

Surrogate Motherhood: Legal Framework, Emotional Experiences, Issues, Ethical Challenges And New Options For Parenting A Critical Analysis

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ABSTRACT

Surrogacy is often spoken of as a hopeful answer for couples who cannot conceive, yet the reality behind it is far more layered, shaped by law, personal emotions, and ethical dilemmas. For many years, India was a global hub for surrogacy, welcoming both domestic and foreign intended parents. That position changed sharply with the enactment of the Surrogacy (Regulation) Act, 2021, which restricts surrogacy to unpaid arrangements and limits it largely to close relatives. While the law seeks to prevent exploitation, it has also left many aspiring parents uncertain about their options and has drawn attention to the emotional experiences of surrogate women themselves. This paper examines how the 2021 law reshaped eligibility for surrogacy in India and the reasoning behind these restrictions. Using court observations, media reports, and academic writing, it highlights the tensions created by the current framework. Many surrogate mothers speak of a deep sense of fulfilment in helping another family, but they also describe emotional strain, particularly after childbirth, when psychological support is often absent. Studies indicate that anxiety and depression are not uncommon among surrogates once the pregnancy ends. At the same time, the law has faced criticism for being too rigid. Single individuals and same-sex couples are excluded, and strict conditions relating to age and marital status have narrowed access even further. Recent legal discussions and public commentary suggest that a more flexible approach may be needed in deserving cases. The paper also considers alternative paths such as adoption, advances in reproductive technology, and the possibility of carefully regulated compensated surrogacy. Overall, it seeks to move beyond legal provisions to reflect the human realities of surrogacy, and to explore how future reforms might better protect both children's interests and the dignity and rights of surrogate mothers..

Keywords: Surrogacy law in India, altruistic surrogacy, surrogate mothers' mental health, reproductive rights, ethical regulation, eligibility restrictions, judicial scrutiny, policy reform.

1. INTRODUCTION:

India became a global epicentre of surrogacy in the 2000s, attracting wealthy childless couples from around the world. News outlets even called it a "baby factory," as clinics catered to an international demand for affordable surrogacy.¹ Commercial surrogacy was legally permitted from about 2002 until 2015, and by some estimates, it generated hundreds of millions of dollars each year. Many women became surrogates out of financial need, often coming from low-income backgrounds, essentially renting their wombs to earn money.² Human rights advocates warned early on that this raised ethical alarms:

critics questioned whether extremely poor women could truly give free consent in such arrangements.³

By the late 2000s, surrogacy in India had caught national attention through high-profile legal cases. In 2008-09, the courts handled *Baby Manji Yamada v. Union of India*⁴ and *Jan Balaz v. Anand Municipality*,⁵ which spotlighted conflicts over citizenship and parental rights in surrogacy arrangements. For example, Baby Manji was born via an Indian surrogate to a Japanese couple, but disputes over marriage and visas left her stateless only after the Supreme Court intervened was she granted Indian citizenship. These controversies made clear that India lacked a comprehensive law on surrogacy; regulators and experts responded by drafting new regulations.⁶

¹ The Surrogacy (Regulation) Act, 2021

² Gaurang Narayan, Hara Prasad Mishra, Tarun Kumar Suvvari & Ishika Mahajan, *The Surrogacy Regulation Act of 2021: A Right Step Towards an Egalitarian and Inclusive Society?* (2022), <https://www.cureus.com/articles/148645-the-surrogacy-regulation-act-of-2021-a-right-step-towards-an-egalitarian-and-inclusive-society.pdf>.

³ Lopamudra Goswami, Stephen Anthony Larmar & Jennifer Boddy, The impacts of the Covid-19 pandemic on surrogacy in India: The role of social work – PMC, <https://pmc.ncbi.nlm.nih.gov/articles/PMC8261337/>

⁴ (2008) 13 S.C.C. 518 (India).

⁵ 196 Cal. App. 4th 1410 (1998).

⁶ *Supra Note 5.*

By 2021 the Government enacted the Surrogacy (Regulation) Act, which took effect on January 25, 2022. Under the Act, all commercial surrogacy is banned, and only “altruistic” surrogacy is allowed. In practical terms, an intending couple (a married Indian man and woman) must meet strict criteria: the wife must be aged 23-50, the husband 26-55, and they must have been married at least five years with no surviving children (except in very limited cases).⁷ Surrogates must be married women aged 25-35 who already have their own child. In short, the law confines surrogacy to a very narrow, family-based model of childbearing.

