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A Multi-dimensional Aspects of Commercialization of Surrogacy at Indian Fertility Centre

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Abstract

This research paper deals with the commercialization of surrogacy in Indian fertility centre and how it connects with the Indian economics. This paper elaborates The commercialization of surrogacy in Indian fertility centres is a multidimensional issue, involving complex ethical, social, legal, and economic factors that transformed the practice from a medical solution for childless couples into a large-scale industry attracting global attention. It elucidates the reasons for banning commercial surrogacy in India by enacting the India's surrogacy (regulation) Act 2021. This paper deals with how commercialization of surrogacy is benefited to the Indian fertility centres and its impact in Indian economy and discusses related case laws. It discusses the issues and challenges in the commercialization of surrogacy in Indian fertility centre. This paper gives some suggestions to solve the problems.

Keywords: Surrogacy, Fertility Centre, Commercialization, Economy, Adoption.

1. Introduction

Nature has bestowed the beautiful capacity to procreate a life within women and every woman cherishes the experience of motherhood. Right to reproduction is an innate right of an individual. The introduction of surrogacy in Indian fertility centres involved the rise of commercial surrogacy in the early 2000s, transforming India into a global hub for "reproductive tourism", especially for foreigners. A mother's bond with her child is stronger than any other connection. Regrettably, some women have been unable to give birth to their own children because of biological reasons ^[1]. Surrogacy is a boon to the infertile couple for next stage of their life. The childless couple can use this reproductive technology to have their own baby.

Surrogacy is the outcome of the modern medical science which gives hope to the infertile couple. But the surrogacy is misused by some people for money sake. The commercialization of surrogacy in Indian fertility centre has a great impact in the economy of India. Medical tourism facilitates the commercialization of surrogacy by creating international markets where intended parents from countries with restrictive laws seek affordable surrogacy services in nations with more favourable regulations, such as India and Ukraine in the past. But in 2021 the India's surrogacy (regulation) Act bans any financial compensation to a surrogate mother beyond medical and insurance expenses, effectively promoting only altruistic surrogacy.

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2. Statement of Problem

The problem with the commercialization of surrogacy in Indian fertility centres lies in the potential for exploitation of surrogate mothers, particularly from disadvantaged backgrounds, the commodification of women's bodies and human life, ethical dilemmas regarding consent and autonomy, inadequate regulation, and the potential harm to the child's best interests. Many women engage in surrogacy due to poverty, making them vulnerable to exploitation, inadequate medical care, and unfavourable contractual terms. These issues have led to legislative efforts to ban commercial surrogacy in India to protect vulnerable women and ensure a more ethical approach to assisted reproduction.

3. Review of Literature

Dr. S.S. Das and Priyanka Maut ^[2] (2014) highlights that surrogacy has become a commercial business in countries like India, which has given rise to many questions leading to political debate. Feminists have argued over the alienability of women's bodies; legal scholars have probed the contractual and jurisdictional issues. The market for surrogacy is large and is growing. There are thousands of potential parents across the world with both the desire and the wherewithal to hire another woman to bear their children. Commercial surrogacy, or "wombs for rent," is a growing business in India ^[3].

Amrita Pande ^[4] (2014) said that what makes the Indian case

all the more interesting is that the market is flourishing with very few formal regulations. Although commercial surrogacy is legal in India, there are currently no laws regulating the procedures, the contract, or the surrogate-client relationship. As a consequence, intended parents are able to take advantage of the client-friendly policies of private clinics and hospitals, where doctors are willing to offer options and services that are banned or heavily regulated in other parts of the world.

Yuri Hibin ^[5] (2023) told that Surrogacy for commercial purposes began in India in 2002, and stakeholders within the commercial surrogacy industry became well established. It was found that such stakeholders were strongly opposed to altruistic surrogacy as introduced in 2016. It was also found that women in lower social strata still sought some form of financial compensation from their reproductive labor. Controversies surrounding altruistic surrogacy continue within Indian society.

