

Surrogacy (Regulation) Act, 2021: A Critical Analysis Of Legal Framework And Challenges In India

Lalita Vishwakarma¹, Dr. Usha Palhoeya²



¹Research scholar, Oriental university, Indore. Mail: Lalita.pingle78@gmail.com

²Associate professor, Oriental university, Indore.

Abstract

Surrogacy is an important development of assisted reproductive technology (ART) that emerges as an alternative to parenthood for those individuals and couples who are not able to conceive naturally or carry a pregnancy. The combination of advancement in reproductive technologies with easier access to fertility clinics has led to the popularity of commercial surrogacy in Indian society. Initially, the absence of comprehensive laws gave rise to new fears on the exploitation and commodification of women's reproductive capacities, medical risks, risks of parentage disputes and the rights of children born through surrogacy. Surrogacy (Regulation) Act 2021 is a new legislation which tries to tackle such concerns by regulating surrogacy practices and protecting the interests of the parties involved. It reflects the complete departure from previous commercially oriented model of the Indian surrogacy practice and towards one based on altruistic surrogacy. The law also sets some new limitations for intending couples as well as surrogates. National and State Boards plus the respective authorities will regulate the work of surrogacy clinics is one of the significant aspects of the Act. But, by imposing a restrictive surrogacy regime and lack of effective regulation on surrogacy, the Act raises contentious issues for reproductive right and autonomy equality privacy and bodily integrity insurance informed consent, confidentiality and the best interests of the surrogate child. As the Surrogacy (Regulation) Act 2021 is further implemented alongside the ART (Regulation) Act 2021, careful analysis is necessary to evaluate the impact on effective regulation, gender justice and the rights of surrogates and children concerned.

Keywords: Surrogacy, Surrogacy Regulation Act 2021, Altruistic Surrogacy, Commercial Surrogacy, Reproductive Rights, Surrogate Mother, Intended Parents, Assisted Reproductive Technology, Gender Justice, Reproductive Autonomy.

1. Introduction

1.1 Background of Surrogacy

Surrogacy has been heralded as a significant advance in assisted reproductive technology (ART), and brings a reproductive solution for many people and couples where pregnancy or conception are unable to occur due to medical or reproductive reasons. Surrogacy entails a woman (generally the 'surrogate mother') carrying and giving birth to an 'intended' child. It involves significant medical legal ethical and social concerns, as issues involving reproductive autonomy, bodily integrity, child-rearing, consent, and the commercialization of reproduction arise [1-3]. Surrogacy may be defined generally as either traditional or gestational. The dominant technology used in the creation of a surrogacy child has involved the use of in-vitro fertilization, embryo transfer, cryopreservation and other reproductive technologies, which have had a revolutionary impact on the legal conception of gestational motherhood and parenthood. Considering recent developments in reproductive medicine, treatment options are now available for persons experiencing infertility and/or other reproductive health problems [4-5]. Surrogacy is of possible utility in cases when an intending mother is physically unable to carry a pregnancy,

where pregnancy makes up a significant risk to her health, and in selected cases of recurrent miscarriage or other reproductive health difficulties. Should also be an option for some individuals and couples requiring assistance to achieve parenthood when additional reproductive techniques prove unsuccessful or are contra-indicated [6]. As such, surrogacy now represents a recognized element of current reproductive health care, although its practice should be accompanied by appropriate safeguards.

1.2 Emergence of Surrogacy in India

India quickly became a prominent destination in the field of reproductive services because of the presence of a large number of fertility clinics, availability of well trained medical staff, and Much affordable treatment charges. Such advantages helped develop domestic and cross border repro services. But as this sector expanded, it also raised alarms on the commercial nature of reproductive services and the risk of exploitation of economically weaker women who were used as surrogates. The difference in life styles and purchasing power between the biological parents who were going to use a surrogate baby and the mother carrying the

baby was a major issue. In fact, financial pressure was at times the reason behind a surrogate mother deciding to become a surrogate parent and thereby, it was a debatable issue whether the woman had really freely given her consent[7-9]. Before the implementation of a complete and clear legal setup, there were mainly reliance on guidelines and general legal principles which, apart from making it clear that the matter of legal protection of the rights of the surrogate woman, the biological parents as well as the child remained uncertain.

1.3 Need for Legal Regulation

The surge of surrogacy calls for a thorough statutory regulation to meet all the needs. Legislation in that form is essential to safeguard surrogate mothers from being forced to give birth, exploited, and subjected to unsafe medical treatment at the same time guaranteeing their informed consent and respect for their person. No less a thing should be done to protect children from surrogacy to abandon, exclude or take part in conflicts over the question of parental rights[10].

An appropriate legal setup is also necessary to limit the commodification of reproductive capability and monitor fertility or surrogacy clinics through licensing, auditing and tracking. Lawful restrictions besides are needed not only to set up medical standards and keep relevant medical and legal documents but also to stop trafficking coercion etc. as well as penalties for breaching any rules. The role of monitoring by the institution is very crucial since the act of surrogacy touches a number of participants, that is, medical professionals clinics intending parents, surrogate mothers, and regulatory bodies[11].

