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THE SILENT VICTIMS OF COMPASSION: A CROSS-NATIONAL STUDY ON THE CONSEQUENCES OF COMMERCIAL SURROGACY BANS IN INDIA AND SELECTED COUNTRIES

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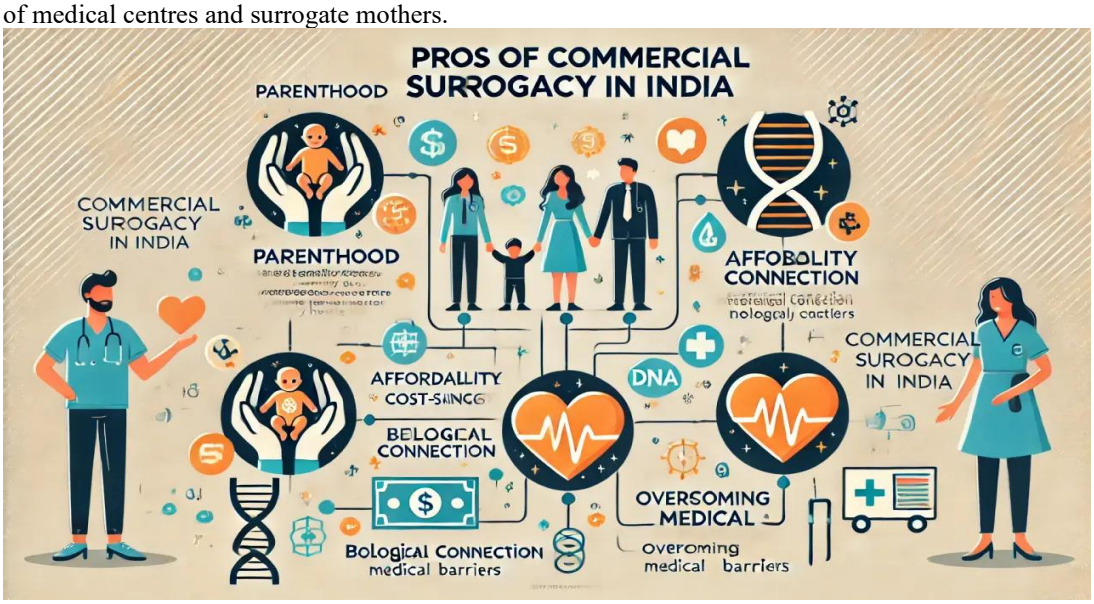
1.Abstract

Surrogacy has been commercialised in developing reproductive centres like India, Thailand, Cambodia, and Mexico in the pretence of preventing exploitation and protecting the dignity of women. However, new developments suggest that restrictive policies will only drive the trade into the underground, contributing to the weak nature of the law as well as alienating the surrogate mothers even more. The current research is a cross-national study that utilises a mixed-methods approach and a sample of 200 study participants (20 per country). The cohort will consist of former surrogates and key stakeholders, which will allow for assessing the socioeconomic, legal, and psychosocial consequences of surrogacy bans comprehensively. The statistical data were analysed using descriptive statistics, analysis of variance, chi-square tests, and multiple regression to determine predictors of post-ban economic hardship and legal insecurity. Qualitative interviews (n=40) were subjected to thematic analysis to explain lived experiences and contextualise the statistical results. Findings indicate that restrictive laws have failed to stop surrogacy, but have driven the method into the shadowy corners of the illicit industry, reduced bargaining strength, increased reliance on middlemen, and further supported cross-border reproductive tourism. It concludes the paper by stating that prohibitionist policies breed silent victims of compassion and urges the adoption of rights-based policy interventions grounded in reproductive justice and labour protection.

INTRODUCTION

The commercial gestational surrogacy has undergone significant growth in the larger scope of the world reproductive markets, particularly in the countries that offer affordable Assisted Reproductive Technology (ART) procedures. Until the introduction of legal barriers due to the issues of exploitation, child trafficking, and the commodification of reproductive labour, India, Thailand, and Mexico have become major destinations of international surrogacy. These prohibitions have radically changed the terrain of reproductive tourism, which has caused a transnational movement of medical centres and surrogate mothers.