4. Research Gap of the Study

This paper appears to address is the lack of comprehensive analysis on the multidimensional aspects of commercial surrogacy in Indian fertility centres, especially after the enactment of the Surrogacy (Regulation) Act of 2021. A potential research gap that this paper may be addressing, or one that could be inferred from the provided context, is the lack of a comprehensive study that integrates the multidimensional aspects of commercial surrogacy with on-the-ground data from people in different regions of India, particularly Tamil Nadu, after the enactment of the 2021 Act. The paper's objectives include finding out the opinion of people from different regions about commercial surrogacy and evaluating the effectiveness of the Surrogacy (Regulation) Act, 2021.

5. Objectives of the Study

- i). To examine the current practices and trends in commercialization of surrogacy within Indian fertility centre.
- ii). To analyse the impact of commercialization of surrogacy in the economics of India and how it affects the backward women due to poverty and limited opportunities.
- iii). To find out the opinion of the people belonging to different regions about the commercialization of the surrogacy in India.
- iv). To evaluate the effectiveness of existing law and guidelines such as the Surrogacy (Regulation) Act 2021 in regulating the surrogacy in India.
- v). To suggest some policies and regulatory reforms to ensure fair and ethical practices in the surrogacy industry.
- vi). To find out the reason for the increasing trend of foreigners opting for surrogacy in India despite evolving regulation.

6. Methodology

This research is based on both doctrinal and non-doctrinal research. The sources of data collected from different newspaper, journal, magazine and e-resources. The statistical tool of the research is average and percentage method. It is used such as the sample size of the respondent is 100 respondents. The duration of the research is 5 months. The jurisdiction of the research is within Tamil Nadu.

7. Significance of the Study

This paper is significant for me because it serves as a comprehensive resource on the complex issues surrounding

commercial surrogacy in India. It helped me to understand the historical context, from the legalization of commercial surrogacy in 2002 to the ban in 2021. By detailing the economic impact, the exploitation of vulnerable women, and the legal challenges, it provides a well-rounded view of the topic. The case studies, like Baby Manji Yamada v. Union of India, highlight the real-world consequences and the legislative gaps that necessitated the new regulations. These cases are helped to understand how foreigners misused the surrogacy in India. This information is crucial for developing a nuanced understanding of how ethical, social, and legal factors intersect with economic ones in a rapidly evolving field like assisted reproduction.

This paper is significant for the government as it provides a detailed analysis of the multifaceted problems that arose from commercial surrogacy in India, which led to the enactment of the Surrogacy (Regulation) Act, 2021. It highlights how the unregulated industry led to the exploitation of surrogate mothers, particularly those from disadvantaged backgrounds who were vulnerable to inadequate medical care and unfavourable contracts. The paper also points out the commodification of women's bodies and the ethical dilemmas involved. By detailing case laws such as Baby Manji Yamada v. Union of India and the Chennai underpayment case, the paper justifies the need for strict regulations to protect all parties involved, especially the surrogate and the child. The analysis of the new Act's economic impact, including the loss of income for fertility clinics and surrogates, provides valuable data for future policy adjustments to ensure a fair and ethical system.

8. Hypothesis of the Study

H1: The surrogate mother in the commercial surrogacy does not have any relation with the child after the delivery.

H2: Re-commercialization of surrogacy for foreign couples could boost the national economy.

9. Limitation of the Study

India's fertility centres operated under an unregulated system of commercial surrogacy, which created significant legal, ethical, and medical limitations. Exploitation of vulnerable women was rampant, and commercial interests often superseded the health and rights of surrogates and the children born through the arrangements. In surrogacy somewhere the surrogate mother is emotionally connected with the child but after the delivery they both did not have any relationship it may affect the mental health of the surrogate mother.

