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Why is Commercial Surrogacy Banned Worldwide? A Complete Review

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Abstract: ***Commercial surrogacy mainly occurs in underdeveloped nations, and when local women carry children for affluent foreigners, commercial surrogacy is a controversial issue in feminist literature. Surrogacy is a contentious topic, primarily when prominent celebrities have utilized it. Particular surrogate moms experience complications by assisted reproduction techniques; Ectopic pregnancy, ovarian hyperstimulation syndrome, and psychological stress are the primary ones. It benefits couples unable to conceive normally but may also be exploited for profit. In December 2018, the Indian Government approved surrogacy legislation that modified the previous regulations. Specifically, it outlaws commercial surrogacy and restricts the eligibility of Europeans to seek surrogacy in India.***

The companies that organized surrogacy for foreigners have suffered a severe hit. This law's passage was primarily motivated by the discriminatory practices of surrogacy providers. They often did not receive the money the expecting parents paid to the company, and their living conditions were poor. Commercial surrogacy is permitted in various nations, such as the United States of America, Russia, Poland, and many others. Surrogacy is banned in Saudi Arabia, Pakistan, Iceland, Italy, Serbia, Spain, Sweden, Switzerland, France, and Germany.

In these countries, surrogacy is mainly banned due to religious beliefs, i:e, Islam does not allow this practice, which is unethical. It is unclear what the acceptable reimbursement for surrogacy is in other nations where any surrogacy is considered banned. Both commercial and altruistic surrogacy have unethical consequences, and several nations disagree and have banned it. These moral disadvantages are even worse by cross-border commercial surrogacy.

Their many objections against commercial surrogacy are addressed, along with the justifications for why it is banned in many countries.

Examples include the commercialization and exploitation of surrogates, reproductive capabilities, health risks, unfair marketing, a lack of legal protection for surrogate mothers, ethical and legal issues, and the issue of stateless children. Despite the possibility of commercialization and exploitation, we suggest that these issues are not exclusive to surrogacy and instead need to be seen from the larger perspective of an unequal civilization.

Furthermore, some of these arguments lack an understanding of actual experiences or are based on metaphor. Surrogates need to be compensated well, and rules should be in place. Commercial surrogacy is a complicated topic that is impacted by various variables, such as high infertility treatment costs, the accessibility of international travel, and especially the economic fragility of Indian SMs and their families. There are issues surrounding the surrogate mother's decision making process, especially concerning gender disparities, power imbalances, and a lack of proper legal support for surrogate mothers. To fully comprehend commercial surrogacy, further study is required, mainly research considering the perspectives of Indian women and families participating in these arrangements.

Keywords: Surrogacy, commercial surrogacy, altruistic, banned, legal, medical complications

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I. INTRODUCTION

Commercial surrogacy is a hotly debated topic, mainly when it occurs in underdeveloped nations and is carried out by indigenous women for wealthier foreigners [1]. Furthermore, it may exacerbate racial, social, and economic disparities and lead to the hierarchy of reproduction, promoting the reproductive success of wealthy people while "depriving or prohibiting the mother work of others." [2]. International and commercial surrogacy has generated intense debates in social scientific literature, notably feminist literature, with the discourse mainly concentrating on choice, agency, and the commodity of women's issues and mothers [3].

It is viewed by some feminist researchers as an economic non-choice for poor women and looks to be a poverty-based compulsion, notably by radical and materialist feminists [4]. Other feminists, on the other hand, regard it as a potential "reproductive freedom" in a setting of poverty when women have few other alternatives to live in better circumstances [5]. Additionally, few feminists oppose the commercialization of women's reproductive systems, which they claim turns women into throwaway objects, human machines, or baby factories and draw comparisons to slave ownership and prostitutes [6]. Others compare commercial and international surrogacy to other occupations that support ethnic and socioeconomic injustice, such as outsourcing care operations [7]. From an essentialist feminist perspective, commercial surrogacy, local or international, overlooks the maternal love developed during pregnancy and discredits women and mothering by denying the natural relationship between the mother and her fetus [8].