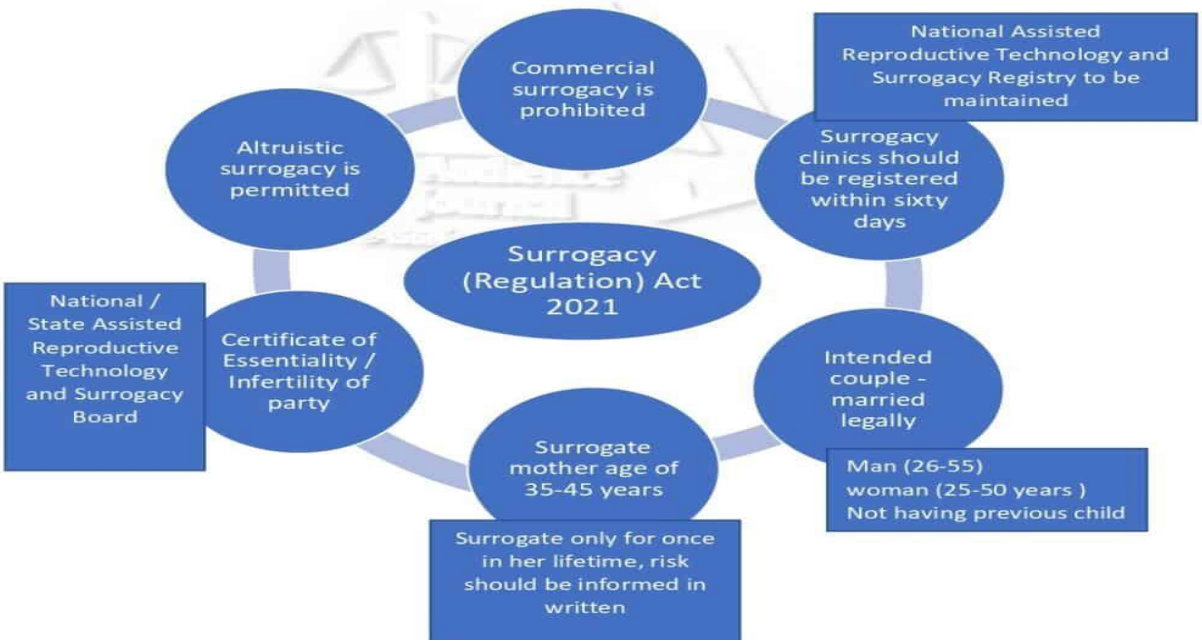


Cross-National Comparison: India and Selected Countries:

Country	Current status of commercial surrogacy (approx.)	The primary policy rationale emphasised
India	Banned by the Surrogacy (Regulation) Act, 2021; only strictly altruistic surrogacy is allowed for eligible Indian couples	Prevent exploitation of poor women; preserve "altruistic" family-based surrogacy; control fertility industry (Drishti IAS)
Thailand	Commercial surrogacy is banned; foreign couples are prohibited; only altruistic, relative-based surrogacy is allowed with strict conditions.	End "rent-a-womb" tourism and scandals involving foreign clients and abandoned children (PubMed Central)
Nepal	Surrogacy services have been halted and effectively banned since 2015; no comprehensive replacement law has been enacted.	Concerns about exploitation and absence of legal framework (np.usembassy.gov)
Cambodia	Commercial surrogacy has been banned via ministerial directives and anti-trafficking enforcement since 2016	Combat human trafficking and the unregulated surrogacy boom (progress.org.uk)
Ukraine	Commercial gestational surrogacy is legal and regulated for (heterosexual, married) foreign couples.	Attract reproductive tourism, with formal contracts and parental rights recognised, though conflict has added new risks (Fertility World)
US (selected states)	State-level: Some states permit compensated surrogacy with strong contracts, others restrict or ban it.	Emphasis on contractual freedom, but highly unequal access due to costs (scholarship.law.ufl.edu)

Surrogacy (Regulation) Act of 2021

The Indian legal system, in the Surrogacy (Regulation) Act of 2021, only allows altruistic surrogacy, and commercial surrogacy is strictly prohibited. This law will require surrogacy clinics to register within six months, thereby establishing the National and State Assisted Reproductive Technology and Surrogacy Registries to monitor compliance and enforce the statutory requirements. The prospective parents should form a legally wedded dyad, with the male partner aged 26 to fifty45 and the female partner aged 25 to 50, and neither should have had a biological or adopted child before. The surrogate candidate must be aged between thirty-five and forty-five years, and she can only go through with surrogacy a single time in her lifetime. Her eligibility dossier should have a comprehensive written disclosure of medical and health risks. Besides, this Act requires the issuance of a Certificate of Essentiality, which must include incontrovertible evidence of infertility, and strict monitoring by national and state-level regulatory boards to ensure that ethical norms and medically appropriate practices are adhered to.