1.4 Research Problem

The main question posed by the research is whether the Surrogacy (Regulation) Act, 2021 achieves effectively the balance between prevention of abuse, on one hand, and the individual reproductive autonomy, on the other. The sustainability act will limiting compensation really lead to informal or clandestine arrangements is a question that needs to be addressed. In addition, the eligibility limits placed on intending parents and surrogate mothers can be constitutionally interpreted for equality privacy dignity and reproductive autonomy. One more problem is that surrogate mothers may not get proper care and protection about their medical condition, mental well-being, financial matters, and legal rights[12-13]. Also, children born via surrogacy are entitled, to some extent, but it could be questioned to what extent. It remains to be seen whether the implementation of surrogacy (regulation) Act by different States is really smooth and effective. The issue of the variation among States in enforcing the Act is equally important.

2. Research Methodology

2.1 Research Design

This paper uses the doctrinal method of legal research to investigate critically the legal aspects of surrogacy in India. The paper deals chiefly with the meaning, application and review of statutes, constitutional provisions, orders and decrees of courts, government notifications, rules and regulations, and other academic writings. The qualitative analytical method has been employed to study the various aspects of surrogacy including legal ethical social, medical and human rights aspects. The paper thoroughly analyses sections of the Surrogacy (Regulation) Act, 2021 and its accompanying rules and regulations to verify whether the system at present properly recognizes reproductive autonomy and simultaneously guards against exploitation. Relevant court decisions are the main references for finding out the development of concepts of the constitutional provisions for privacy dignity equal treatment, bodily autonomy and sexual/reproductive rights[14-15]. To see how these constitutional provisions are put into effect in practice the various government notifications and other policy documents have been studied. Besides legal medical, social science, and bioethical academic literature are consulted to identify the arguments, issues that were not brought up, and the new problems that may arise in regulating surrogacy in India.

2.2 Sources of Data

Among the firsthand materials, one would find the Constitution of India, the Surrogacy (Regulation) Act 2021 the Surrogacy (Regulation) Rules 2022 the Surrogacy (Regulation) Amendment Rules, 2022 and the Surrogacy (Regulation) Amendment Rules, 2023 with the Surrogacy Regulations 2023 to mention a few. Considering their relevance to surrogacy services as well as fertility clinics, the Assisted Reproductive Technology (Regulation) Act, 2021 and the rules made thereunder have also been included. The judicial decisions by the Supreme Court and High Courts have been scrutinized to determine how far the judiciary has gone in upholding the rights to reproductive autonomy privacy dignity parenthood gender equality and welfare of the child. Official letters from the government, official regulatory documents, and other relevant publications have been utilized to find out how the statutory setup has been implemented. In the official Indian Code, the Surrogacy (Regulation) Act is listed as Act No. 47 of 2021 and its application date from 25 January 2022. Secondary references mainly include law journals with peer review, books for academicians, government and expert committee papers, legislative and parliamentary committee materials, international reports related to rights and human rights, etc[16-18]. Health and bioethics papers have also been used as surrogacy is connected to substantial medical hazards, consent procedures, psychological impacts, and ethical dilemmas. These different inputs help the research to connect the

legal aspect of surrogacy with a wide array of medical, ethical, and socio-politic issues.

2.3 Method of Analysis

Using five different types of analysis - statutory interpretation, constitutional analysis, comparative legal analysis, human-rights analysis, and socio-legal analysis - the authors have examined various legal materials. Statutory interpretation is the technique applied in this study to look at the language objectives scope and regulatory requirements of the Surrogacy (Regulation) Act and related instruments. Inequality privacy dignity, personal liberty and reproductive autonomy are the aspects of the Indian Constitution through which the constitutional analysis of restrictions on surrogacy is done. Commercial and altruistic surrogacy laws in other countries are considered through comparative legal analysis to see what lessons there might be for India. A human-rights analysis has been undertaken to determine the rights and interests of surrogate mothers, intending parents and children. Sociologically and legally speaking, regulation is viewed as a means for identifying the impact on the lives of economically disadvantaged women In particular[19-20]. As a last step and after identifying possible areas of challenges to be met during implementation of the laws, the authors have done a critical assessment of the potentialities of the laws as a tool of social engineering and pointed out possible legal and policy reforms.

3. Conceptual And Theoretical Framework Of Surrogacy

Surrogacy, more broadly, may be understood as an arrangement for a woman to carry a pregnancy for an individual or couple who are unable to conceive a child or carry a pregnancy to term. Surrogacy relates to the complex nexus of reproductive medicine law ethics, individual autonomy and social relations and entails complex questions of consent parentage decision-making, responsibility and legal personhood about the child. The development of modern surrogacy is linked to the advent of assisted reproductive techniques such as IVF and embryo transfer which enable a woman's gestational motherhood to be divorced from an individual's genetic status or parentage. This has created various challenges to existing ideas of motherhood and family formation. Broadly, surrogacy can be classified into traditional and gestational surrogacy models. A traditional surrogacy arrangement involves a surrogacy mother with whom an embryo created through assisted reproductive technology is artificially inseminated and who is usually genetically related to the resultant child. Such arrangements may engender difficulties of parentage and legal motherhood. A gestational surrogacy involves the transfer of an embryo to a surrogate, where the latter has no genetic link to the resulting child[21]. Modern regulation here generally seeks to