10. Result and Discussions

10.1. Concept of Surrogacy

Surrogacy is a process where one woman (the surrogate) carries and gives birth to a child for another individual or couple (the intended parents) who cannot conceive or carry a pregnancy themselves. This agreement typically involves using assisted reproductive technology, such as *in-vitro* - fertilization (IVF), to create an embryo from the intended parents' gametes or donor gametes. The resulting child is then handed over to the intended parents after birth, forming a new family through a complex journey with legal, ethical, and emotional considerations. It is possible because of the evaluation in the medical technology.

10.2. Types of Surrogacy:

- i). **Commercial Surrogacy:** Commercial surrogacy is a contractual arrangement where a woman (the surrogate)

carries a pregnancy and gives birth to a child for another person or couple (the intended parents) in exchange for financial compensation beyond just medical expenses. The child will be handed over to the intended parents after delivery.

- ii). **Altruistic Surrogacy:** Altruistic surrogacy is a form of non-commercial surrogacy where a surrogate carries a pregnancy for intended parents without receiving any financial compensation beyond reimbursement for pregnancy-related medical and legal expenses ^[6]. This arrangement is motivated by compassion and emotional connection, often involving a close friend or relative of the intended parents.
- iii). **Traditional Surrogacy:** Traditional surrogacy, also known as "genetic" or "straight" surrogacy, is a method where the surrogate's own egg is fertilized with the intended father's or a donor's sperm, either through artificial insemination or laboratory fertilization. This makes the surrogate the biological and genetic mother of the child.
- iv). **Gestational Surrogacy:** Gestational surrogacy is a form of assisted reproductive technology where a woman (the gestational carrier or surrogate) carries and gives birth to a baby for another person or couple (intended parents), but is not genetically related to the child. This process involves creating an embryo through *in vitro* fertilization (IVF) using the intended parents' eggs and sperm, or eggs and sperm from donors, and then transferring that embryo into the surrogate's uterus for gestation.

10.3. Commercial Surrogacy in India

Surrogate motherhood, while not unknown in the past, gained widespread prominence in the mid-1970s. When surrogacy was initially commercialized, mainly in the U.S., all interventions existed within a single nation state. By the time surrogacy's history in India is marked by its legalization of commercial surrogacy in 2002 to boost medical tourism, making India a global hub for fertility treatments, but this led to significant ethical issues and exploitation. India legalized commercial surrogacy, or "rent-a-womb," to attract medical tourism and provide a viable option for infertile couples. Commercial surrogacy was legalized in India in 2002, establishing the country as a global hub for surrogacy due to lower costs and less stringent regulations compared to other nations.

India permitted commercial surrogacy, making it an attractive option for foreign and national couples seeking to have children. The low cost of procedures and a high availability of surrogates positioned India as a major centre for commercial surrogacy, attracting medical tourists. The absence of comprehensive legal frameworks led to unethical practices and exploitation of surrogate mothers. Cases of surrogate abandonment and health issues arose, highlighting the need for better regulation.

By 2011 India had 200 infertility clinics registered with the National Association for Assisted Reproduction in India, though estimates claim a higher number closer to 500 infertility clinics, to an even more preposterous figure of 3000 infertility clinics ^[7]. In 2011 infertility assistance was estimated to be a \$2 billion industry. Through decades of state subsidized medical education, and working with women's bodies in providing "birth control" (as described above) and

childbirth services, India had skilled medical expertise in place. As a GATS signee (the General Agreement on Trade in Services), India boosted global trade in health by providing financial incentives to private hospitals, reduced import tariffs for medical equipment, and expedited medical visas and joint insurance collaborations in order to facilitate medical, and infertility travel (Unnithan, 2010) ^[8].

10.4. Impact of Commercial Surrogacy in Indian Economics:

The commercialization of surrogacy in India created an economic boom in fertility tourism, but it also led to the exploitation of vulnerable women and the commodification of children, with a disproportionately small share of profits going to surrogates. While surrogates gained economic benefits by improving their families' lives, the industry was characterized by unfair distribution of wealth, with clinics and intermediaries accumulating most of the profits. This unregulated market, thriving on the cheap labor of women in an unorganized sector, was driven by the demand from international clients, leading to ethically problematic practices and the commodification of human life.