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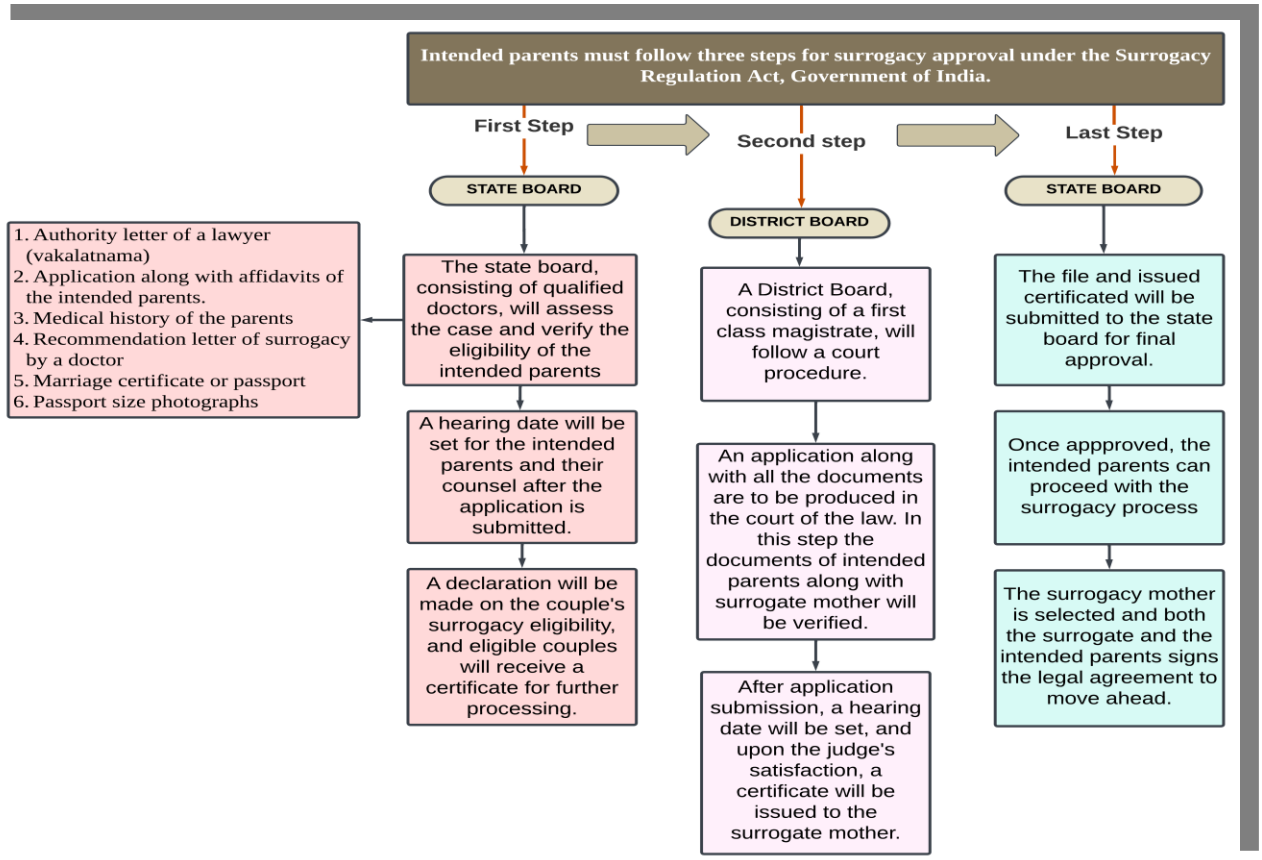

