of *Baby Manji Yamada v. Union of India* [AIR 2009 SC 84] showed how difficult this can be. In that case, a Japanese couple's baby who was born through an Indian surrogate was stuck in legal limbo because the laws about nationality were different. The child's parents were supposed to be the child's parents, but they got a divorce and left the child in India. The case showed that India doesn't have clear laws about surrogacy and got people talking about commercial surrogacy and the need for rules. The case ended with the Supreme Court allowing the child's grandmother to take the child to Japan.

The Indian Legal Framework:

Indian surrogacy laws have undergone a significant transformation over the past two decades, shifting from being one of the most liberal commercial surrogacy destinations in the world to adopting a highly restrictive, altruistic-model. This evolution reflects both domestic ethical debates and international criticism of exploitation in cross-border arrangements.

➤ Key Legislative Milestones

- 2002 - Commercial surrogacy was legalized in India, making it a global hub for surrogacy, particularly for couples from other countries.
- 2005-2015 - Surge in foreign commissioning parents; growing reports of exploitation, contract disputes, and abandonment of children.
- 2015 - Government bans foreign nationals from engaging in surrogacy in India.
- 2021 - Surrogacy (Regulation) Act, 2021 comes into force, restricting surrogacy to altruistic purposes and imposing strict eligibility criteria.

➤ Key Provisions of the Surrogacy (Regulation) Act, 2021

- Only Altruistic Surrogacy Permitted - No monetary compensation except for medical expenses and insurance coverage.
- Eligibility of Intended Parents -
 - Married Indian couples with at least five years of marriage.
 - Age criteria: Husband (26-55 years), Wife (23-50 years).
 - At least one partner must have proven infertility.
- Eligibility of Surrogate Mother -

- Married woman with at least one biological child of her own.
- Age: 25-35 years.
- Can act as a surrogate only once in her lifetime.
- Ban on Commercial Agencies - No middlemen or commercial clinics allowed to arrange surrogacy.
- Legal Safeguards for the Child - The child is deemed to be the biological child of the intending couple from birth, with full inheritance rights.

India's shift from a global surrogacy hub to a closed, altruistic-only system illustrates the tension between protectionism and personal autonomy in reproductive law. Whether this model truly eliminates exploitation or simply relocates it to unregulated spaces, remains a pressing question for policymakers and courts.

Judicial Approach in India:

Indian courts have played a pivotal role in shaping the legal and ethical discourse on surrogacy, particularly in the absence of comprehensive legislation prior to 2021. Through landmark judgments, the judiciary has addressed questions of parentage, citizenship, contract enforceability, and child welfare, while also interpreting surrogacy arrangements in the light of constitutional values.

- Landmark Cases

*Baby Manji Yamada v. Union of India (2008)*¹

This case was one of the earliest and most influential cases, involving a Japanese couple who commissioned a surrogate in India but separated before the child's birth. With the intended mother withdrawing from the arrangement, the grandmother sought custody. The Supreme Court recognized the legitimacy of surrogacy in India, facilitated travel documents for the child, and emphasized the urgent need for clear legal regulation.

*Jan Balaz v. Anand Municipality (2009)*²

The Gujarat High Court faced a similar cross-border complication, when a German couple's surrogate-born twins were denied Indian passports due to citizenship concerns. The court granted Indian citizenship to the twins, prioritizing their welfare. Together, these cases highlighted the complex intersection of family law, immigration policy, and child rights, and underscored the pressing necessity of a comprehensive surrogacy framework.

Conclusion and Way forward:

The Surrogacy (Regulation) Act, 2021 in India was supposed to be a step forward, but when it went into effect, it made things harder. One of the biggest problems is making sure that the rules are followed on the ground. This is hard because different medical boards interpret the rules in different ways, there isn't enough standard paperwork, and there are bureaucratic delays that make both intended parents and surrogates less likely to follow through. Some people have also said that the strict eligibility requirements are unfair instead of protective. They mostly only let married heterosexual couples in and leave out most single people and LGBTQ+ families. Also, the ban on commercial surrogacy, which is meant to stop exploitation, has forced some arrangements to go underground or to countries with less strict laws, which makes people very worried about medical safety, informed consent, and the ability to enforce the law. Ethically, surrogacy continues to be a contested terrain where autonomy, dignity, and commodification intersect. Critics argue that even altruistic surrogacy risks turning women's reproductive capacity into a transactional service, subtly influenced by social pressure or economic dependency. Thus, the ethical terrain of surrogacy is neither uniform nor static; it shifts with changes in technology, economics, cultural norms, and legal frameworks. Understanding these moral dimensions is essential before designing or evaluating any regulatory system, since laws that ignore ethical realities risk either enabling exploitation or unjustly restricting reproductive freedoms. Looking ahead, India's surrogacy framework must adapt to emerging family structures, advances in reproductive technology, and evolving human rights standards. International best practices suggest that stronger counselling provisions, better-defined expense reimbursements, and transparent dispute resolution mechanisms could improve trust in the system. Moreover, gradual expansion of eligibility, paired with strict ethical oversight may strike a balance between protecting vulnerable women and respecting the diverse ways by which people form families today. Ultimately, the challenge is to craft a system that is both legally robust and ethically sensitive, ensuring that surrogacy remains a legitimate, safe, and humane pathway to parenthood in the modern era.

References:

- Enactments
 - The Surrogacy (Regulation) Act, 2021
- Academic and research publication
 - Pikee Saxena, Archana Mishra, et.al., "Surrogacy: Ethical and Legal Issues" *Indian J Community Med* 37(4) (2012).
 - Francoise Shenfield, Basel Tarlatzis, et.al., "Ethical considerations on surrogacy" 40 *Oxford Academic (human reproduction)* (2025).
 - R S Sharma "Social, ethical, medical & legal aspects of surrogacy: an Indian scenario" 140 *Indian Journal of Medical Research* (2023).
- Websites

¹AIR 2009 SC 84.

²AIR 2010 Guj 21.

- <https://pmc.ncbi.nlm.nih.gov/articles/PMC3531011/>
- <https://academic.oup.com/humrep/article/40/3/420/7979098>
- <https://ijmr.org.in/social-ethical-medical-legal-aspects-of-surrogacy-an-indian-scenario/>
- https://www.researchgate.net/publication/346714993_Surrogacy_in_India_Ethical_and_Legal_Aspect