Commercial surrogacy established India as a hub for "fertility tourism," attracting international clients and generating significant revenue for clinics and related services. The industry was often framed as a beneficial arrangement, with intended parents gaining access to affordable reproductive services and surrogates alleviating poverty for their families. The economic benefits were unevenly distributed, with surrogates receiving a small fraction of the payment (15-25%), while clinics and other intermediaries captured the majority of the profits. It develops the economic status of the clinics and fertility center in a larger sense but contributes the development of the surrogate mother in a smaller sense. Surrogacy operated within the growing unorganized sector, characterized by temporary and contractual jobs for under skilled labor, making it a profitable venture with minimal control.

The process led to the commodification of both the surrogate's body, treated as a resource, and the resulting child, seen as a "product" to be bought and sold. Women from economically disadvantaged backgrounds were lured by the promise of financial gain but often ended up being exploited due to lack of education and awareness, as well as pressure from husbands and economic necessity. The "cheap labor" of women in the context of a globalizing Third World economy was a key factor in the rise of the surrogacy industry, with a demand for their "docile" labor in informal sectors.

The ethical debate centered on the conflicting principles of individual autonomy and equity, with critics arguing that the system exploited the poor and created a market for "outsourced" pregnancy in a country with poor reproductive health outcomes. The economic disparity and control exerted by husbands on surrogate mothers highlighted the power imbalance, leading to exploitation and a disregard for surrogates' rights. Ultimately, the economic incentives of commercial surrogacy in India created a lucrative industry that provided financial opportunities for some but also fostered conditions ripe for the exploitation of the poor and the questionable commodification of life itself. The need for regulatory frameworks to protect the rights and welfare of surrogates was a prominent concern.

10.5. Estimated Value of India's Commercial Surrogacy Market:

Year(s)	Source	Estimated value
2012	CIA Report (via Jus Corpus Law Journal)	\$2 billion per year
2012	United Nations Study (via The Research Publication)	Over \$400 million per year
2019	Confederation of Indian Industry (via The Research Publication)	\$2.3 billion

Source: A 2019 journal article, "Commercial Surrogacy in India: An Overview," published in The Research Publication.

Estimated Number of Clinics and Births

Year(s)	Source	Estimated data
2009	National Commission for Women (via Feminist Law Archives)	About 3,000 clinics offering surrogacy services
Ongoing	Indian Council of Medical Research (via The Research Publication)	Approximately 2,000 babies born per year

Source: National Commission for Women (NCW) and Indian Council of Medical Research (ICMR).

10.6. Surrogacy (Regulation) Act, (2021):

Many problems and cases are raised because of the commercial surrogacy and the courts stressed to make a clear legislation regarding the surrogacy to avoid and solve these kinds of cases. A new legislation was created because some foreigners misused commercial surrogacy [9]. The Surrogacy (Regulation) Act, 2021 is an Indian law that bans commercial surrogacy, allowing only altruistic surrogacy for couples with proven infertility, provided at least one intended parent is an Indian citizen. The law sets out strict eligibility criteria for intending parents and surrogate mothers.

This act negatively affects the economy by disrupting the existing surrogacy-related fertility clinics and related businesses previously involved in commercial surrogacy have lost a significant income stream, as their primary business model has been outlawed. Women who previously served as surrogates under commercial arrangements received financial compensation, which significantly contributed to their families' economic stability. With commercial surrogacy banned, these women lose a vital source of income.

India was a popular and cost-effective destination for international couples seeking surrogacy. The ban effectively shut down a portion of this market, impacting the overall "reproductive tourism" industry that benefited the Indian economy. Concerns have been raised that the strict prohibition of commercial surrogacy may lead to the development of an unregulated, illegal market, which can further exploit women and bypass tax revenues, further harming the formal economy.