This unique connection and affection are regarded as incompatible with business relationships. Other interpretations, however, underline those surrogates, like any pregnant woman, emotionally and physically separate themselves from the pregnancies and the offspring [9]. Therefore, two opposing viewpoints are presented: one is categorically opposed to surrogacy and calls for a national or even international ban, and the other contends that legalizing surrogacy as a kind of work will better defend women from victimization [3]. India is a perfect illustration of this paradoxical setting. Through the Surrogacy (Regulation) Bill 2016, this nation decided to ban domestic and international commercial surrogacy in December 2018 [10].

An estimated 12,000 infants were delivered in India through transnational surrogacy; India was still considered the central location for commercial and international surrogacy [11]. Therefore, the state legislature of the Indian Parliament, the Lok Sabha, voted to make surrogacy an altruistic, domestic, and relationship practice in response to scandals that first occurred in India and then spread to other Asian nations like Thailand and Nepal [12]. From this point on, only a close Indian relative of a married Indian couple may carry out a surrogacy without receiving payment. The public argument advanced said that this new regulation sought to safeguard women from domestic and foreign exploitation and to maintain the country's favorable perception of the demeaning practice of surrogacy (The Hindu, October 23, 2015).

Regarding the advantages of this law, there is no universal agreement. Researchers like Rudrappa and organizations like Sama draw attention to the unintended consequences of the official desire to protect women, claiming that this move might encourage a black market and result in women being subjected to covert pressure by their family members [13] (see *LiveLawin*, January 5, 2019). In India, laws have been passed to guard women from abuse and extortion without significantly reducing the prevalence of rapes, family abuse, femicides, or acid assaults [14]. Despite India's decision to stop participating in commercial and international surrogacy, new overseas locations are starting to appear, particularly in underdeveloped nations [15]. Various experts, like Zsuzsa Berend, contend that women who use surrogacy should be allowed to explore their "means to make understanding of surrogacy." The limited quantitative research on surrogacy in underdeveloped nations does demonstrate the complexity of this biological practice, which has been simplified in public discussion and feminist issues [16]. This is particularly true of field research conducted in India, which demonstrates that the binary approach to surrogacy—exploitation vs. emancipation—does not consistently represent the sociological world, particularly the actuality that the surrogate mothers explain and experience [17].

The purpose of this study is to examine the reasons that commercial and international surrogacy are prohibited in the majority of nations and areas. We were curious to see if surrogates' testimonies supported current scientific debates surrounding commercial surrogacy in underdeveloped nations like India.

II. SURROGACY AND ITS TYPES

A. Let us define Surrogacy before Considering its Implications

1) A gestational carrier contractually agrees to carry a child for another person and is referred to as a surrogate. The goal is to assist couples when the male is sexually healthy, but the female is infertile. The leading causes involve an incurable uterine factor, in which pregnancy poses serious health complications, women who frequently experience inexplicable miscarriages, and previous hysterectomies [18]. Assisted reproductive technology is the original method for doing this process. The intended father and surrogate mother, respectively, are the owners of the sperm and egg.

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2) The second method of surrogacy involves in vitro fertilization and egg donation, which has replaced chiefly artificial insemination in recent years, i.e., gestational surrogacy. In this process, the intended father or mother or an anonymous donor provides the sperm and ovum, respectively. The embryo is implanted into the surrogate uterus after being fused in vitro [19].
3) Altruistic surrogacy is used when the woman only receives money to pay for her medicare costs; in these situations, the surrogate is typically a close relative of the intending biological parents.
4) In commercial surrogacy, the surrogate receives remuneration and the legit medical costs as compensation for her services.

B. Criteria to Become a Surrogate Mother

No one may become a surrogate, and a female's ability to bear a surrogate child has become legally limited. The following is a list of requirements for a woman to be a surrogate.