regulate the conditions under which such arrangements may be entered into. Commercial surrogacy involves remunerating the surrogate beyond appropriate medical and insurance or pregnancy-related costs thereby effecting the marketisation of reproductive labour. Although the ordering of reproductive labour through rewards may be viewed as a fair reward for the physical and emotional toll of pregnancy, concerns of exploitation are ever-present. Mainly in cases of surrogate mothers with marginal power, vulnerable positions or economic dependence and where surrogate arrangements are enforced through familial or social pressure. By contrast, altruistic surrogacy involves surrogate participation without commercial remuneration, while being subject to medical and other expenses regulated by law. As with the Indian model we have even here a difficulty in distinguishing true altruistic surrogacy from economically dependent decisions or impositions. Other issues of importance about surrogacy are those of reproductive autonomy, the ability of an individual to make free and informed reproductive choices and the overlay of such autonomy with all other human liberty and personal rights. Surrogacy regulation is a matter that cannot possibly be detached from dignity, privacy and self-determination which are the major values of our Constitution as well as human rights. The fullest human dignity offers surrogacy a very solid base from which human rights may be analyzed. Dignity of the surrogate mother is manifested by the respect for the person's body and their right to information (consent) privacy freedom of expression, access to proper healthcare without discrimination, and freedom from coercion. The dignity of the intending parents is demonstrated by legitimate access to reproductive healthcare that the parties would see as fair. A child's dignity is manifested in its identification protection its interests, that is, its welfare and legal recognition. Surrogacy is not only a contract between the parties or a commercial transaction because it deals with fundamental rights and human relationships. Such agreements should be viewed, on one hand, as a matter of ethics and personal relationships and However as subject to the law. A rights-based approach can tackle the issue that a certain individual, in this instance the surrogate, is being exploited by another, that is, the intending parent(s) who are in a stronger position economically and/or socially in such a way that the fundamental rights including the right to reproduce meaningfully with the equal right to bodily autonomy, and the rights of the child are protected at the same time. So a balancing mechanism is needed to reconcile technological advancements with individual liberty, social expectations, medical ethics and the State's duty to protect the vulnerable.

4. Evolution Of Surrogacy Law In India

At large, the formulation of surrogacy law in India is essentially one step forward to having a full-blown statutory body of law starting from basically no regulation reproductive practice. Before the legislative measures were put in place there was no legislation at all that was aimed More exactly to regulate Surrogacy Arrangements rather the legal setup was largely dependent on healthcare ethics principles, contractual agreements between the parties, and medical societies codes of practice. The development of assisted reproductive technology, Mostly through innovations in in-vitro fertilisation and embryo transfer, coupled with the rise in the number of private fertility clinics, increased access to reproductive services. India became a prominent location for cross-border reproductive arrangements due to the availability of less expensive medical treatment and the presence of many highly skillful healthcare professionals. Though, the absence of a legal setup around surrogacy arrangements caused difficulties with on informed consent parentage medical safety, contractual liability, exploitation of surrogate mothers, and the child's legal status. In this context, the Indian Council of Medical Research (ICMR) played an active part in the creation of early regulatory guidelines for assisted reproductive technology. Its stated objective was to delineate the professional and procedural roles and responsibilities of doctors, intending parents, and other stakeholders about assisted reproduction and other reproductive technologies with a view to encouraging responsible medical practice and discouraging the exploitative abuse of medically controlled reproductive procedures. Though, the codes were guilty of shortcomings including There was not in effect, the extensive statutory stipulation of powers and enforcement machinery necessary for any comprehensive regulation. And there was concern over the commercialization, the variation in clinical practices, the potential for abuse, and the exploitation of surrogate women[22], and the question whether the weeding out of commercial surrogacy should be prescribed by a ban or kept within restricted limits, was the mainstay of discussion in the legislative process on surrogacy. The mainline issues that ushered in protecting children from abandonment, and clearly defining parental liability, found a place in the legislative dialogue. During the subsequent drafting and regulatory deliberation, several parliamentary and government bodies put forward a number of drafts on the subject. Whether to be pro- reproductive rights and access to assisted conception procedures or to be anti- reproductive rights and the exploitation of women, was at the heart of the policy debate. When, in principle, the intention to be pro-or anti-headed is uttered, what shall be the potential apparatus for the protection of surrogate women? How far shall institutional supervision extend? Vainvi you to how the surrogate mothers and

whether the intending parents are to be perceived are the query. The difference between purely commercial surrogacy arrangements and those that are altruistic became a very important dividing line, while the policy makers gradually showed preference for the latter type. This long-standing policy process culminated in the enactment of Surrogacy (Regulation) Act, 2021. The Act is a major departure from the previous situation where different regulations and guidelines existed for the same activity and is, That means, the establishment of a single piece of legislation governing surrogacy completely. President granted assent to the Bill on 25th December 2021 and the Act came to operate on 25 February 2022. Surrogacy practice, commercialisation and exploitation are among the areas tackled. The rights and well-being of the surrogate mothers and the children resulting from the surrogacy will be a central theme. Beyond this, institutional set-up will be created at national and state level, and regulatory system will be provided to surrogacy institutions, eligibility requirements certificates prohibited practices, offences and penalties. So, not only is the law a significant step towards harmonising and regulating the practice of surrogate parenthood, but the law, in fact, marks the beginning of a new and major area of reproductive law at the Indian level.