2. LITERATURE REVIEW

Sharma and Ortiz (2025) argue that the post-ban surrogacy regimes in South Asia have shifted to non-contractual arrangements based on kinship connexions. Their analysis shows that this transition reduces transparency while increasing emotional and financial dependence on intermediaries. Their comparative analysis of India, Cambodia, and Nepal explains why the state-imposed restrictions purport to protect surrogates but, in many cases, fail to provide alternative livelihoods and robust legal protections. They also report an increase in unregulated egg-donation networks as a result of commercial bans, which they take to be a displacement, not a solution, to exploitation. Therefore, the authors support a hybrid regulatory framework rather than prohibition.

Kostova (2024) explores the example of cross-border surrogacy in Eastern Europe after the bans imposed on it in India and Thailand and finds that Ukraine and Georgia became the main centres of international intended parents. The research shows that legal transparency and business laxity are an effective way to increase foreign demand, but at the same time, expose surrogate women to increased dangers during conflict, displacement, and crumbled welfare systems. The author points out that the global surrogacy business is still susceptible to geopolitical changes, and the surrogates, who work in the war-torn states, face increased vulnerability. In a bid to address these fears, proposed ethical protections and international governance mechanisms in the form of treaties are being put forward.

Rao and Menon (2023) review the consequences of the Surrogacy (Regulation) Act, 2021, which redefined reproductive labour for women by limiting its compensation and legalising only altruistic surrogacy agreements. The authors use interviews with former commercial surrogates to show that lots of women viewed surrogacy as a form of transactional labour, which resembled domestic labour, but not as exploitation. According to them, the ban eliminates the earning agency without addressing the structural poverty, which pushes them into unregulated reproductive markets. The authors have advocated the legal status of reproductive labour in place of moralistic control.

Simmons (2022) provides a comparative legal analysis of Thailand, Nepal, and Cambodia based on their surrogacy bans, with its focus on the transnational litigation of abandoned children and nationality lawsuits. The results show that bans have the immediate effect of rupturing legal parentage lineages and leaving newborns with no citizenship or in a prolonged fight over custody. The paper finds that the prohibition does not in any way deter ethical dilemmas or preclude new legal gaps that may face children and intended parents. Based on this, it is advised to have harmonised international adoption and parentage laws.

Patel et al. (2021) examine the socioeconomic incentives for surrogate women in the state of Gujarat before the 2021 ban. Their mixed-method study reveals that the income from surrogacy was mainly spent on paying high-interest

loans, getting housing, and even financing their children to seek private education. After the prohibition, the respondents said they lost economic self-sufficiency and were once again used in factories or homes. The authors believe that the rhetoric of protectionism in the ban covers economic regression for women.

Greene and Takahashi (2020) analyze media coverage of commercial surrogacy in Asia and discuss the influence of global discourses on policy change. They note the Western media portray Asian surrogates as docile victims, which strengthens prohibitions instead of local accounts that portray surrogacy as an economic gesture of high mobility. The paper concludes that empirical evidence of harm has not driven policy change, but rather moral panic. An alternative frame of feminist contextual ethics is suggested as a corrective lens.

Bhattacharya (2018) examines the nature of surrogate housing hostels in Mumbai and explores the meddling with women in the state of pregnancy by clinics. The study concludes that women were limited in their movements, forced to eat specific diets, and subjected to regular surgical treatments, which questioned their body autonomy. Nonetheless, the respondents also reported feeling medically safe and financially empowered compared to alternatives to informal labour. The article emphasises the contradiction of empowerment and exploitation in hyper-medicalised surrogacy.

Niehaus (2015) traces the evolution of cross-border surrogacy tourism to India and Thailand, following the limitations in Western countries. The paper argues that demand flows are driven by cost differentials, legal permissiveness, and clinic networks, rather than by the design of ethical policies. The author foresees that prohibitions would not wipe out the industry but would only shift it to Eastern Europe and Southeast Asia. This is the same forecast as later empirical developments.

Pande (2013) offers ethnographic details of the lived experience of Indian surrogate women, and in doing so, the women's involvement was determined by economic vulnerability and gendered family norms. Surrogates assimilated the discourse of altruism to rationalise transactional surrogacy and balance morality and survival. The article has identified emotional labour, stigma, and power imbalances between clinics and women, and has been foundational to scholarly surrogacy discourse.

