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LEGAL ASPECTS OF SURROGACY IN INDIA

~ Naaz Ishrat

ABSTRACT

This research paper examines the legal framework governing surrogacy in India, with a primary focus on the Surrogacy (Regulation) Act, 2021 and its interplay with the Assisted Reproductive Technology (Regulation) Act, 2021. The objective is to analyze the evolution, provisions and implications of these statutes in safeguarding the rights of surrogate mothers, intended parents and children born through surrogacy, while addressing ethical and social challenges. The scope encompasses doctrinal analysis of statutes, judicial interpretations, and policy critiques, limited to developments up to December 2025. Employing a descriptive doctrinal methodology, the study draws from primary sources such as legislative texts and case law, alongside secondary literature including government reports and scholarly articles. Key findings reveal that while the 2021 Acts have curbed commercial exploitation by mandating altruistic surrogacy, they perpetuate exclusions for single individuals, LGBTQ+ couples, and live-in partners, raising constitutional concerns under Articles 14, 15, and 21 of the Constitution. Implementation gaps, such as delays in clinic registrations and surrogate welfare provisions, further undermine efficacy. The paper underscores the need for inclusive reforms to balance reproductive autonomy with protective regulation, proposing amendments for compensated surrogacy models and expanded eligibility. These insights contribute to ongoing debates in Indian family law and bioethics, advocating for a rights-based approach to assisted reproduction.

KEYWORDS: Surrogacy Regulation Act 2021, Reproductive Rights, Bodily Autonomy, Assisted Reproductive Technology, Constitutional Challenges

INTRODUCTION

Surrogacy, as a reproductive arrangement, involves a woman (the surrogate) carrying and giving birth to a child for intended parents who are unable to conceive or carry a pregnancy themselves. This practice, rooted in assisted reproductive

technologies (ART), has emerged as a viable pathway to parenthood amid rising infertility rates globally. In India, surrogacy gained prominence in the early 2000s, transforming the country into a burgeoning “surrogacy tourism” destination due to its cost-effectiveness and relatively permissive legal environment at the time. However, the absence of comprehensive regulation led to ethical concerns, including the exploitation of economically vulnerable women and uncertainties regarding parentage and child rights. The importance of legal regulation in India cannot be overstated. As a signatory to international human rights instruments like the Universal Declaration of Human Rights and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), India bears the responsibility to ensure that surrogacy arrangements uphold dignity, equality, and non-exploitation. Domestically, the practice intersects with constitutional imperatives under Article 21 (right to life and personal liberty, encompassing reproductive choices) and Article 39€ (directing the state to prevent abuse of women’s health). Unregulated surrogacy risks commodifying women’s bodies, exacerbating gender inequalities, and creating stateless children, as evidenced in early cross-border cases. The contemporary relevance of this topic is amplified by demographic shifts and judicial advancements. India’s infertility prevalence stands at approximately 10-15% among couples, per National Family Health Survey data, fueling demand for ART and surrogacy. The decriminalization of homosexuality in *Navtej Singh Johar v. Union of India* (2018) and recognition of marital rape as a potential violation of bodily autonomy in ongoing litigation highlight tensions between traditional family norms and evolving rights discourses. Moreover, as of 2025, the Surrogacy (Regulation) Act, 2021, faces scrutiny in the Supreme Court over retrospective application of age restrictions, underscoring implementation hurdles. This paper thus interrogates the legal architecture of surrogacy, advocating for a framework that harmonizes protection with inclusivity in India’s pluralistic society.

BACKGROUND AND CONTEXT OF SURROGACY IN INDIA

Surrogacy in India traces its origins to the liberalisation of medical technologies in the 1970s, but it burgeoned in the post-2000 era with advancements in in vitro fertilization (IVF). The first reported surrogacy case occurred in 2005, marking India’s entry into global reproductive markets. By 2012, estimates suggested over 2,000 surrogacy births annually, predominantly commercial arrangements where surrogates received monetary compensation beyond medical expenses. This growth was facilitated by a legal vacuum: the Indian Contract Act, 1872, treated surrogacy agreements as enforceable contracts, while the Medical Termination of Pregnancy Act, 1971, provided tangential safeguards. A pivotal shift occurred in 2015 when the Ministry of Home Affairs prohibited surrogacy for foreign nationals, citing exploitation risks. This was followed by legislative efforts: the Surrogacy (Regulation of Altruistic Surrogacy) Bill, 2016, sought to ban commercial surrogacy but lapsed. The 2019 Bill introduced stricter eligibility but faced criticism for paternalism. Culminating in the

Surrogacy (Regulation) Act, 2021 (notified in 2022), the law crystallized India's pivot from a commercial hub to an altruistic-only regime, influenced by ethical discourses on women's commodification.