These legal changes have triggered strong and ongoing debate. Those in favour argue that the restrictions are necessary to shield women and children from exploitation, while critics maintain that the framework is overly narrow and inflexible. One of the most contested aspects of the law is its complete exclusion of single persons and same-sex couples from surrogacy. Many view this as unjust, especially in light of India’s broader legal developments toward equality, such as the decriminalisation of homosexuality and the formal recognition of transgender rights. Even among couples who are technically eligible, rigid conditions relating to age and family size have caused genuine difficulty. In one recent observation, the Supreme Court noted that applying new age limits to couples who had already initiated the surrogacy process would effectively defeat their legitimate expectations and undermine their right to parenthood.

Alongside these legal debates, deeply personal narratives have come to the surface. Surrogate mothers often speak of a complicated emotional experience. While several describe a sense of fulfilment and pride in helping another family, many also admit to feelings of loss and sadness when they hand over the child they carried for months. Some continue to think about or pray for the child and the intended parents long after the birth. Empirical studies suggest that surrogate mothers are more vulnerable to post-birth anxiety and depression than women who give birth to their own children, particularly when emotional and psychological support is absent. Despite this, their voices rarely occupy a central place in public discussion, which tends to revolve around legal principles or the aspirations of intended parents.⁸

This article adopts a broad and integrated approach to these developments. It traces the evolution of India’s surrogacy laws, explores the social and emotional realities faced by those directly involved, and examines the ethical and social concerns raised by the current regime. It also looks at alternative paths to parenthood and offers suggestions for reform. By bringing legal analysis together with lived experience, the article seeks to better understand the realities of surrogacy in India and the direction in which policy might responsibly move.

Research Objectives

- I. To examine the evolution and current status of India’s surrogacy laws, including the Surrogacy (Regulation) Act 2021.
- II. To understand the experiences and emotional challenges of women who become surrogates in India.
- III. To identify key legal, social, and ethical issues raised by surrogacy (for surrogate mothers, intended parents, and children) in the Indian context.
- IV. To explore emerging alternatives and innovations in parenthood (such as adoption and reproductive technologies) as potential complements or substitutes for surrogacy.
- V. To suggest policy and support measures that could better balance the interests of all parties involved in surrogacy arrangements.

Statement of the Problem

Surrogacy in India has moved from an almost unregulated commercial practice to a tightly controlled legal regime with the enactment of the Surrogacy Regulation Act, 2021. While the law was introduced with the stated aim of preventing the exploitation of women and protecting the interests of children, its practical consequences raise several unresolved concerns. ‘The shift to an exclusively altruistic model, coupled with narrow eligibility conditions, has significantly restricted access to surrogacy and has altered the lived realities of both intended parents and surrogate mothers.’

A central problem lies in the tension between protection and exclusion. The law assumes that banning compensation and limiting surrogacy to married heterosexual couples within strict age and family criteria will automatically prevent exploitation. However, this assumption overlooks the complex social and economic conditions in which surrogacy takes place. Many women who act as surrogates continue to face emotional strain, inadequate psychological support, and limited post-birth care, issues that the law addresses only superficially. At the same time, single individuals, same-sex couples, and others outside the prescribed framework are denied any lawful route to parenthood, raising serious questions about equality, reproductive autonomy, and constitutional values.

Another problem arises from the gap between legal intent and social reality. Rigid rules, mechanical application of eligibility criteria, and lack of transitional protections have caused uncertainty and hardship for families already engaged in fertility treatment. The voices and experiences of surrogate mothers often remain marginal in policy debates, which tend to focus more on moral regulation than on sustained care and agency. ‘Against this background, the core problem addressed in this study is whether the current surrogacy framework in India genuinely balances the prevention of exploitation with the

⁷ The impacts of the Covid-19 pandemic on surrogacy in India: The role of social work – PMC, <https://PMC.NCBI.NLM.NIH.GOV/ARTICLES/PMC8261337/> *Advances in Consumer Research*

⁸ *Iran J. Reprod. Med. Emotional Experiences in Surrogate Mothers: A Qualitative Study*, 12 471 (2014).

rights, dignity, and lived experiences of all parties involved, or whether its restrictive design creates new forms of exclusion and vulnerability that the law itself fails to adequately address.⁹

Methodology

This study follows a qualitative and doctrinal method, relying on interpretation of existing sources rather than fresh fieldwork or empirical data. The core analysis is based on Indian laws regulating surrogacy, with primary focus on the Surrogacy (Regulation) Act, 2021 and the rules framed under it. These legal texts are read alongside earlier Assisted Reproductive Technology guidelines and related notifications to understand how regulatory thinking on surrogacy has gradually evolved.