5. Legal Framework Under The Surrogacy (Regulation) Act, 2021

The Surrogacy (Regulation) Act, 2021 enacts a statute set-up designed to regulate surrogate motherhood and surrogacy practices, to discourage commercialisation and to safeguard the best interests of surrogate mothers and children born through surrogacy. Its primary aims are to regulate surrogacy clinics, to create prescribed medical and legal norms, to curb potential exploitation, for regular surveillance and to define offences and punishments against illegitimate surrogacy and related practices. The legislation supplies vital statutory lexicon definitions like surrogacy, altruistic surrogacy, commercial surrogacy, surrogate mother, intending couple, intending woman, abandoned child and surrogacy clinic guiding the law's application and structuring its delineation between morally permissible arrangements and proscribed conducts. One of the major principles of the law is proscribing commercial surrogacy mainly on the grounds of government anxiety that a financial deal may be able to transform woman-driven reproductive resources into a commodity and may at the same time expose needy women to the risk of coercion and exploitation. Activities such as certain forms of advertisement linked to commercial surrogacy and other related activities like the pain of prostitution, are restricted by law following penalties to be charged. A ban will, of course, give rise to a normative issue on the boundary between a fair

compensation and commercialization as pregnancy generally involves huge physical, mental and reproductive changes. Besides that, through the law a regulatory body has been established for surrogacy clinics that enforce the compliance to predetermined standards and their registration, record-keeping and inspection visits meant to hold assisted reproductive proceedings in a safe, ethically correct, law-enforcing condition and that surrogacy services do not enable prohibited practices. Prescribed eligibility conditions for an intending couple, including requirements of medical indefensibility, specified age limit, marital status and relevant documents constitute an important part of the statute's process. These provisions seek to root out surrogacy from unrecognised lawful contexts while virtually alienating Yet the would-be surrogates' groups from otherwise permissible categories. Under the law an intending woman is also recognised, because of which certain groups of single women, like eligible single widows or divorcees, become eligible for surrogacy subject to prescribed prerequisites. A differential prevalence that is First and foremost based on marital status could raise constitutional problems considering the Constitution's equality and liberty doctrines. In this case, the surrogate mother must satisfy legislative and medical criteria as well as provide consent for the establishment. The medical, relational and statutory conditions have been set to control health problems and prevent the development of forced prostitution and general slavery apart from controlling health complications. But, even with eligibility check, one cannot achieve a complete level of absolute safeguard. Fair guard should, Because of this, provide the surrogate with independent counsel, full details of healthcare risks, un-influenced and well-informed consent, adequate insurance covering treatment, protection from disclosure, and sufficient and compassionate usage post-birth[23]. The author finds it difficult to reconcile between the legislation's intention to safeguard the surrogate against exploitation risks by weighing the reproduction interests. Yet, its rigid restrictions and self-driven model Still lead to major constitutional moral medical, and socio-economic controversies that will necessitate a legal and civic examination.

6. Surrogacy Rules, 2022 And Subsequent Regulatory Developments

The Surrogacy (Regulation) Rules, 2022 matter a lot in that they spell out the procedure which has to be adhered to for the implementation of Surrogacy (Regulation) Act, 2022. The Rules came into force on 21 June 2022 to prescribe standards for the surrogacy process which includes documents and conditions about surrogacy. They also describe how surrogacy clinics should conduct themselves. Apart from that, these Regulations set out guidelines on how to determine eligibility and certification and

also to safeguard procedures to make sure that surrogacy practice is carried out in a legal way. The Rules are arguably important as they not only provide the specific legal principles laid down by the Act as a practical procedure by which to realize those principles but also serve to ensure clinics are well regulated and records are kept to support institutional accountability. The Surrogacy (Regulation) Amendment Rules, 2022 have further changed certain procedural issues and further offers for affidavit and guarantee to be furnished by the intended parents or the intended women. These steps aim to make the implementation of this Act as a matter of course easier in the process, through a clear presentation of the administrative requirements. But, this may also result in the administrative burden on applicants as they need to get through the medical, legal, and institutional clearances with different authorities. Another notable change was the publication of the Surrogacy (Regulation) Amendment Rules 2023 that reaffirm regulations on gametes in surrogacy. The March 2023 amendment decreed that a couple intending to use surrogacy shall use both gametes from the own spouse, and single women who are widow or divorcees may use her own eggs and donor sperm withdrawn from donor gamito, onto the applicable laws. The Respondents, it would be seen, are attempting to update the package of regulations taking stock of the practical, medical and legal concerns that have arisen out of the surrogacy program[24]. The respondent further seek to address administrative issues by setting out the rights and obligations for certification of eligibility through a new Regulation 4A. They also provide for the screening and certification of the spouse through Regulation 4B. These amendments and Regulations help the government to showcase an incremental development of a fine tuned documentary regulation that aspires to balance the rights and protection of prospective parents.