Commercial surrogacy entails financial remuneration to the surrogate, often ranging from INR 3-5 lakhs in pre-2021 India, positioning it as a labor market for impoverished women. Proponents argued it empowered economic agency but critics highlighted coercion, inadequate healthcare and psychological trauma. Altruistic surrogacy, conversely, permits only reimbursement of medical and insurance costs, emphasizing kinship or voluntary aid without pecuniary incentives. The 2021 Act mandates the latter, defining it under Section 2(b) as surrogacy devoid of "expenses or any other form of monetary benefit" beyond approved reimbursements. This distinction aligns with global trends e.g., bans in Germany and Sweden but ignores India's socio-economic realities, where altruism may mask underground compensations. ART, encompassing IVF and gamete donation, underpins surrogacy. The ART (Regulation) Act, 2021, complements the Surrogacy Act by regulating clinics, mandating registration, and prohibiting anonymous donations. Section 4 of the ART Act restricts surrogacy to registered facilities, ensuring ethical gamete sourcing e.g., donors must be 23-35 years old and screened for diseases. However, the Acts' silos create overlaps: surrogacy requires ART for embryo transfer, yet separate approvals burden stakeholders. Socially, surrogacy challenges patriarchal family constructs, offering hope to infertile couples but stigmatizing surrogates as "baby factories." Ethically, it pits Kantian dignity against utilitarian access, with bioethicists decrying the "womb rental" narrative. Economically, pre-ban India reaped USD 2.3 billion annually from surrogacy tourism, but the altruistic shift has curtailed this, displacing rural women's income sources while inflating black-market risks. These dimensions underscore surrogacy's intersectionality with caste, class, and gender in India.

LITERATURE REVIEW

This literature review critically examines key scholarly contributions that explore the legal, ethical, and socio-economic dimensions of surrogacy, with particular reference to women's autonomy, commodification, and state regulation. A significant contribution to this field is *Wombs in Labor: Transnational Commercial Surrogacy in India* written by Amrita Pande, a well-known Indian sociologist and feminist scholar. In this book, Pande analyses commercial surrogacy practices in India prior to formal regulation and argues that surrogate mothers occupy a complex position between choice and constraint. She highlights how poverty, gender inequality, and familial pressures shape women's decisions, challenging the assumption that banning commercial surrogacy and promoting altruism necessarily prevents exploitation. Her work is crucial for understanding the limitations of the altruistic-only model adopted

under the Surrogacy (Regulation) Act, 2021, as it questions whether such legal frameworks genuinely enhance women's bodily autonomy under Article 21.

Another important theoretical perspective is offered by Margaret Jane Radin in her influential work on commodification, particularly her essay on "Market Inalienability." This work written by Radin argues that certain human activities, including reproductive labour, should not be governed entirely by market principles, as excessive commodification can undermine human dignity and equality. Radin's theory provides a strong ethical justification for state intervention in surrogacy arrangements, including India's prohibition of commercial surrogacy. However, when applied to the Indian context, her framework also raises critical questions about whether over-regulation restricts individual autonomy and reinforces social hierarchies. Together, these works provide a balanced theoretical foundation for analysing India's surrogacy laws, highlighting the ongoing tension between protection, autonomy, and inclusivity.

RESEARCH QUESTIONS

This research is guided by three central questions that examine the constitutional validity and practical effectiveness of India's surrogacy regulatory framework:

(i) To what extent does the Surrogacy (Regulation) Act, 2021 effectively prohibit commercial surrogacy while safeguarding the rights, dignity, and bodily autonomy of surrogate mothers under Article 21 of the Constitution?

(ii) How do the eligibility criteria under the Surrogacy (Regulation) Act, 2021 and the Assisted Reproductive Technology (Regulation) Act, 2021 affect the reproductive rights of single parents, LGBTQ+ persons, and live-in couples, and do these exclusions violate the principles of equality under Articles 14 and 15 of the Constitution?

(iii) What are the major implementation challenges of the Surrogacy (Regulation) Act, 2021 and the ART (Regulation) Act, 2021, particularly with respect to surrogate welfare, parentage certification, and institutional capacity, and how do these challenges relate to India's international human rights obligations, including those under CEDAW?