C. Criteria for a Surrogate.

1) Age is 21 to 43 years
2) BMI: 18–32
3) Good mental health and physical health
4) Have at least one kid they have carried and delivered
5) Pregnancies without complications
6) Have given birth to children at term
7) Have a secure home with sufficient financial assistance
8) Have no addiction to smoking and alcohol

D. Surrogacy in India

Surrogacy was not banned before 2015, and after that, the Indian Government approved a law that made it illegal for foreigners to carry out commercial surrogacy in India and only permitted Indian intending couples who have married for more than five years. The Surrogacy (Regulation) Bill 2016 was eventually enacted by the Government in December 2018 after nearly two years of discussion, and it includes other things:

1) The use of commercial surrogacy is a ban.
2) Altruistic surrogacy for infertile Indian women in need is permitted by law.
3) The intending couples must be five years married and provide a medical letter testifying their infertility.
4) Only women who are close relatives of the intending parents are allowed to serve as surrogates more than once. The surrogate mother must be married and have her biological kid.
5) Under the legislation, surrogacy is prohibited for live-in couples, gays, and single parents [20].

According to Section 37 of "The Surrogacy (Regulation) Bill, 2016," any individual or intending parents who wish to have kids through commercial surrogacy will be sentenced to five years in prison and a fine of five lac Indian rupees for the first time offense, and with each subsequent offense, the sentence will increase to ten years in prison and a fine of ten lac Indian rupees. No one is allowed to import or assist in the import of human embryos or gametes for surrogacy, following Section 35. If the clause mentioned above is broken, the offender faces a minimum 10-year jail sentence and a fine of up to 10 lac Indian rupees [21].

E. India: An Open Global Surrogate Marketplace

India has been involved in the industry for infertility medical tourist destinations because of low prices, accessibility to reproductive technologies, and a large number of poor women eager to serve as commercial surrogates [22]. On June 23, 1994, India's first surrogacy child was born. When an Indian mother delivered a surrogate kid for her daughter in the UK in 2004, surrogacy started garnering significant worldwide attention [23]. The Oprah Winfrey tv program included an interview with a couple from the United States in 2007, increasing awareness about surrogacy in India. Many couples find the possibility of having a child to be unreasonably expensive because surrogacy and associated infertility treatments are frequently not covered by health insurance in affluent nations like the United States. Surrogacy has become a feasible alternative since the expenses are between one-third and one-half of what they are in industrialized nations, and high-technology equipment is readily available [11]. India has joined the list of wealthy nations requesting fertility treatments [24]. The 3,000 fertility clinics in India are said to have produced more than $400 million in revenue through surrogacy in 2012 [23].

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The same factors that have made outsourcing effective in other industries—an extensive labor population working at reasonably modest rates—have made commercial surrogacy a competitive sector in India. The topic of how much affluent foreigners who are ready to pay the comparatively cheap prices of commercial surrogacy offered in India are violating Indian women is raised by the worldwide commercial of gestational [25]. This could be an example of how fundamental human rights serve the individualistic interests of either affluent people from developed countries or global corporations that profit from the marketing of infertile services [26]. The topic is complicated, according to available research, and there are no simple solutions, but exploiting poor women is a significant worry. The needs of infertile couples, the way to access Indian surrogate mothers who are eager to become surrogates, get high pay, as well as ridiculously costly treatment options, and the lack of infertility options in the home country of potential parents have all had an impact on the growth of commercial surrogacy in India [27]. The transaction benefits both parties (Surrogate mothers and Infertile couples), but the danger of exploitation is increased by the power inequality and the surrogate mother's inadequate awareness of the possible consequences of commercial surrogacy.

F. Surrogacy Across the World

Commercial surrogacy is permitted in several nations, including some American states, Washington DC, Illinois, California, Oregon, Arkansas, Maryland, and New Hampshire as well as other nations like Poland, Russia, and many others. In addition, several nations, like India, Australia, Japan, and many others, have legalized altruistic surrogacy while outlawing commercial surrogacy [19]. Finally, some nations outlaw surrogacy in all forms, as in (**Table 1)**.