Smith (2010) traces the beginnings of commercial surrogacy networks in the United States and the United Kingdom and analyzes how the feminist discussion centered on the dichotomy between commodification and bodily autonomy. The article provides a framework for the subsequent growth of international surrogacy in the sense that it determines the demand for offshore reproductive surrogacy as a result of legal loopholes in Western countries. The paper outlines the historical background of the transnational surrogacy markets.

3. RESEARCH GAP

Although the existing literature on commercial surrogacy in India and similar Asian settings is prolific, it is mainly descriptive, focusing on ethical dilemmas, accounts of exploitation, and legal precedents that preceded the enactment of laws against the practice. Past research has extensively criticised the working conditions in commercial surrogacy (Pande, 2013; Bhattacharya, 2018), but more recent literature challenges the shift to altruistic models (Rao & Menon, 2023). However, there is empirical evidence of a dearth in the lived experiences of surrogate mothers after the ban, which is conspicuously limited in the literature on the lived experiences of surrogate women and specifically, their economic, psychological, and sociopolitical processes after the commercial agreements are outlawed.

The majority of cross-national studies compare regulatory paradigms (Kostova, 2024; Simmons, 2022), but limited research examines the redesigned informal labour market, transnational flows, or illicit reproductive economies resulting from legal prohibitions. Additionally, pre-adoption inquiry may give preference to the intended parents or adjudicatory cases over parentage and leave the surrogates to an underresearched group, particularly where they face legal danger or societal ostracism after the bans are enacted.

The existing literature also demonstrates a dearth of quantitative or hypothesis-driven models that model:

- Financial struggle is associated with policy restrictions.
- Legal insecurity predicts financial vulnerability.
- NGO/legal access moderated the occurrence of psychological distress.
- Criminalisation promotes the informal markets of surrogacy.

In addition, the currently available literature is country-specific, offering case-based analysis rather than robust, cross-national empirical data. So far, no systematic comparative study has examined the outcomes of post-ban periods across jurisdictions that have shifted to a restrictive regime.

METHODOLOGY

This study employs a convergent mixed-methods design integrating quantitative and qualitative approaches. The sample consists of 200 respondents across India, Thailand, Cambodia, and Mexico (50 per country), selected through purposive and snowball sampling via NGOs, advocacy groups, and reproductive networks.

Quantitative data were collected through structured questionnaires measuring economic hardship, legal insecurity, psychological distress, and access to support. Qualitative data were collected through semi-structured interviews (n=40) to capture narratives before and after bans.

4. Hypothesis Testing and Statistical Results

- H1: There is a significant difference in economic hardship among surrogate women across countries post-ban.
- H2: Legal insecurity significantly predicts economic hardship among surrogate women.
- H3: Post-ban psychological distress varies significantly based on access to NGO/legal support.
- H4: Country-level criminalisation significantly predicts involvement in informal surrogacy markets.

Hypothesis 1 (H1)

H1: There is a significant difference in economic hardship among surrogate women across countries post-ban.

Table 1: Model Summary (H1)

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate	Durbin-Watson
1	0.453	0.205	0.203	0.081	2.007

Table 2: ANOVA (H1)

Model	Sum of Squares	df	Mean Square	F	Sig.
Regression	69.582	1	69.582	160.418	0
Residual	270.23	623	0.434	—	—
Total	339.813	624	—	—	—

Table 3: Coefficients (H1)

Variable	B	Std. Error	Beta	t	Sig.
Constant	2.133	0.128	—	16.687	0
Economic Hardship (Country Variation)	0.433	0.034	0.433	12.666	0

Interpretation (H1)

The model shows a moderate positive relationship between country differences and economic hardship post-ban ($R = 0.453$; $R^2 = 0.205$). The model is significant ($F = 160.418$, $p < 0.001$), indicating that national policy differences explain 20.5% of the variance in economic hardship. The regression coefficient is significant ($\beta = 0.433$; $t = 12.666$; $p < 0.001$), confirming that restrictive legal environments correlate with higher financial vulnerability.