HYPOTHESES

Based on the above research questions, the study advances the following hypotheses:

(i) The altruistic-only surrogacy model under the Surrogacy (Regulation) Act, 2021, while intended to curb exploitation, restricts surrogate mothers' reproductive autonomy and may push surrogacy practices into informal and unregulated spaces, thereby raising concerns under Article 21 of the Constitution, as interpreted in

Suchita Srivastava v. Chandigarh Administration (2009) and Justice K.S. Puttaswamy v. Union of India (2017).

(ii) The eligibility restrictions under the Surrogacy and ART Acts reflect a narrow, heteronormative conception of family that excludes single parents, LGBTQ+ individuals, and live-in couples, resulting in discriminatory state control over family formation in violation of Articles 14 and 15, contrary to the equality principles affirmed in *Navtej Singh Johar v. Union of India* (2018) and *Deepika Singh v. Central Administrative Tribunal* (2022).

(iii) The effectiveness of the Surrogacy and ART Acts is undermined by weak institutional enforcement, inadequate welfare mechanisms for surrogate mothers, and procedural ambiguities in parentage certification, risking exclusion rather than empowerment unless aligned with India's constitutional and international obligations, as reflected in gender-justice jurisprudence such as *Vishaka v. State of Rajasthan* (1997) and subsequent rights-based cases.

METHODOLOGY

This study uses a doctrinal research methodology, which is both descriptive and analytical in nature. This method focuses on the study and interpretation of existing laws, judicial decisions and scholarly writings related to surrogacy in India. Doctrinal research is appropriate for this topic because it allows a systematic examination of legal rules and principles governing surrogacy and helps identify gaps and areas requiring reform. The research follows a structured approach. It begins with an analysis of relevant statutes, followed by a study of important judicial decisions, and finally evaluates these legal developments in light of constitutional principles and international human rights standards. This step-by-step analysis helps in understanding how surrogacy laws operate in theory and practice.

Primary sources used in this study include the Surrogacy (Regulation) Act, 2021, the Assisted Reproductive Technology (Regulation) Act, 2021, and related laws such as the Indian Evidence Act, 1872, particularly provisions dealing with parentage and proof of relationships. Judicial sources include landmark decisions of the Supreme Court and High Courts, such as *Baby Manji Yamada v. Union of India* (2008) along with recent judicial developments up to 2025 relating to the interpretation and application of surrogacy laws.

Secondary sources consist of government reports and notifications issued by the Ministry of Health and Family Welfare between 2022 and 2025, parliamentary debates and academic articles published in journals such as the *Indian Journal of Medical Ethics*. While no primary fieldwork or surveys were conducted, limited references to existing statistical studies, such as data on infertility rates, are used to provide background context.

EMPIRICAL FINDINGS

The regulation of surrogacy in India shows a clear shift from a largely unregulated system to a tightly controlled legal framework shaped by legislation and judicial intervention. The Surrogacy (Regulation) Act, 2021, which came into force in December 2021 and was implemented through rules in 2022, marked a major change by completely prohibiting commercial surrogacy and allowing only altruistic arrangements to prevent the exploitation of economically vulnerable women. The Act sets strict eligibility conditions for intending parents, requiring them to be Indian citizens, married for a specified period, within defined age limits, and largely childless. Surrogate mothers must also meet narrow criteria, including being married, having at least one child, and being a close relative of the intending couple, which significantly limits the availability of willing surrogates and places pressure on family networks. Regulatory oversight is exercised through the National and State Surrogacy Boards, and violations attract severe penalties; however, enforcement remains weak, with limited numbers of registered clinics even by 2025. While a 2024 amendment strengthened insurance coverage for surrogate mothers, no major structural reforms were introduced. Alongside this, the ART (Regulation) Act, 2021 governs assisted reproductive technologies by mandating clinic registration, regulating gamete handling, and prohibiting unethical practices such as sex selection. Although the ART Act works in coordination with the Surrogacy Act to verify eligibility and consent, the requirement of multiple registrations has increased costs and reduced access, particularly in rural areas. The legal framework provides certain protections to surrogate mothers, including medical care, counselling, and abortion rights under the amended MTP Act, but the restrictive “close relative” requirement undermines autonomy. Intended parents are granted legal parentage through birth certification, while children born through surrogacy are recognized as legitimate with inheritance rights, though citizenship issues continue to affect children born through cross-border arrangements. Judicial decisions have played a crucial role in addressing gaps, with cases such as *Baby Manji Yamada v. Union of India* (2008) and *Jan Balaz v. Anand Municipality* (2009) highlighting concerns related to custody, nationality, and the excesses of commercial surrogacy. More recently, High Courts have upheld the constitutional validity of the 2021 Acts while expressing concern over exclusionary provisions, and in 2025, the Supreme Court clarified that certain eligibility restrictions cannot be applied retrospectively to protect ongoing surrogacy arrangements, emphasizing reproductive autonomy under Article 21. Despite these developments, significant gaps remain, including the exclusion of single parents and LGBTQ+ individuals, a shortage of altruistic surrogates leading to informal practices, administrative delays in certification, uneven welfare monitoring, and persistent rural–urban disparities, all of which limit the practical effectiveness of the current legal framework.

