

The Economic Implications of the Surrogacy Bill 2019 and the Act of 2021 on the Indian Surrogacy Industry

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Abstract:

The Indian surrogacy industry, once a thriving sector, has undergone significant transformation with the enactment of the Surrogacy Bill 2019 and the Surrogacy (Regulation) Act 2021. These legislative measures aimed to regulate surrogacy practices, safeguard the rights of surrogates, and prevent exploitation. However, they have also led to substantial economic consequences, particularly in terms of industry contraction, loss of income for surrogate mothers, and the rise of cross-border surrogacy. This article examines the economic implications of these legal frameworks on the Indian surrogacy industry, analysing both short-term and long-term effects.

Introduction:

India emerged as a global hub for commercial surrogacy in the early 2000s, attracting couples from around the world seeking affordable and accessible surrogacy services. The surrogacy industry, often referred to as the "rent-a-womb" market, generated significant economic activity, particularly in urban centres such as Mumbai, Delhi, and Gujarat. However, concerns over ethical practices, exploitation of poor women, and the commercialization of reproduction led to the introduction of regulatory measures.

The Surrogacy Bill 2019 and its subsequent enactment as the Surrogacy (Regulation) Act 2021 marked a turning point in the regulation of surrogacy in India. These laws, while intended to protect the rights of women and children, have also had profound economic implications for the surrogacy industry. This article explores these implications, focusing on the contraction of the industry, the impact on surrogate mothers, and the shifting dynamics of international surrogacy.

Background: The Surrogacy Bill 2019 and the Act of 2021

The Surrogacy Bill 2019 was introduced in the Indian Parliament with the primary objective of banning commercial surrogacy and promoting altruistic surrogacy. The bill was passed by the Lok Sabha in August 2019 and subsequently became law with the passage of the Surrogacy (Regulation) Act 2021. The key provisions of the Act include:

- Ban on Commercial Surrogacy:** The Act prohibits commercial surrogacy, allowing only altruistic surrogacy, where no monetary compensation other than medical expenses and insurance coverage is provided to the surrogate mother.
- Eligibility Criteria:** The Act imposes strict eligibility criteria for intending couples, including the requirement that they must be Indian citizens, married for at least five years, and medically certified as infertile. The surrogate mother must be a close relative of the intending couple.
- Regulation and Oversight:** The Act establishes national and state-level surrogacy boards to regulate and oversee surrogacy practices, ensuring adherence to ethical and legal standards.

While the Act was designed to protect vulnerable women from exploitation and ensure the welfare of children born through surrogacy, it has also led to significant economic repercussions.

Economic Contraction of the Surrogacy Industry

Before the enactment of the Surrogacy (Regulation) Act 2021, the Indian surrogacy industry was estimated to be worth around \$2 billion annually. This industry was driven by the availability of low-cost surrogacy services, skilled medical professionals, and relatively lax regulations. However, the ban on commercial surrogacy and the restrictive eligibility criteria imposed by the Act have led to a sharp contraction in the industry.

- **Reduction in Surrogacy Clinics:** The number of surrogacy clinics across India has declined significantly, as many clinics that specialized in commercial surrogacy have either closed or shifted their focus to other fertility services. This has resulted in job losses for healthcare professionals, legal advisors, and support staff who were employed in these clinics.
- **Loss of International Clients:** The ban on commercial surrogacy has also deterred international clients from seeking surrogacy services in India. Previously, foreign couples constituted a substantial portion of the clientele, contributing significantly to the industry's revenue. With the legal restrictions in place, many of these clients have turned to countries with more permissive surrogacy laws, such as Ukraine, Georgia, and the United States.
- **Impact on Medical Tourism:** The decline in surrogacy services has had a ripple effect on India's broader medical tourism industry. Surrogacy was a major component of medical tourism, attracting clients who often combined surrogacy with other medical treatments. The loss of this market has reduced the overall revenue generated by medical tourism in India.