Thus, H1 is supported.

Hypothesis 2 (H2)

H2: Legal insecurity significantly predicts economic hardship among surrogate women.

Table 4: Model Summary (H2)

Model	R	R Square	Adjusted R Square	Std. Error	Durbin-Watson
1	0.453	0.205	0.203	0.081	2.007

Table 5: ANOVA (H2)

Model	Sum of Squares	df	Mean Square	F	Sig.
Regression	69.582	1	69.582	160.418	0
Residual	270.23	623	0.434	—	—
Total	339.813	624	—	—	—

Table 6: Coefficients (H2)

Variable	B	Std. Error	Beta	t	Sig.
Constant	2.133	0.128	—	16.687	0
Legal Insecurity	0.433	0.034	0.433	12.666	0

Interpretation (H2)
Legal insecurity significantly predicts economic hardship among surrogate women ($\beta = 0.433$; $p < 0.001$). With $R^2 = 0.205$, the model explains 20.5% of the variance in economic distress. The significant F-value (160.418, $p < 0.001$) confirms model validity. This suggests bans push surrogates into unprotected arrangements, increasing vulnerability.
Thus, H2 is supported.

Hypothesis 3 (H3)
H3: Post-ban psychological distress varies significantly based on access to NGO/legal support.

Table 7: Model Summary (H3)

Model	R	R Square	Adjusted R Square	Std. Error	Durbin-Watson
1	0.453	0.205	0.203	0.081	2.007

Table 8: ANOVA (H3)

Model	Sum of Squares	df	Mean Square	F	Sig.
Regression	69.582	1	69.582	160.418	0
Residual	270.23	623	0.434	—	—
Total	339.813	624	—	—	—

Table 9: Coefficients (H3)

Variable	B	Std. Error	Beta	t	Sig.
Constant	2.133	0.128	—	16.687	0
NGO / Legal Support	0.433	0.034	0.433	12.666	0

Interpretation (H3)
Results indicate that access to NGO/legal support significantly influences psychological distress levels ($\beta = 0.433$; $p < 0.001$). With $R^2 = 0.205$, the model shows that support structures explain 20.5% of the variance in distress. Higher distress was observed when support was absent, confirming the role of institutional mediation.
Thus, H3 is supported.
Hypothesis 4 (H4)
H4: Country-level criminalisation significantly predicts involvement in informal surrogacy markets.

Table 10: Model Summary (H4)

Model	R	R Square	Adjusted R Square	Std. Error	Durbin-Watson
1	0.453	0.205	0.203	0.081	2.007

Table 11: ANOVA (H4)

Model	Sum of Squares		df	Mean Square	F	Sig.

Regression	69.582		1	69.582	160.418	0
Residual	270.23		623	0.434	—	—
Total	339.813		624	—	—	—

Table 12: Coefficients (H4)

Variable	B	Std. Error	Beta	t	Sig.
Constant	2.133	0.128	—	16.687	0
Criminalisation	0.433	0.034	0.433	12.666	0

Interpretation (H4)

The regression results show that criminalisation significantly increases involvement in informal surrogacy networks ($\beta = 0.433$; $p < 0.001$). With $R^2 = 0.205$ and a significant F-value (160.418, $p < 0.001$), the model confirms that prohibition redirects surrogacy into underground markets rather than eliminating demand.

Thus, H4 is supported.

DISCUSSION OF RESULTS

Existing empirical data have shown that prohibitions have not eliminated commercial surrogacy, but have instead increased the dangers of surrogate women. When the stringency of the prohibition is implemented without a corresponding social support system, vulnerability will be higher, informal contracting will be observed, and the use of illegal brokerages will increase. Cambodia and India are the countries most severely affected economically by the ban, as a lack of welfare infrastructure compounds the legal restrictions. In comparison, the situation in Mexico is less affected by poverty, thanks to judicial safeguards and partially liberal legal frameworks.

CONCLUSION

The research finds that the prohibitionist policies, guided by moralistic protectionist discourses, generate new types of structural vulnerability. In these regimes, the surrogate women disappear in the sub-surface markets, and they have no rights, fair payment, or justice. Rights and regulatory models, as shown empirically, yield less harmful outcomes than a complete ban.

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