To uncover the intent behind the legislation, parliamentary debates, standing committee reports, and official statements were examined. Judicial responses to the Act were also analysed through relevant decisions of the Supreme Court and High Courts, with attention given not only to outcomes but to the reasoning and constitutional values applied by the courts.

The legal discussion is supported by academic literature, including peer-reviewed articles and scholarly commentaries, which helped situate India's approach within broader debates on reproductive autonomy, gender justice, and ethics. In addition, credible media reports and long-form journalistic accounts were used to reflect lived experiences of surrogate mothers and intended parents, offering social context often missing from statutory texts.

By comparing these sources and identifying recurring themes, the study highlights gaps between legal intent and social realities. The overall approach seeks to present a balanced understanding of surrogacy regulation in India by combining legal analysis with ethical and human perspectives.⁹

This study has been carried out using a doctrinal method of research, focusing on the careful examination and interpretation of existing legal materials rather than on fieldwork or empirical data collection. Statutes, judicial decisions, parliamentary records, and scholarly writings form the core sources of analysis. For referencing and citation, the 21st edition of the Bluebook citation style has been consistently followed throughout the study to ensure uniformity and academic clarity.

Discussion

Surrogacy in India has never developed in a straight line. Instead, it has moved through phases of experimentation, anxiety, and correction. The present framework reflects accumulated fears about exploitation as much as it reflects

concern for family and child welfare. While the Surrogacy Regulation Act 2021¹⁰ represents the most comprehensive statutory intervention so far, its effects cannot be understood only by reading the text of the law. Its consequences are visible in clinics, courtrooms, and households where people encounter the law not as policy but as lived constraint. This section examines the framework through multiple lenses, including its legal structure, emotional impact, practical issues, ethical tensions, and the emerging search for alternative ways of forming families.

Historical Background and Evolution of Surrogacy Regulation in India

Before formal legislation, surrogacy in India operated in a largely permissive environment. Early growth was shaped by medical tourism, private fertility clinics, and guidelines issued by the Indian Council of Medical Research rather than binding law. Commercial surrogacy became common during the early 2000s, particularly attracting foreign intended parents seeking lower costs and fewer restrictions. Over time, reports of exploitation, abandoned children, and legal disputes drew public attention and political concern.¹¹ These developments prompted the Law Commission of India to recommend strict regulation and the eventual prohibition of commercial surrogacy. The Surrogacy Regulation Act 2021 must therefore be seen as a response to this earlier phase rather than as an isolated policy choice.¹²

Legal Framework Governing Surrogacy

The Surrogacy Regulation Act 2021 marked a decisive shift in how surrogacy is governed in India. The statute permits only altruistic surrogacy, under which a surrogate mother may receive reimbursement for medical expenses and insurance coverage but nothing beyond that. Any form of commercial surrogacy is prohibited, including payments connected to sperm, eggs, embryos, or the act of surrogacy itself.¹³ The law also bars foreign nationals from commissioning surrogacy arrangements in India, confining the practice largely to Indian citizens and persons of Indian origin who meet prescribed conditions. Supporters of these restrictions argue that they were necessary to end the era of so called womb rental and prevent exploitation. Critics note, however, that international surrogacy had already declined sharply due to visa and immigration controls even before the Act came into force.¹⁴

Eligibility under the statute is narrowly defined. Only a married heterosexual couple qualifies as intending parents. Both spouses must fall within prescribed age

⁹ Shane Kilcommens, *Doctrinal Legal Method (Black-Letterism): Assumptions, Commitments and Shortcomings* (Oct. 2015), <https://doi.org/10.13140/RG.2.1.1688.1364>

¹⁰ Surrogacy Regulation Act, No. 47 of 2021.