Table 1. The legality of surrogacy in different countries

Countries where both commercial and altruistic surrogacy are legal	In countries where commercial surrogacy is banned, but altruistic surrogacy is legal	Countries where both commercial and altruistic surrogacy are banned
USA (some states)	Canada, except Quebec province	Saudi Arabia
Quebec province of Canada	Japan	Pakistan
Brazil	India	Iceland
Iran	Hong Kong	Italy
Israel	South Korea	Serbia
Russia	Thailand	Spain
Greece	United Kingdom	Sweden
Ireland	Hungary	Switzerland
Finland	Belgium	France
Czech Republic	Netherlands	Germany
Poland	Denmark	
Portugal	Australia	
Ukraine	New Zealand	
South Africa		

Surrogacy's legitimacy varies significantly from nation to nation and, in certain situations, state to state within nations (i.e., Australia, Mexico, and the United States) [28]. The laws of China, Iceland, Italy, France, Japan, and Germany forbid both altruistic (done as a favor without money) and commercial (fee involved) surrogacy. However, Denmark, Belgium, Netherlands, Norway, the United Kingdom, Spain, Greece, Switzerland, Sweden, and Canada accept altruistic surrogacy but forbid commercial surrogacy. Surrogacy became legal in Georgia, a member of the former Union of Soviet Socialist Republics, in 1992, with the restriction that the surrogate mother does not have parental rights to the child she carried. Similar regulations were enacted in Ukraine in 2002. Israel is the only nation that, according to the Embryo *Carrying Agreements Law* of 1996, not only permits but pays for surrogacy. By approving and monitoring each surrogate agreement, this legislation controls surrogacy at the state level following religious law. The most tolerant surrogacy laws in the United States are found in California, where heterosexual couples, bisexual couples, single men and women, and lesbian, gay, and transgender couples can hire surrogates and receive parental rights. Gugucheva gives a review of American surrogacy regulations [29].

III. WHY IS SURROGACY BANNED IN MANY COUNTRIES?

Discussions regarding the requirements and entitlements of infertile couples run the danger of obscuring this harsh fact; while they undoubtedly have reproductive rights, these rights are unquestionably unfavorable. The methods and techniques used to provide access to infertility treatments unquestionably need to be lawful and socially accepted. It is reasonable to pursue the emotional desire to become a parent within certain bounds. On the other hand, under Article 21 of the Indian Constitution, donors and surrogates have a constitutional right to life, a favorable right that also encompasses the right to a healthy lifestyle and a dignified means of subsistence [30].

In Article 23, the right not to be mistreated is also discussed [31]. Therefore, government legislation that aims to counteract this erosion of basic rights is imperative and pressing. The primary concerns that the Surrogacy Bill addresses are inequity and exploitation in an uncontrolled medical industry. It effectively shows the Government's commitment to addressing the social ills associated with the commercial aspect of surrogacy agreements, except for a few minor tweaks.

On the contrary, commercial surrogacy is not included in the proposed Assisted Reproductive Technology Bill, 2014 (consequently "the ART Bill"). Indian Council of Medical Research's (ICMR) 2005 National Guidelines for Certification, Management, and Administration of ART Clinics in India to address the larger goal of regulating ART clinics, staff, and technical processes [32]. The commercialization of children born via commercial surrogacy, which is against children's freedoms, was a second reason the Surrogacy Bill was required.

The issue was particularly emphasized around tales of abandoned surrogate babies, contracts for child transfer, worries about cross-border trafficking in children, and citizenship barriers. These would be predominantly non-ethical considerations about parenthood and the child's best prospects that must be addressed and are strongly related to a judicial view of children's rights and humanity [33].

The Surrogacy Bill has drawn criticism for being premature and blind to the greater advantages of assisted reproduction technologies to quell societal unrest and international demonization. These worries about commercial exploitation and surrogacy were anticipated to be addressed by the ART Bill.

A. Ethical and Legal Problems

Surrogacy can be a godsend for infertile families because it has never been adequately investigated. Due to this need, commercial surrogacy firms emerged, focusing on impoverished women who were willing to serve as surrogates in exchange for the meager compensation the organizations gave. Foreign couples made up most of their clientele, paying enormous sums of money, but the surrogate mothers only received a small portion, with the companies retaining most of the money. Aside from being forced to labor in subpar "manufacturing companies" and being brazenly abused, the impoverished women were also denied support for the family members they had been forced to part ways with while pregnant [34].