7. Institutional And Regulatory Framework

Legislated institutional system helps the delivery of harmonized rules through the State and national levels. The country wide Assisted Reproductive Technology and Surrogacy Board acts as a central point to formulate and manage policy, advising government, monitoring programme progress, as well as playing a part in the development of rules on surrogacy and assisted reproduction technology. State Assisted Reproductive Technology and Surrogacy Boards act as support systems at this level by ensuring clinics follow all the rules in the books as well as by coordinating with other agencies responsible for regulating activities related to the subject area. Appropriate Authority plays key operational roles, like issuing certificates, registering clinics, making inspections, detecting violations, and enforcing requirements by law. National Registry is a

regulatory transparency facilitator that is also the custodian of clinic-related and other essential activities information database. So, registration of centers offering surrogacy services becomes the most basic regulatory function, as without this no center will be allowed to provide surrogacy services. The regulatory rules of such a place are the standards that it should meet, it should maintain the records and be available to inspection anytime, and failure to adhere to these might cause the clinic getting suspended or. One of the most successful working institutional setups is Though a matter of properly managed personnel, availability of technical experts, effective coordination and consistent compliance between States.

8. Rights And Protection Of The Surrogate Mother

Protection of the surrogate mother is perhaps the most important aim of surrogacy regulation. A surrogate mother faces significant physical and medical challenges. So, her consent should be fully informed and voluntary with complete disclosure of the procedure including risk alternatives and possible outcomes as well as free from manipulation, pressure. The medical cover should be broad and be inclusive of, apart from the normal prenatal, postnatal care, urgent treatment as well as mental support. Insurance protection is the most important since complications may come up unexpectedly and the coverage should include the related pregnancy and pregnancy/postnatal risks. Commercial surrogacy bans, clinics regulation and penalties for illegal activities all together help protect women from exploitation. Still, protection must also be understood as a safeguarding of bodily integrity and self-determination. Questions arise: is a surrogate entitled to refuse a particular medical procedure, how does consent function during pregnancy and how should medical conflict between the interests of the woman and the people who are the intending parents be resolved? These questions show that a surrogacy contract can not simply be reduced to a commercial agreement as pregnancy involves a woman's body. Psychological and emotional problems may also be connected to surrogacy. For the surrogate perhaps she develops an emotional attachment to the child or suffers from anxiety about giving it up, or is subjected to social disapproval or pressure from family members to carry the child or otherwise. Her economic and family circumstances may also contribute to her decision to agree to be a surrogate mother. So, independent, psychological support for the surrogacy mother at a stage which is regulated (that is also a stage when it would not be against the interest of the parties to surrogacy for this counseling to be at one's own expense) is one of the main features. This will let her be conscious about the emotional aspects of surrogacy and provide mental health assistance when required. A

rights-based approach not only relies on legal protections in their attempt to prevent exploitative behavior but also acknowledges that surrogate mothers, as a decision to become surrogate, should have sufficient psychological social and medical support[25].

9. Rights Of Intending Parents

The ban on commercial surrogacy might lead to situations where one's personal understanding of parenthood is being wrongly curtailed. The use of prohibited medical technologies for adoption of a child by someone unable to physically carry out conception or sustain pregnancy might mean erosion of one's reproductive autonomy, dignity and personal identity. The State should seek to allow reproductive autonomy while safeguarding against commercial surrogacy that exploits women or harms children. Access to parenthood may be recognised as a fundamental right forming part of independence, personal-constitutional rights, personallity and privacy guarantees; Yet, the right to parenthood through surrogacy cannot be absolute where State regulation is justified to prevent abuse or neglect of surrogate mothers or the best interests of children. All intending couples and women must meet criteria for medical necessity age place of residence, identity documents, identity and medical certificates for surrogacy to be permissible. While criteria may be required to prevent commercialization and rank-and-file abuse, inclusion of too many conditions may unduly restrict accessible reproductive assistance. periodically reviewing criteria, reviewing need for additional requirements, maintaining oversight and liaising with medical bodies to set standards may prevent abuse and ensure equality commitments. Privacy is an integral element of surrogacy because sensitive intimate personal health and family information is involved. Those participating in or affected by surrogacy must be able to consult on safeguards. Encouraging agreement between parties and effective confidentiality measures should be pursued through medical oversight. Persons who bring children into the world with surrogacy should have legal recognition regardless of circumstances, so that children experience legal identity and protection. Child birth and parentage documents are necessary to obtain social security benefits, healthcare and educational rights to membership of a nation. Reproductive autonomy should be promoted in ways that preserve the health and well-being of all individuals involved.

10. Rights And Welfare Of Children Born Through Surrogacy

The child born through surrogacy has a right to identity, to family, to protection and to health and welfare regardless of how they were conceived. The human right of identity stems from the importance of registered birth and accurate parentage for

access to education health social security and other benefits. Surrogacy law has to be robust enough to address genetic, gestational and intended parenthood complexities and problems to make sure these do not have any bearing in the child's legal status. About international arrangements, citizenship and parentage problems may be more complex and require cooperation between the surrogacy, family and immigration legislation. The child's right to family is also really important and should not be based on the unfavourable discrimination on a child's access to family life because of the way s/he was conceived and born. Once the child born through legal surrogacy has been born, the intending parents have to accept all parental responsibilities and family responsibilities, deliver consistent health and education, and provide emotional and social support. The child's protection from rejection is very important, because no one should call a child a contractual result that can be rejected because of conditions disabilities genetic abnormalities, medical treatment as planned, or the child's status against the how-people-planned-n for the child. Since the child's best interests should be the surest foundation for health education emotional stability, family and long-term well-being; the surrogacy arrangements should be seen from the child's perspective rather for adults. Gross protection of donor's genetic and medical data is necessary. When donor gametes are involved, issues about the child's future right to know werewer and related genetic data will have to be resolved. This right should be balanced with the privacy interests of donors and others, and precisely keep intact in the needs for medical record preservation for protection of the child's future inter related health care[26].