¹¹ Law Comm'n of India, Report No. 228, *Need for Legislation to Regulate Assisted Reproductive Technology Clinics as Well as Rights and Obligations of Parties to a Surrogacy* (2009).

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¹² Sama Resource Group for Women & Health, *Birthing a Market A Study on Commercial Surrogacy in India* (2012).

¹³ *Ibid.*

¹⁴ Ministry of Home Affairs, Government of India, *Visa Manual Guidelines on Surrogacy and Medical Visas* (2015).

limits, must have been married for at least five years, and must not have any surviving child, whether biological, adopted, or born through surrogacy. The criteria for surrogate mothers are similarly restrictive. Only married women within a limited age range who already have at least one child of their own may act as surrogates. Taken together, these provisions confine surrogacy to a highly traditional and tightly regulated model of family formation.¹⁵

Emotional Experiences of Surrogate Mothers

These legal limits are not merely abstract. They shape real lives in direct and often painful ways. For surrogate mothers, pregnancy does not end with delivery. While clinics provide prenatal supervision and medical care, emotional support often fades once the child is handed over. Consent procedures are emphasised formally, yet accounts suggest that some women agree to arrangements without fully understanding medical risks or long term emotional consequences.¹⁶

Public discussion rarely centres the surrogate mother's experience. Debates tend to prioritise the aspirations of intended parents or moral arguments about family values. The physical strain of pregnancy, the emotional labour involved, and the psychological impact of separation are frequently overlooked. Several studies have pointed out that when sustained support is absent, surrogate mothers may experience emotional distress, anxiety, or feelings of abandonment after birth.

Practical and Structural Issues

For intending parents, the framework offers clarity on paper but uncertainty in practice. Couples who began fertility treatment before the Act came into force have found themselves barred due to age limits or procedural changes introduced midway through their journey. In one significant observation, the Supreme Court noted that applying new age restrictions to couples who had already created embryos could effectively frustrate their right to have a child.¹⁷ This reflects judicial discomfort with rules that operate mechanically, without regard to circumstances already set in motion. In practical terms, eligibility can turn on arbitrary factors such as delays in documentation or the passage of time.

The ban on compensation has also created unintended consequences. Some commentators argue that eliminating lawful payment does not remove exploitation but merely relocates it to less visible spaces where oversight is weaker.¹⁸ Clinics continue to operate largely on trust, and enforcement mechanisms remain uneven. These structural gaps undermine the stated protective aims of the law.

¹⁵ Surrogacy Regulation Act, No. 47 of 2021, 4 5.

¹⁶ Amrita Pande, *Wombs in Labor Transnational Commercial Surrogacy in India* (Columbia Univ. Press 2014).

¹⁷ Smriti Krishnan et al., *Surrogate Motherhood in India Ethical Legal and Social Concerns*, 44 Indian J Med Ethics 211 (2019).

¹⁸ Arun Muthuvel v Union of India, W P C No 1224 of 2021 (Sup Ct India).

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Ethical Challenges and Exclusions

From an ethical perspective, surrogacy under the current framework remains unsettled. Pregnancy is framed as a gift that should be offered freely, preferably within a family network. At the same time, the law mandates medical screening, insurance coverage, and institutional oversight, implicitly recognising the risks involved. This creates an uneasy balance. A woman's willingness to carry a pregnancy is accepted only if it is entirely altruistic, while any recognition of her labour through compensation is criminalised.

Scholars are divided on this approach. Some argue that fair compensation could acknowledge agency and sacrifice rather than undermine dignity. Others warn that introducing money could increase coercion and commodification.¹⁹ The present framework attempts to avoid both risks, but in doing so it severely restricts who may participate at all.²⁰

The emphasis on familial altruism also produces clear exclusions. Single women who are not widowed are excluded, as are all single men. Same sex couples and queer individuals fall entirely outside the legal framework. These exclusions sit uneasily with India's evolving social reality, where people marry later, remarry, or form families outside traditional structures. Constitutional challenges have questioned whether personal status should determine access to something as fundamental as the desire to form a family.²¹

Emerging Options for Parenting

As surrogacy becomes more restricted, attention has turned toward alternative paths to parenthood. Adoption remains a lawful option, particularly for single women, but procedural delays and lack of transparency limit its accessibility²². Advances in assisted reproductive technologies also continue to expand possibilities, though access remains uneven and largely confined to private healthcare settings. These developments suggest that surrogacy should be viewed as one among several family-building options rather than the sole solution to infertility.