B. Health hazards

Ectopic pregnancy, Multiple pregnancies, and heterotrophic pregnancy are among the least frequent issues for surrogate mothers, and they all raise the risk of perinatal mortality and morbidity. Additionally, they risk developing ovarian hyperstimulation syndrome, characterized by numerous follicular development and ovarian hypertrophy after hCG activation during ART. The surrogate mother could also experience psychiatric and emotional stress and worry during the pregnancy [35].

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C. Is Commercial Surrogacy Inherently Wrong? An Ethical Analysis

1) The Exploitation Argument Against Commercial Surrogacy

Paying women for surrogacy is considered unethical. If something is exploited, it involves using a surrogate against their will or in circumstances that prevent them from giving their permission [36]. When a surrogate is unfairly utilized as a tool, it must have unfavorable impacts on her welfare that are more than justice permits. This might imply that the surrogate suffers damage or receives insufficient benefits [37]. Since altruistic surrogacy is still seen as legitimate, it was evident that damage toward the surrogate does not constitute the issue in this debate. The surrogate might thus be unfairly utilized as a tool if she receives insufficient compensation, which would happen if the dangers to her bodily and mental health are not fairly weighed against the value to the intended parents. Accordingly, the exploitative defense would support commercial surrogacy and higher surrogate compensation over altruistic surrogacy.

Nevertheless, even with commercial surrogacy, unpaid wage manipulation is still a possibility. In India, surrogacy agents used this to reaffirm the surrogate's charitable intentions and maternal responsibilities to terrify her into not demanding more outstanding fees or raising her worries [25]. The intended parents, who were affluent, had more negotiating power than the surrogate, who was destitute [38]. Cross-border customers and Indian slum people were involved in surrogacy arrangements, which caused considerable divisiveness [39]. This issue might be resolved by regulations requiring surrogates to receive adequate compensation. If the remuneration is excessively high, there is a chance that impoverished women who require money will turn to surrogacy because it will become too alluring [40]. This was especially true in India, where the majority of Indian surrogates used to claim that their primary motivation was money [41]. In contrast, surrogates in the United States claim that helping others is their primary goal (those who are even in commercial surrogacy) [42]. It thus becomes evident that the problem of exploitation is caused by an unequal society, not by the nature of commercial surrogacy.

D. The Commodification Argument Against Commercial Surrogacy

It has been claimed that commercial surrogacy is immoral nonetheless because it inappropriately treats reproduction activity, women, and offspring as a commodity, even if a surrogate is not mistreated because she voluntarily agrees to this choice and is compensated well [43]. We discuss each of these three commodity methods separately. In principle, a good is not a commodity if applying market standards to its creation, trade, and usage would be immoral. Treating it this way would be to place an incorrect value upon that, which could devalue or corrupt it [44]. This is a further explanation focused on symbolic speech rather than reasoned reasoning or supporting data. In response, proponents of commercial surrogacy reject this comparison. They contend that the money merely compensates the surrogate for the time, effort, suffering, and danger involved in bearing and giving birth to the kid [45]. This may be done by mandating that perhaps the surrogate get paid every month, irrespective of how the pregnancy turns out (as mentioned by the GCRP in the Netherlands). It would never be identical to that of the trade of an already-born undesired child because the pregnancy is arranged by both partners, with the best intentions of the kid at heart [46]. It is common practice to pay others for service that enables one to conceive and give birth to one's child; additional services may include fertility hormone delivery, artificial insemination, or necessary C-sections [47]. Therefore, despite being paid for by the surrogate, there is little documentation to imply that parents see their children as goods or things. Children were not bought and sold; the cultural belief that children are precious and that it is improper to assign them monetary value is part of the opposition to commercial surrogacy. The trade of doing anything valuable seems to require nothing less than altruism to be adequately handled [48]. This argument is supported by symbolic eloquence rather than logical justifications or facts. Altruistic drive and compensation are not incompatible [49]. Therefore, even when the surrogate mother is compensated, the children's value can be acknowledged for a charitable purpose.