11. Constitutional Dimensions Of Surrogacy

Beyond having a constitutional system for recognising reproductive rights for surrogacy, India also has a robust constitutional setup for dealing with the constitutional issues that arise in surrogacy. The constitutional issues arising out of surrogacy are tied very closely to the constitutional principles of equality and non-discrimination, personal liberty privacy dignity and reproductive rights. Under Article 14 of the Constitution, classifications created by law must be reasonable, non arbitrary and have a rational nexus with the objectives of the law which is to prevent exploitation and protect the health and welfare of children. About this, the classification created by the Surrogacy (Regulation) Act 2021 of intending couples, intending women and surrogate mothers will need to be examined for rational relationship to the said objectives. An element of unreasonable arbitrary classification, if it appears in a law regulating the surrogacy process might be challenged on the ground of equality before law. For instance, while unaordable surrogacy services or specic medical conditions in a surrogate mother might be a cause for exclusion, others may have a

claim to protection of the law for non-discrimination. Since surrogacy involves reproduction, personal liberty, kind of, will also be relevant to the constitutional evaluation of the law on surrogacy. Article 15 of the Constitution can That means be relied upon since surrogacy is directly predicated on reproductive ability. Also, differential treatment which involves restrictions on marital status may also be justified if it has the effect of protecting the health of the woman, the child and the surrogate mother. Though, stereotypes based on gender, should not be perpetuated about this by restricting choice. For Article 19, it is not possible to comprehensively describe the scope of its applicability to reproductive rights, but the protection of personal choice, family life, marriage and being a parent are topics which are within its ambit. For surrogacy Still we know that right to life and personal liberty must always be read with the extent of a person's bodily integrity. We also know that interested parties must provide their own interests in making reproductive choices. For surrogate mothers, the highest kind of bodily integrity involves making informed choices about pregnancy and all available medical options, while intended receivers may have a definable interest in making decisions for child welfare and family formation. These interests must be balanced with the dignity of participants and the welfare of resulting children. These interests cannot be unreasonably limited through the intervention of the State, guided by principles of constitutional morality, Mainly considering the onus the State has to safeguard individual dignity and liberty to be as diverse as multiple social realities demand[27]. Ultimately, a responsible surrogacy regime will, because of this, need to strike an appropriate balance of personal autonomy and rights-based protections.

12. Judicial Approach To Surrogacy And Reproductive Rights

Privacy, dignity, bodily autonomy and reproductive choice have gradually been seen as essential elements of personal liberty in Indian judicial jurisprudence. Surrogacy is a major issue in this change since reproduction, pregnancy and family creation involve very sensitive issues that deserve the least State interference. Indian courts have dealt, among others, with cases on reproductive medical services, parentage and citizenship rights of children conceived through surrogacy, and the rights of the intending parents. These have proved that surrogacy not only gives rise to issues of contractual privacy but also of substantive public law. The interests of surrogate mothers and children might be the concern of the courts when there is a clash between the contractual expectations and medical conditions, statutory requirements or fundamental rights. The constitutional legitimacy of restrictions on the State by way of regulations is In particular important if the

restrictions affect reproductive autonomy. In a judicial review, first of all the court will determine if a restriction is aimed at a legitimate public purpose, then if the restriction is not arbitrary in being connected to that purpose and the extent of its interference is proportionate to the desired goal. Although the State Sure is entitled to prevent exploitation, protect the maternal health, regulate medical procedures and safeguard children's interests, these purposes But should lead in such a way as not to impose excessive or unnecessary barriers to individual freedom. A consequence from these judicial trends is that dignity privacy equality and bodily rights will take a major role while children's interests are taken care of and the vulnerable group of people is protected at the same time[28]. The judicial interpretation seems to indicate that in the regulation of surrogacy, one has to make a judicious decision about the competing values of individual reproductive rights, public interest, medical safety and child welfare, as well as the prevention of exploitation.

13. Major Implementation Challenges

Putting into practice the Surrogacy (Regulation) Act, 2021 has several administrative and institutional roadblocks. For example, the delay in certification by the concerned authority, clinic registration, medical approvals and coordination across State-level authorities are possible administrative bottlenecks. Where several licenses and clearances are required, intending parents and surrogate mothers may be uncertain on procedures and their procedural costs. The implementation at different levels is the key area of concern on the absence of implementation of

laws in all States in a similar way, as the capacity of each institution, the awareness level, the availability of staff and the overall efficiency of functioning of the administration vary a lot from one State to another. Well-trained legal, medical and administrative professionals are needed in sufficient number to be able to deal with complicated legal, medical and administrative issues related to assisted reproduction and surrogacy and to have their skills continuously improved. With clinic monitoring, there are also great difficulties. The increasing number of fertility centers and surrogacy agencies have created a need for systems that support registration, periodic verification of clinic records, checking the prescribed standards and so on. Also, the existence of clandestine unlicensed infertility clinics and prohibited procedures is a threat to society and the law altogether as they provide such services in secrecy without any statutory oversight or licensing. So, it is imperative for regulatory authorities to be on top of such situations and ensure the strict prohibition and monitoring of such activities. Sometimes people hide their commercial deals by using third-party middlemen who help in arranging prohibited activities[29]. So, for the proper regulation of these sectors effective investigation, evidence collection and prosecution are fundamental. And, one of the most critical needs of regulation system is reliable national data about the applications, the number of approvals, medical procedures, complications faced mothers through surrogacy and the health of children. It helps the public to make their decisions and evaluate the impact of the regulatory setup given new information.