Economic Impact on Surrogate Mothers

One of the most profound economic implications of the Surrogacy (Regulation) Act 2021 is its impact on surrogate mothers, who were often economically disadvantaged women seeking a means of financial support. Before the Act, surrogate mothers were compensated for their services, providing them with a substantial income that could significantly improve their financial situation.

- **Loss of Income:** The shift to altruistic surrogacy, where monetary compensation is prohibited, has resulted in a loss of income for surrogate mothers. The only financial support they receive now is for medical expenses and insurance coverage, which does not provide the same economic benefits as the previous commercial arrangements.
- **Increased Financial Vulnerability:** For many women, commercial surrogacy was a means of lifting themselves and their families out of poverty. The ban on commercial surrogacy has increased their financial vulnerability, as they lose access to a potentially lucrative income source. This change may also push some women into more precarious or exploitative forms of work.
- **Shift to Illegal Surrogacy:** The economic need for surrogate mothers may drive the practice underground, leading to the rise of illegal surrogacy arrangements. These arrangements often lack the legal protections and oversight that ensure the safety and rights of surrogate mothers, exposing them to greater risks of exploitation and abuse.

Rise of Cross-Border Surrogacy

The restrictive nature of the Surrogacy (Regulation) Act 2021 has also led to an increase in cross-border surrogacy, where Indian couples or international clients seek surrogacy services in countries with more lenient surrogacy laws. This trend has significant economic implications:

- **Loss of Revenue:** The outflow of clients to other countries has resulted in a loss of revenue for the Indian surrogacy industry. Countries such as Georgia, Ukraine, and Greece, which have less restrictive surrogacy regulations, have seen an influx of clients who would have otherwise sought services in India.
- **Cross-Border Legal and Ethical Challenges:** Cross-border surrogacy raises complex legal and ethical issues, particularly regarding the rights and citizenship of children born through surrogacy, the enforcement of surrogacy contracts, and the protection of surrogate mothers in foreign jurisdictions. These challenges create additional economic costs for intending parents and the Indian legal system.

• **Impact on International Relations:** The rise of cross-border surrogacy has also affected India's diplomatic relations with countries involved in surrogacy arrangements. Legal disputes and the lack of clear international surrogacy laws can strain relationships between India and other nations, potentially affecting trade and diplomatic ties.

Long-Term Economic Implications

The long-term economic implications of the Surrogacy (Regulation) Act 2021 on the Indian surrogacy industry will depend on several factors, including the enforcement of the Act, the evolution of global surrogacy laws, and the demand for surrogacy services.

• **Potential for Reform:** If the economic impact of the Act is deemed too severe, there may be calls for legal reform to reintroduce some form of regulated commercial surrogacy. Such reforms could strike a balance between protecting surrogate mothers and ensuring the viability of the surrogacy industry.

• **Development of Alternative Fertility Services:** The contraction of the surrogacy industry may lead to the growth of alternative fertility services, such as IVF and egg donation, which remain legal and are less regulated than surrogacy. This could mitigate some of the economic losses associated with the decline in surrogacy.

• **Global Shifts in Surrogacy Practices:** As other countries adjust their surrogacy laws in response to global demand, India's position in the international surrogacy market may continue to decline. This shift could have lasting economic consequences for the country's medical tourism industry and related sectors.

Conclusion

The Surrogacy Bill 2019 and the Surrogacy (Regulation) Act 2021 have had far-reaching economic implications for the Indian surrogacy industry. While these legal measures were intended to protect the rights and welfare of surrogate mothers and children, they have also led to the contraction of a once-thriving industry, the loss of income for surrogate mothers, and the rise of cross-border surrogacy. The long-term economic impact of these changes remains uncertain, but it is clear that the Indian surrogacy industry has been profoundly transformed by these regulatory efforts.

As the global landscape of surrogacy continues to evolve, India will need to carefully consider the economic, legal, and ethical dimensions of its surrogacy laws to ensure that the rights of all stakeholders are protected while maintaining the viability of its reproductive services sector.

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