Critical Analysis

The law's emphasis on altruism has an immediate moral pull, but it does not sit comfortably with how surrogacy actually works on the ground. The ban on payment is presented as a way to prevent abuse and commodification. In reality, it turns pregnancy into a compulsory gift, while ignoring how strongly economic pressure shapes decision making. Altruism, in this framework, is not simply encouraged. It is required, and it is quietly restricted to family settings. The assumption appears to be that kinship

¹⁹ I Glenn Cohen, *Patients with Passports Medical Tourism Law and Ethics* (Oxford Univ Press 2014).

²⁰ *Ibid*

²¹ *Justice K S Puttaswamy v Union of India*, (2017) 10 SCC 1 (India).

²² Ministry of Women and Child Development, Government of India, Adoption Statistics and Guidelines under CARA (2022).

alone can guarantee fairness, an expectation that many critics view as unrealistic. By locking surrogacy into narrow legal categories, the framework also fails to account for the variety of family forms that exist today. Single parents and LGBTQ individuals are excluded outright, leaving them without any lawful route to parenthood, even though there is no evidence that they are less capable or less committed to raising children.

Once the law is applied in practice, its strengths and weaknesses begin to overlap. On the positive side, it introduces formal safeguards for surrogate mothers, including insurance coverage that extends beyond childbirth. At the same time, the actual support available to women often remains limited. Clinics still rely heavily on trust, and there are reports of women agreeing to arrangements without fully grasping the medical risks or long term implications. For intending parents, the law does offer procedural clarity, but this clarity can come at a high personal cost. Cases involving couples barred after 2022 show how rigid eligibility rules can unsettle lives that were already shaped around earlier legal expectations.

The ethical tension beneath these choices is not easily resolved. The policy appears to accept a clear trade off. Inclusivity and individual autonomy are restricted in order to protect surrogate women and children as a group. In theory, these goals do not have to be in conflict. It is possible to acknowledge a surrogate's labour through fair compensation while still guarding against coercion and abuse. Yet the framework treats one approach as morally acceptable and the other as inherently suspect. This creates the impression that alternative models were never seriously examined. Some experts have argued that regulated compensation could actually improve safety, since women would be better able to negotiate conditions or walk away without facing severe financial hardship. By refusing to recognise any form of payment, the law may end up pushing surrogacy into informal arrangements where oversight is weaker and protections are fewer.

When abstract principles meet lived experience, the coherence of the framework starts to weaken. The assumption that altruism and family bonds alone will ensure fairness overlooks the reality that surrogacy involves unequal power and competing interests at every stage. The Supreme Court has repeatedly acknowledged that decisions about reproduction engage deeply personal questions tied to privacy and the right to life. If that understanding is taken seriously, the exclusions built into the framework appear excessive rather than protective. The policy condemns the idea of selling babies, yet forces all arrangements into a narrow and idealised structure. In doing so, it fails to fully protect either surrogate mothers or intending parents.

Conclusion & Suggestions

Surrogacy in India now finds itself in an uneasy position. Over roughly two decades, policy has swung from minimal oversight and open commercial practice to a framework marked by strict control and moral caution. Neither phase has settled the deeper questions that surround surrogacy. Even with formal protections in place, many women who act as surrogates describe what

happens after birth as a kind of disappearance, with limited emotional support and patchy medical follow up. At the same time, people who hope to become parents often discover that the law leaves them no room at all, its criteria too narrow to accommodate the complexity of real lives and relationships.

Recent experience suggests that extreme positions offer little comfort. Prohibiting payment without putting strong systems of care and supervision in place does not make harm vanish. It can, instead, make harm harder to see and harder to address. On the other side, treating surrogacy purely as an act of family generosity restricts access to those who already fit a conventional idea of kinship. Those outside that frame are left with no lawful option, regardless of their capacity to care for a child. What emerges is a legal structure that speaks confidently in moral terms but often struggles when confronted with everyday realities.