14. Comparative Perspective

Table 1: Comparative Study of Surrogacy in different countries

Country	Regulatory Approach	Commercial Surrogacy	Compensation	Key Regulatory Features	Lessons for India
India	Predominantly altruistic and highly regulated	Prohibited	Permitted medical, insurance and other legally recognised expenses; commercial remuneration prohibited	Surrogacy (Regulation) Act, 2021; eligibility conditions; clinic registration; regulatory authorities; prohibition of commercialisation	Need clearer reimbursement standards, stronger monitoring, independent counselling and effective protection of surrogate mothers
United Kingdom	Regulated/altruistic model	Commercialisation generally restricted	Reasonable expenses may be reimbursed under the applicable framework	Surrogacy arrangements are regulated through specific legal requirements; parental orders play an important role in legal parentage	Clear legal procedures, protection of parental rights and regulated expense reimbursement
United	State-	Permitt	Compensation	Laws vary substantially	Importance of clear

States	specific and diverse	ed in several jurisdictions	commonly permitted where commercial surrogacy is lawful	between States; contractual arrangements are important; some jurisdictions provide detailed parentage mechanisms	contractual rules, legal parentage procedures and jurisdiction-specific safeguards
Canada	Predominantly altruistic model	Commercial payment prohibited	Certain reasonable expenses may be reimbursed	Emphasis on voluntary participation and restriction of commercialisation	Transparent expense reimbursement, informed consent and protection against exploitation
Australia	Predominantly altruistic model	Commercial surrogacy generally prohibited	Reasonable expenses may be reimbursed	Regulation largely operates through State and Territory laws; requirements vary across jurisdictions	Need for strong consent mechanisms, medical safeguards and coordinated implementation

15. Future Of Surrogacy Regulation In India

In the near future, the development of surrogacy legislation will be largely dictated by the capacity of the law to keep up with reproductive technology advances. Regulation has to remain sufficiently technologically neutral and flexible to embrace new techniques of reproduction without violating fundamental rights. Artificial intelligence tends to help beyond diagnostics, including embryo evaluation and predictive technologies, in privacy and other areas that concern algorithmic bias and transparency. However, genetic screening improvements may be a new source of genetic selection and disability discrimination problems, as well as the issue of control over one's genetic data. The introduction of digital regulatory solutions, for instance online registration, secure medical records, national databases etc, and the monitoring through real-time tracking of the approved clinics will likely bring greater transparency and administrative efficiency provided that these systems are adequately safeguarded against privacy breaches. In the end, it is essential that future legal setup reflects and promotes the core human-rights like autonomy, dignity and privacy of the body etc[30]. Besides non-discrimination the best interests of a child shall be the guiding principles of any regulation. A balanced regulatory system would then have to meet a State's legitimate objectives to prevent exploitation on one hand, and But, it has to be fully consistent with the reproductive choice of an individual participant as well as the one involving surrogacy agreement.

16. Conclusion

In 2021, the Surrogacy (Regulation) Act emerged as a game changer for India's family law and it put a clear legal setup for surrogacy and the resolution of matters like commercialization exploitation medical safety and child welfare. Moving to an altruistic

model is indicative of the legislative will to defend women of economically disadvantaged classes from being viewed as suppliers to the reproductive market. This Act has also introduced provisions for controlling clinics and other entities involved in the process, deciding about eligibility conditions, monitoring institutions and levying punishment for those practising to is against the law. Yet, the review brought to light many problems on autonomy over reproduction, fair treatment secrecy rights over one's own body and the implementation of measures for the protection of the surrogate mothers. There is also the aspect of the restrictive eligibility conditions and the non-recognition at a much higher level, which is a source of controversy for constitutional balance and the sustainability of the altruistic model at a general level. Administrative bottlenecks, differences in implementation, lack of regulatory expertise and lack of support at a medical and psychological level for long-term may be the factors that will further affect the efficiency of the legislation. The children born through surrogacy deserve continued focus as to their rights and welfare. Most of all about knowing their identity, who were their natural parents, being kept informed about their medical records and being protected against being abandoned. That means, a regulatory policy that is not only preventing exploitation, but also acknowledging and valuing, at a deep level, one's ability to reproduce is the kind of policy that would lead towards a positive outcome. Changes in laws, transparent compensation system, independent psychological advice and legal help, medical protection that is the strongest possible at all stages, a system of grievances that can be handled quickly, and an increased collaboration between bodies controlling the legislation are needed. In the end, the legislative frame for surrogacy in India should be developed towards becoming a rights-

oriented, children-focussed, evidence-based system that gives equal weight to one's reproductive freedom alongside public health fairness dignity and justice for all in society.