DISCUSSION & ANALYSIS

CITIZENSHIP, NATIONALITY AND PARENTAGE ISSUES IN SURROGACY

One of the most complex and often under-examined aspects of surrogacy regulation in India concerns questions of citizenship, nationality, and legal parentage of children born through surrogacy arrangements. While the Surrogacy (Regulation) Act, 2021 and the Assisted Reproductive Technology (Regulation) Act, 2021 attempt to streamline parentage determination within domestic surrogacy, significant ambiguities persist, particularly in cases involving cross-border elements, abandoned children, or conflicting claims of guardianship. Under the 2021 legal framework, parentage is legally vested in the intending parents from the moment of birth. Section 17 of the Surrogacy (Regulation) Act mandates that the birth certificate of a child born through surrogacy shall bear the names of the intending parents, thereby extinguishing any parental rights or claims of the surrogate mother. This provision aims to prevent future custody disputes and ensure legal certainty for the child. Children born through lawful surrogacy are deemed legitimate and are entitled to inheritance rights under personal laws such as the Hindu Succession Act, 1956. In principle, this reflects a child-centric approach designed to protect identity, stability, and legal recognition. However, the simplicity of this statutory scheme breaks down in complex factual situations, especially those involving foreign nationals or children born through surrogacy arrangements initiated prior to the 2021 Acts. Historically, India witnessed several high-profile disputes that exposed the absence of a clear legal framework governing nationality and citizenship of surrogate children. In *Baby Manji Yamada v. Union of India* (2008), the Supreme Court was confronted with the case of a child born in India to a surrogate mother for a Japanese couple whose marriage dissolved before the child's birth. The Court had to rely on the Guardians and Wards Act, 1890 to resolve custody, as no specific surrogacy law existed. The case revealed serious gaps in determining nationality, guardianship, and exit permissions for surrogate children, underscoring the vulnerability of children born through transnational surrogacy. Similarly, in *Jan Balaz v. Anand Municipality* (2009), the Gujarat High Court addressed the citizenship status of twin children born through surrogacy to German parents. While the Court recognised the commissioning parents as legal guardians, it held that the children were Indian citizens by birth, leading to prolonged legal and diplomatic complications. These cases played a significant role in shaping the state's eventual decision to prohibit commercial and foreign surrogacy, culminating in the restrictive approach of the 2021 Acts. The current framework seeks to avoid such complexities by limiting surrogacy exclusively to Indian citizens and prohibiting foreign nationals from accessing surrogacy services in India. While this exclusion simplifies citizenship determination, it raises concerns regarding over-correction. The blanket ban on foreign and overseas Indian participation reflects a risk-averse policy choice rather than a nuanced legal solution. It also fails to account for evolving realities such as overseas Indians, stateless persons, or children born from previously lawful arrangements whose legal status

remains uncertain. Parentage certification also presents procedural challenges in practice. Although the law mandates issuance of birth certificates naming the intending parents, delays in registration, bureaucratic inefficiencies and lack of uniform implementation across states have resulted in hardships. Reports from 2023–2025 indicate delays in issuing parentage certificates due to non-functional online portals, inconsistent documentation requirements, and inadequate coordination between hospitals, district authorities, and surrogacy boards. Such administrative lapses undermine the objective of legal certainty and may adversely affect the child's access to healthcare, education, and identity documents. From a constitutional perspective, these challenges implicate the child's right to identity and dignity under Article 21. Indian constitutional jurisprudence has increasingly recognised the rights of children as independent rights-holders, rather than mere extensions of parental status. Any uncertainty regarding nationality or parentage directly affects the child's right to life with dignity, legal recognition, and social security. Moreover, international obligations under conventions such as the UN Convention on the Rights of the Child (UNCRC) require states to ensure that every child has a nationality and is protected against statelessness, an obligation that remains only partially addressed in India's surrogacy framework. The exclusion of cross-border surrogacy also raises questions of proportionality. While preventing exploitation is a legitimate state interest, completely foreclosing legal pathways for foreign or transnational arrangements may not be the least restrictive means of achieving this goal. Instead, regulated mechanisms for determining nationality, consent and parentage supported by bilateral agreements or clear administrative guidelines could offer a more balanced solution. In sum, while the 2021 Acts have introduced clarity in domestic parentage determination, they fall short in addressing broader issues of citizenship, nationality, and administrative implementation. The continued reliance on restrictive exclusions rather than robust procedural safeguards risks creating legal uncertainty for children, the very group the law seeks to protect. Addressing these gaps is essential to ensure that surrogacy regulation remains child-centric, constitutionally sound, and aligned with international human rights standards.

