

Surrogacy and Human Rights: Balancing Regulation and Autonomy

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Introduction

Surrogacy remains a complex issue, presenting a delicate balance between the yearning for parenthood and the challenges posed by ethical, legal, and human rights considerations. India, once a prominent destination for commercial surrogacy, faced global scrutiny due to concerns over the exploitation of surrogate mothers, the commercialization of women's bodies, and the protection of children born through surrogacy. These issues led to the introduction of the Surrogacy (Regulation) Bill 2019, which culminated in the Surrogacy (Regulation) Act 2021. This article explores the human rights implications of this regulatory framework, with a focus on how the Act navigates the rights of surrogate mothers, intended parents, and children.

The Surrogacy (Regulation) Act 2021: Key Provisions

The Surrogacy (Regulation) Act 2021 was designed to eliminate commercial surrogacy, endorse altruistic surrogacy, and protect surrogate mothers from exploitation. The Act includes several crucial provisions:

- Commercial Surrogacy Ban:** The Act prohibits commercial surrogacy, allowing only altruistic arrangements where no financial compensation is involved, apart from covering medical expenses and insurance for the surrogate mother.
- Eligibility Requirements:** Strict criteria are set for both intended parents and surrogate mothers. Intended parents must be Indian citizens, legally married for at least five years, and certified by a medical board as infertile. Surrogate mothers are required to be close relatives of the intended parents and should have previously given birth to a healthy child.
- Regulatory Bodies:** The Act establishes national and state surrogacy boards to monitor and regulate surrogacy practices, ensuring compliance with ethical and legal standards.

While the Act aims to safeguard the rights of surrogate mothers and prevent exploitation, it raises significant concerns about whether it achieves an appropriate balance among the rights of all parties involved.

Human Rights of Surrogate Mothers

One of the primary motivations behind the Surrogacy (Regulation) Act 2021 was to address the exploitation of economically vulnerable women who might be coerced into becoming surrogate mothers. The shift to altruistic surrogacy was intended to protect these women, yet this change presents several human rights challenges.

- **Autonomy and Informed Consent:** The requirement for altruistic surrogacy and the mandate that the surrogate mother be a close relative could limit women's autonomy over their bodies. Critics argue that such regulations may subject women to familial pressures, potentially compromising the voluntariness of their consent.
- **Economic Rights:** By banning commercial surrogacy, the Act removes a potential source of income for women who might choose surrogacy as a path to financial independence. This restriction raises questions about a woman's right to make autonomous decisions concerning her economic situation.
- **Health Rights:** The Act ensures that surrogate mothers receive medical care and insurance during the surrogacy process. However, it is essential to consider the need for ongoing healthcare beyond the immediate period of surrogacy, given the potential long-term physical and psychological effects.

Rights of Intended Parents

For many infertile couples, surrogacy represents the last opportunity to have a biological child. However, the strict eligibility criteria imposed by the Surrogacy (Regulation) Act 2021 bring to the forefront concerns regarding the rights of intended parents to family life and reproductive autonomy.

- **Family Life and Non-Discrimination:** The Act restricts surrogacy to Indian citizens who are married for at least five years, excluding single individuals, LGBTQ+ couples, and couples who do not meet the marriage duration requirement. These exclusions raise issues of discrimination and the potential violation of the right to family life.

- **Reproductive Freedom:** The stringent regulations, including the prohibition of commercial surrogacy and the requirement for the surrogate to be a close relative, limit the reproductive choices available to intended parents. Such restrictions may compel intended parents to seek surrogacy services abroad, where legal and ethical protections may not be as robust.

Rights of the Child

Children born through surrogacy deserve protection and the prioritization of their best interests. The Surrogacy (Regulation) Act 2021 includes provisions to safeguard these rights, yet challenges persist.

- **Right to Identity:** The Act lacks provisions ensuring that children born through surrogacy have access to information about their genetic origins. This gap raises concerns about the child's right to know their identity and access personal history.

- **Legal Status and Citizenship:** While the Act restricts surrogacy to Indian citizens, it does not adequately address the legal and citizenship status of children born to foreign parents through international surrogacy arrangements. Such situations often result in complex legal disputes.

- **Best Interests of the Child:** The Act's regulatory framework aims to protect the best interests of the child by promoting ethical surrogacy practices. However, the ban on commercial surrogacy might drive the practice underground, where children's rights and welfare could be compromised.

Striking a Balance Between Regulation and Autonomy

The Surrogacy (Regulation) Act 2021 represents a significant effort to balance the competing rights and interests of surrogate mothers, intended parents, and children. However, its strict regulations have sparked human rights concerns, particularly regarding the autonomy of women and the reproductive rights of intended parents.

- **Towards a More Balanced Approach:** To better protect the rights of surrogate mothers without undermining their autonomy, a more balanced approach is necessary. This could involve providing more comprehensive economic support and ensuring long-term healthcare while allowing surrogate mothers the option of receiving fair compensation for their services.

- **Revisiting Eligibility Requirements:** Revising the eligibility criteria for intended parents could help eliminate discriminatory practices and uphold the right to family life. Expanding these criteria may also enhance reproductive freedom for a broader group of individuals and couples.

- **Protecting Children's Rights:** The Act should incorporate provisions to guarantee the rights of children born through surrogacy, including their right to identity and legal clarity regarding citizenship. Maintaining detailed records of surrogacy arrangements and the identities of genetic parents is essential for protecting the child's best interests.

Conclusion

The Surrogacy (Regulation) Act 2021 marks a pivotal shift in India's approach to surrogacy, driven by the need to protect the rights of women and children while curbing the commercialization of reproduction. However, the Act's stringent regulations have prompted concerns about human rights, particularly in terms of women's autonomy and the reproductive rights of intended parents and children.

A more nuanced approach to surrogacy regulation could better balance regulation with autonomy, ensuring that all parties' rights are protected without infringing on individual freedoms. By revisiting

certain provisions of the Act, it is possible to create a legal framework that upholds human rights while maintaining ethical and legal standards in surrogacy practices.

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