Major Regulations

Commercial surrogacy is strictly prohibited, only medical and insurance expenses are covered for the surrogate. Intending couple should be legally married Indian heterosexual couples and single Indian women (widows or divorcees) who meet specific age and infertility criteria. A medical condition preventing conception or carrying a pregnancy is required for

intending parents, certified by a District Medical Board.

The surrogate must be a close relative of the intending couple. She must be between 25 and 35 years old. She must have at least one biological child of her own. A woman can act as a surrogate only once in her lifetime. She must undergo rigorous medical and psychological evaluations.

All surrogacy clinics must be registered with the appropriate authority. Advertising for surrogacy services is prohibited. The intending parents must provide 36 months of insurance coverage for the surrogate. The surrogate child is considered the biological child of the intending parents.

10.7. Related Case Laws:

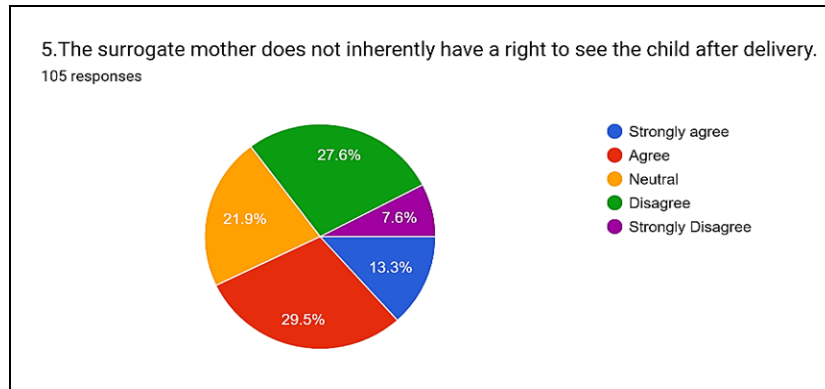
- i). **Baby Manji Yamada V. Union Of India (2009):** A Japanese couple sought a surrogate mother in India, leading to the birth of Baby Manji Yamada. The intending parents divorced before the baby's birth, creating a dispute over the child's custody and citizenship. The baby's Japanese grandmother, Ms. Emiko Yamada, filed a petition in the Supreme Court to bring the child back to Japan. The Supreme Court of India prioritized the child's welfare by directing the issuance of a passport and allowing her to travel to Japan with her grandmother, even after her Japanese parents separated and issues with the surrogate's custody arose. The judgment highlighted India's lack of specific surrogacy laws, recognized the validity of the commercial surrogacy contract, and emphasized the need for regulation to protect the child and ensure responsible surrogacy practices.
- ii). **Chennai Surrogate Mother Underpaid for Twins (2015):** In 2015 Chennai case, a surrogate mother, who delivered twins, accused a private hospital of underpaying her after she was promised 10 lakh rupees per child, but the hospital offered only 3.5 lakh rupees and refused to provide a contract copy. The surrogate mother claimed she was not properly informed about the contract terms and felt cheated, leading her family to file a complaint with the police. The police were investigating but had not yet lodged a formal First Information Report (FIR), as they needed to verify the contractual documents. The incident highlighted issues of unethical practices and power imbalances within the then-largely unregulated commercial surrogacy industry in India.
- iii). **Universal Srushti Fertility Center/Dr. Athaluri Namratha Case:** Dr. Namratha, operating under various clinic names including Srushti Test Tube Baby Centre and Universal Srushti Fertility Centre [9], has been accused of orchestrating a fraudulent surrogacy racket. She allegedly deceived couples by promising biological children through IVF and surrogacy, only to provide infants purchased from impoverished biological parents. These infants were sold to childless couples for substantial sums, ranging from ₹35 lakh to ₹90,000, depending on the case. Dr. Namratha and her associates allegedly lured impoverished women into surrogacy arrangements, often by promising financial compensation. In 2020, Dr. Namratha was imprisoned for three months in Visakhapatnam for a similar surrogacy-related offense. Despite this, she continued her operations, leading to the current charges.