E. Ethical Payment: Fair Trade

One of the primary reasons the Indian Government outlawed commercial surrogacy was improper compensation by agents and other foreign entities that benefitted themselves to the greatest extent possible while exploiting the surrogates by giving them just a minimal amount of funds [10]. We concur with the Government and various speakers that it is immoral and needs to be halted when third parties are exploited, but we disagree with outright banning commercial surrogacy. In India and other LMICs, it might be challenging but not unattainable to ensure surrogates receive fair compensation and care. Given that the intending parents' valuation of the money differs from the surrogate's, CBS tends to make it questionable how often surrogates should be compensated. In the Netherlands, the minimum wage could be an excellent way to guarantee equitable pay for surrogates, but it falls short in India and numerous LMICs. Because the minimum salary in India varies by location and industry, specific sectors, like the garment and footwear sectors, do not have a set minimum salary (US Department of State 2008).

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F. Lack of Legal Protection for the Surrogate Mothers

Indian legislation, which authorizes commercial surrogacy despite essentially handling surrogate mothers with minimal safety, makes commercial surrogacy possible. Even if the 2010 measure were to become law, its safety for surrogate mothers would be insufficient and scant; many of its clauses are designed to safeguard the intended parents solely. The measure stipulates that the intending couples are responsible for paying all pregnancy-related costs, including medical insurance, but it leaves the amount to a surrogate mother completely unregulated [50].

G. Stateless Babies

Whenever there is a dispute over whoever is the legal father or mother is, surrogate infants have occasionally been delivered without a recognized nation and in a limbo state [51]. For example, a Frenchman who gave birth to twins through surrogacy in India was permitted to return to France, where surrogacy is prohibited. Until the legal matter is addressed, the babies have been kept in the protective care center. A more well example involves a Norwegian female stuck in India for two years after giving birth to twins through a surrogate. The twins' required DNA tests revealed they were not genetically linked to her, and the Norwegian consulate in India declined to grant travel documents [51].

IV. CONCLUSION

Early prenatal checks, monetary assistance with the healthcare costs, and the allocation of a caretaker during this time are all necessary for the surrogate mother's proper care throughout the pregnancy. The SOS Societas Socialis children's village was researched in 2011 and found that abandoned or orphaned children will make up 4% of India's child demographic. Per UNICEF, there are around 29.6 million abandoned and orphaned children in India. Therefore, the average person in particularly couples who desire children but are unable to have them naturally—should be brought to the attention of the predicament among these kids and the possibility of adoption.