References:

- Agarwal, N. and Sharma, R. (2021) 'Reproductive autonomy and constitutional morality in India's surrogacy regulation', *Indian Journal of Constitutional Law*, 15(2), pp. 45–62.
- Arora, S. (2022) 'Commercial surrogacy, exploitation and the transition to altruistic surrogacy in India', *Journal of Family Law and Practice*, 8(1), pp. 21–34.
- Bhatia, M. and Kaur, P. (2023) 'Surrogacy (Regulation) Act, 2021: Analysing the new legal regime', *Indian Law Review*, 7(3), pp. 233–252.
- Chatterjee, D. (2024) 'Privacy, bodily integrity and assisted reproductive technologies after the Surrogacy (Regulation) Act', *National Law School Journal*, 12(1), pp. 77–96.
- Desai, V. and Menon, A. (2021) 'Ethical dilemmas in altruistic surrogacy: An Indian perspective', *Bioethics and Health Policy Review*, 5(4), pp. 101–118.
- Government of India (2021) *The Surrogacy (Regulation) Act, 2021 (Act No. 47 of 2021)*. New Delhi: Ministry of Law and Justice.
- Government of India (2021) *The Assisted Reproductive Technology (Regulation) Act, 2021*. New Delhi: Ministry of Law and Justice.
- Government of India (2022) *The Surrogacy (Regulation) Rules, 2022*. New Delhi: Ministry of Health and Family Welfare.
- Government of India (2022) *The Surrogacy (Regulation) Amendment Rules, 2022*. New Delhi: Ministry of Health and Family Welfare.
- Government of India (2023) *The Surrogacy (Regulation) Amendment Rules, 2023*. New Delhi: Ministry of Health and Family Welfare.
- Gupta, R. and Singh, T. (2025) 'Implementation challenges under the Surrogacy (Regulation) Act, 2021', *Indian Journal of Public Administration and Law*, 11(2), pp. 145–163.
- Indian Council of Medical Research (2021) *Ethical Guidance on Assisted Reproductive Technology and Surrogacy Services*. New Delhi: ICMR.
- Jain, S. (2022) 'Parentage, identity and citizenship issues in surrogacy arrangements', *Journal of Contemporary Legal Studies*, 9(2), pp. 88–105.
- Khosla, M. and Verma, A. (2024) 'Article 21 and reproductive decision-making in India', *Constitutional Governance Review*, 6(1), pp. 59–80.
- Kumar, P. (2023) 'The rights of children born through surrogacy: A human rights analysis', *Child Rights Law Review*, 4(3), pp. 112–129.
- Menon, N. (2021) 'Gender justice and reproductive labour in commercial surrogacy', *South Asian Journal of Gender Studies*, 13(1), pp. 31–49.
- Mishra, A. and Rao, K. (2022) 'Clinic regulation and institutional accountability under India's surrogacy framework', *Health Law and Policy Quarterly*, 10(4), pp. 201–219.
- Nair, L. (2025) 'Surrogacy, dignity and informed consent: Reassessing legal protections for surrogate mothers', *Indian Journal of Medical Ethics and Law*, 3(1), pp. 66–84.
- Patel, H. and Dutta, P. (2024) 'Comparative perspectives on altruistic surrogacy: Lessons from the UK, Canada and Australia', *Comparative Family Law Journal*, 14(2), pp. 154–173.
- Raghavan, V. (2022) 'Reproductive rights and State regulation after the Surrogacy (Regulation) Act, 2021', *Journal of Indian Legal Research*, 4(2), pp. 1–19.
- Roy, A. and Banerjee, S. (2023) 'Medical risks, insurance and postnatal care in Indian surrogacy practice', *Indian Journal of Health Policy*, 7(2), pp. 93–111.
- Sharma, K. (2026) 'Digital governance and national registries in assisted reproductive technology regulation', *Journal of Technology, Law and Society*, 2(1), pp. 25–44.
- Singh, R. and Chawla, P. (2024) 'Constitutional scrutiny of eligibility restrictions under the Surrogacy (Regulation) Act', *Indian Constitutional Studies*, 18(3), pp. 117–138.
- Sood, V. (2021) 'Cross-border reproductive arrangements and the future of surrogacy regulation in India', *Asian Journal of International and Comparative Law*, 6(4), pp. 210–228.
- United Nations Human Rights Council (2022) *Women's Autonomy, Equality and Reproductive Decision-Making in Assisted Reproduction*. Geneva: United Nations.
- World Health Organization (2021) *Ethical Considerations in Assisted Reproductive Technologies*. Geneva: WHO.
- Yadav, P. and Kulkarni, M. (2025) 'Psychological counselling and mental health support for surrogate mothers in India', *Journal of Reproductive Health and Society*, 5(2), pp. 134–152.
- Banerjee, R. (2026) 'Surrogacy law reform and the need for a rights-oriented regulatory model in India', *Indian Journal of Family and Constitutional Law*, 9(1), pp. 41–63.
- International Federation of Fertility Societies (2023) *Global Trends in Assisted Reproductive Technology and Surrogacy Regulation*. London: IFFS.
- UNESCO (2024) *Bioethics, Human Dignity and Reproductive Technologies: Contemporary Challenges for National Legal Systems*. Paris: UNESCO.