Non-doctrinal Research

Table 1: The surrogate mother does not inherently have a right to see the child after delivery.

Indicators	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Total
Male	9(8.57)	14(13.33)	11(10.47)	10(9.52)	3(2.85)	47(44.76)
Female	5(4.76)	16(15.23)	11(10.47)	19(18.09)	5(4.7)	56(53.33)
Transgender	0(0.00)	1(0.95)	1(0.95)	0(0.00)	0(0.00)	2(1.90)
Total	14(13.33)	31(29.51)	23(21.89)	29(27.61)	8(7.55)	105(100.00)

Source: Primary data



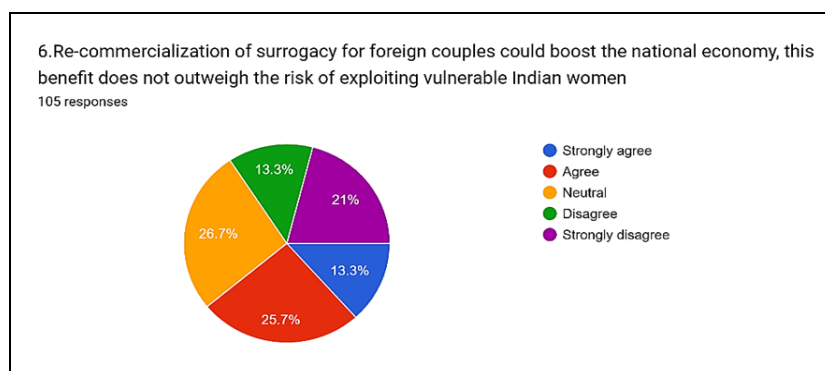
The above table shows that 29.51 percentage of the respondents agree to the statement and 7.55 percentage of the respondents strongly disagree to the statement. 21.89 percentage of the respondents are neutral to this statement. This shows that a greater number of people in Tamil Nadu

people have the legal sense regarding the surrogacy in Indian fertility centre. Overall the survey shows that more people support the view that the surrogate mother does not inherently have a post-delivery visitation right.

Table 2: Re-commercialization of surrogacy for foreign couples could boost the national economy. This benefit does not outweigh the risk of exploiting vulnerable Indian women.

Indicators	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Total
Male	7(7.11)	16(16.25)	11(11.17)	7(7.11)	6(6.09)	47(47.76)
Female	6(5.71)	11(10.47)	16(15.23)	7(6.66)	16(15.23)	56(53.33)
Transgender	1(0.95)	0(0.00)	1(0.95)	0(0.00)	0(0.00)	2(1.9)
Total	14(13.33)	27(25.71)	28(26.67)	14(13.33)	22(20.95)	105(100.00)

Source: Primary data



The major respondents are females which represents the raising power of women in Tamil Nadu and the minor respondents are transgender. 13.33 percentage of the respondents strongly agree to this statement and 25.71 percentage agree to this statement overall 39.04 percentage of the respondent believes that the economic benefit does not outweigh the risk of exploitation. The 26.67 percentage of the respondents are neutral to this statement. 13.33 percentage of the respondents disagree to the statement and 20.95 percentage of the respondents strongly disagree to the statement overall 34.29 percentage of the respondents

believes that the economic benefit does outweigh the risk of exploitation.

Table 3: Surrogacy is a moral and ethical alternative to adoption.