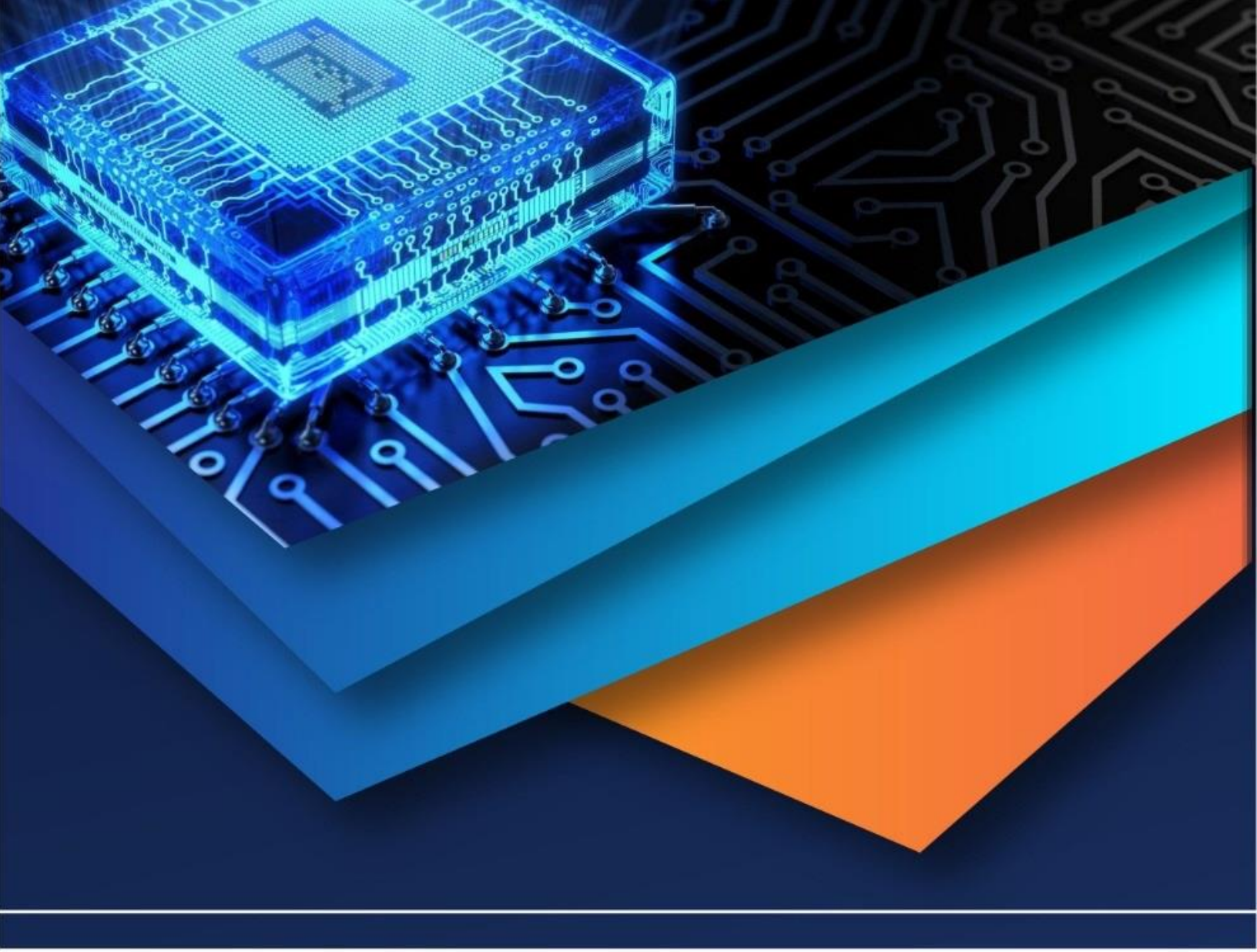
The coercive exploit affects all types of low-wage work and is a problem in an unfair system, not only commercial surrogacy. This problem would not be resolved by outlawing commercial surrogacy since doing so would deny women the chance to escape poverty. Instead, the issue that has to be resolved is the desperation quality of their choices, which can only be accomplished by more extensive initiatives to lessen inequality. Women 's childbearing work being made into a commodity is unimportant. The argument that paying women for this sort of work is demeaning is based only on symbolism or religious conventions, not ones that are logical or supported by evidence. Since compensation for reproduction work is invariably distinct from compensation for already-born children, the question of child commodification does not arise in surrogacy. The commercialization of females is a problem that has to be handled, primarily when women are used as disposable commodities by the reproductive industry through physical and psychological violence. Nevertheless, by considering surrogates as workers instead of non-human assets and according to specific standards, it is feasible to respect their goals and objectives.

Surrogacy has drawbacks and is controversial. With just a few "altruistic" exemptions, commercial surrogacy has been outlawed in certain countries, including India, due to the increasing number of incidents brought on by uncontrolled and unethical activities. Sweden adopted an aggressive stance towards the activity, outright outlawed it, and took steps to prevent its residents from visiting clinics outside of Sweden. Locally, there has not been much discussion over surrogacy since the area has been quite clear about its position. Arab nations restrict it because it is widely seen as prohibited in Islam. The Egyptian Government passed a bill making surrogacy illegal and penalized with a five-year prison term in 2001. The Federal National Council of the United Arab Emirates has approved a draft bill that would outlaw both surrogacy and the donation of eggs and sperm. A penalty of up to one million dirhams ($272,000) and a maximum of five years in jail are possible penalties for breaking the legislation. It has become simple for those who can take advantage of surrogacy thanks to the commodification of human life. Nevertheless, it might be challenging to put a complete ban on it, given how profitable and flourishing the practice is. Persons will constantly devise methods to circumvent it, which will eventually lead to the emergence of a black marketplace.

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