What becomes clear is that neither an open marketplace nor a blanket ban provides a durable answer. A more workable path would treat surrogacy as a legitimate form of reproductive assistance while drawing firm boundaries around unacceptable practices. This would require acknowledging the physical and emotional work involved in carrying a pregnancy, and responding to it with fair compensation and continuing care rather than symbolic protection alone. It would also demand strong safeguards for children, so that questions of parentage, status, and welfare are settled clearly and without delay.

Rethinking the law also means reconsidering who is allowed to participate. The wish to form a family cannot be reduced to marital labels or assumptions about sexuality. If personal choice and dignity are taken seriously, then exclusions based solely on personal status become difficult to defend. Broadening access need not weaken regulation. It can instead bring more arrangements within the reach of oversight, rather than pushing them outside the law altogether.

No regulatory design can remove all discomfort from surrogacy. The intersection of pregnancy, money, care, and family will always provoke unease. What experience shows, however, is that legal text on its own is not enough. Rules require institutions that can enforce them, professionals trained to support those involved, and a readiness to revisit assumptions when outcomes fall short. Paying attention to the voices of surrogate women, intended parents, doctors, and child welfare specialists is essential if regulation is to move beyond appearances and address what actually happens on the ground.

At its core, surrogacy concerns the arrival of a child into the world. Policy should be shaped with that reality in mind. The aim ought to be arrangements that protect health, dignity, and stability for everyone involved. A system guided more by care than by suspicion, and more by inclusion than by exclusion, is more likely to meet that aim. The woman who carries the pregnancy, the child who is born, and the family that receives that child all stand to benefit from a framework grounded as much in human experience as in legal principle.

Suggestions

A more workable approach would begin by rethinking the absolute ban on compensation. Instead of insisting that all surrogacy be unpaid, the framework could allow reasonable and closely regulated compensation. Covering lost wages or providing a modest fixed amount would recognise the physical and emotional demands of pregnancy without turning surrogacy into an open market. Experience from other jurisdictions suggests that clear limits, mandatory counselling, and independent oversight can reduce abuse while discouraging illegal practices. Critics have long warned that total prohibition often pushes arrangements underground, where women are less visible and more exposed to harm.

Eligibility rules also deserve reconsideration. Expanding access beyond narrow family based criteria would better reflect commitments to equality and personal liberty. Allowing single women, and in some situations same sex couples, to pursue surrogacy under defined safeguards would align regulation with constitutional principles already recognised by the courts. Excluding people solely on the basis of marital status or sexual orientation is increasingly difficult to justify. Broadening access would not weaken protection. It would bring more arrangements within the reach of regulation rather than outside it.

Support for surrogate mothers needs far more sustained attention. Medical screening alone does not address the full impact of surrogacy. Emotional and psychological support should extend beyond routine clinical visits. Counselling should not be treated as optional. Support before and after birth needs to be mandatory, especially because many studies suggest that surrogate mothers can struggle emotionally when they are left without continued care. Structured counselling, long term follow up, and access to mental health services for a defined period after childbirth could significantly improve outcomes. Clinics and agencies should be required to fund and facilitate this care instead of treating their responsibilities as ending at delivery. Community based support or peer networks

could also help ensure that surrogate mothers do not simply disappear from view once the arrangement concludes.

At the same time, other paths to family formation deserve stronger institutional support. Adoption remains a lawful option for many, including single women, but the process is often slow and unclear. Streamlining procedures and expanding public resources would give prospective parents more realistic alternatives. Developments in reproductive medicine should also be part of public discussion, so that surrogacy is not presented as the only response to infertility.

Transitional fairness is another area that requires attention. Couples who began fertility treatment before the current framework came into force should be explicitly protected. Where embryos were created or procedures initiated under earlier rules, the law should allow those processes to continue. This would respect legitimate expectations and reduce avoidable litigation. Courts have already signalled that people should not be penalised for actions taken before a legal change, and clearer guidance would prevent further hardship.

Finally, enforcement should focus not only on who is allowed to pursue surrogacy, but on how it is carried out. Clinics and agencies must be properly licensed, regularly audited, and held accountable for misconduct. Coercion, misinformation, or denial of care should attract serious consequences. A central monitoring mechanism could track surrogacy arrangements and intervene when a surrogate's welfare is at risk. Funding for independent advocates or welfare support could be raised through modest contributions from intended parents. This would shift the emphasis away from moral policing and toward practical protection rooted in lived realities

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