Indicators	Yes	No	Total
Rural	8(7.61)	12(11.42)	20(19.04)
Semi-urban	27(25.21)	17(15.87)	44(41.09)
Urban	28(26.66)	13(12.37)	41(39.04)
Total	63(60.00)	42(40.00)	105(100.00)

Source: Primary data

This table shows that 60.00 percentage of the respondents agree that surrogacy is a moral and ethical alternative to adoption and 40.00 percentage of the respondents only support the adoption than surrogacy. 7.61 percentage of the respondents from the rural 25.21 percentage of the respondents from the semi-urban and 26.66 percentage of the respondents from the urban believe that surrogacy is moral and ethical alternative to adoption. Even the respondents in the developed area also support the surrogacy but they are not agreeing to the adoption. 11.42 percentage of the respondents from the rural, 15.87 percentage of the respondents from the semi-urban and 12.37 percentage of the respondents from the urban did not agree that surrogacy is a moral and ethical alternative to adoption.

11. Testing of Hypothesis

H₁: The surrogate mother in the commercial surrogacy does not have any relation with the child after the delivery.

Table No.1 shows that the results of the survey indicate that a majority of respondents agree with the statement that the surrogate mother does not inherently have a right to see the child after delivery. A total of 42.84 percentage of the respondents agree or strongly agree with the statement, a total of 35.16 percentage of the respondents disagree or strongly disagree with the statement. 27.61 percentage of the respondents chose a neutral position.

H₂: Re-commercialization of surrogacy for foreign couples could boost the national economy.

Table No.2 shows that the 39.04 percentage of the respondents agree or strongly agree with the statement, meaning they believe the ethical risk of exploitation outweighs the economic benefit 34.28 percentage of the respondents disagree or strongly disagree with the statement, meaning they believe the economic benefit does outweigh the ethical risk, or they do not perceive the risk of exploitation to be as great. The data shows the aggregate level of agreement 39.04 percentage of the respondents is only slightly higher than the aggregate level of disagreement 34.28 percentage of the respondents 26.67 percentage of the respondents chose a neutral position, suggesting they are undecided and ambivalent. This is the single largest category of response.

The data collected and analysed in the present study favours the Hypothesis, therefore the hypothesis is accepted. Hence it is a null hypothesis

12. Conclusion

The commercialization of surrogacy in India, while creating an economic boom in fertility tourism, was ultimately characterized by ethical exploitation and uneven wealth distribution, primarily benefiting clinics and intermediaries. India's move to ban commercial surrogacy through the Surrogacy (Regulation) Act, 2021, prioritizes human dignity over profit, albeit disrupting the income streams of fertility centres and surrogate mothers. To bridge the gap created by this ban and sustain socio-economic development, the nation must vigorously promote and simplify legal adoption.

A well-regulated and efficient adoption system is a crucial social and ethical alternative, ensuring that every child receives familial care. Crucially, adoption contributes to the Indian economy by reallocating resources from complex, regulated reproductive technologies toward nurturing existing human capital, fostering stable families, which are the fundamental units of economic consumption and productivity. By transitioning from a controversial 'wombs-for-rent' economy to a robust, ethical 'families-for-all' policy, India

secures a more just and resilient path to national prosperity.

13. Suggestions

- i). Fertility centres should focus on facilitating altruistic surrogacy arrangements, ensuring that the surrogate is not compensated beyond her medical expenses and a suitable insurance policy.
- ii). Centres must strictly follow the protocols outlined in the Surrogacy (Regulation) Act, including obtaining eligibility certificates for intended couples and surrogates, and ensuring a parentage order is issued by the court
- iii). Fertility centres can ensure that potential surrogate mothers meet the criteria of the law by being healthy, having their own children, and being between the ages of 25 and 35.
- iv). Since commercial surrogacy is banned, fertility centres should provide information and counselling to intended parents interested in child adoption as a viable alternative.
- v). Government can conduct the awareness program for promoting the adoption of the child in today's modern world. This will create "no orphan" society.
- vi). Fertility centre should ensure the eligibility criteria for both intending parents and surrogate mothers as set by the Surrogacy (Regulation) Act, 2021.

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