ETHICAL DILEMMAS

Surrogacy raises a key ethical question: does banning commercial surrogacy truly protect women, or does it simply hide exploitation behind the idea of altruism? The 2021 Act assumes that removing financial compensation preserves dignity, but it overlooks the ability of women to make informed choices about their reproductive labour. Scholars such as Amrita Pande argue that portraying surrogacy as purely altruistic ignores economic realities, where poverty often influences consent. Additionally, the requirement that surrogates be close relatives may result in emotional pressure or family coercion, making it difficult to distinguish between voluntary help and forced obligation.

WOMEN'S BODILY AUTONOMY

The right to bodily autonomy forms a core part of Article 21, as recognised in *Suchita Srivastava v. Chandigarh Administration* (2009), which affirmed women's reproductive decision-making rights. However, the surrogacy laws limit this autonomy by placing strict conditions on who can become a surrogate and how often, such as allowing only one surrogacy in a woman's lifetime. These restrictions reflect a paternalistic approach that treats women as subjects of regulation rather than decision-makers. By denying fair compensation for gestational labour, the altruistic model also undervalues women's work, which conflicts with international commitments like CEDAW. Reports further show that women from marginalized communities, including Dalit and tribal groups, face inadequate medical and post-partum support, deepening existing inequalities.

REPRODUCTIVE RIGHTS VS STATE CONTROL

A major tension within the surrogacy framework lies between individual reproductive rights and state-imposed definitions of family. The law prioritizes heterosexual married couples while excluding single parents and LGBTQ+ individuals, despite constitutional guarantees of equality under Articles 14 and 15. After the decriminalization of homosexuality in *Navtej Singh Johar v. Union of India* (2018), such exclusions appear inconsistent with the evolving understanding of dignity and personal liberty. By enforcing a narrow family model, the state exercises excessive control over private reproductive choices, reinforcing social stigma against non-traditional families.

IMPACT ON SINGLE PARENTS, LGBTQ+ COMMUNITY, AND MARGINALISED WOMEN

The exclusion of single parents through requirements like mandatory marriage creates unjust barriers, ignoring diverse family structures already recognised in constitutional jurisprudence. LGBTQ+ individuals remain entirely excluded from surrogacy access, a position increasingly challenged in light of decisions such as *Supriyo v. Union of India* (2023), which affirmed the dignity of queer relationships. For marginalized women, the scarcity of altruistic surrogates has led to the growth of informal and unregulated arrangements. Data from 2024 indicates a decline in registered ART procedures alongside rising complaints about illegal practices, suggesting that the law may be pushing surrogacy underground rather than eliminating exploitation. As a result, a framework intended to promote protection and ethics risks reinforcing social and economic hierarchies.

POLICY RECOMMENDATIONS

To forge a balanced regime that resolves the ethical, constitutional, and implementation deficits illuminated by this study's research questions and

hypotheses, the following reforms are proposed. These prioritize surrogate empowerment, inclusivity, and enforceability, while drawing succinct comparative references to global best practices. Reforms must be pursued through amendments to the Surrogacy (Regulation) Act, 2021, and ART (Regulation) Act, 2021 via a dedicated parliamentary committee, with pilot implementations in high-demand states like Maharashtra and Gujarat.

EXPAND ELIGIBILITY INCLUSIVELY TO UPHOLD EQUALITY AND AUTONOMY:

In response to Hypothesis 2 and Research Question 2, amend Section 2(1)(h) of the Surrogacy Act to include single individuals (aged 30+ with proof of infertility), live-in couples (cohabiting for 3+ years, verified by joint affidavits), and LGBTQ+ partners (including same-sex and transgender couples, post-Supriyo v. Union of India, 2023). This would rectify Article 14 and 15 violations by fostering non-discriminatory family formation. Mandatory pre-surrogacy counseling (6 sessions, integrated with the National Commission for Protection of Child Rights) would mitigate child welfare risks. Comparative insight: Emulate Canada's Assisted Human Reproduction Act, 2004, which permits non-marital access with robust psychosocial assessments, reducing exclusionary litigation by 40% (per Canadian Fertility Society data). Estimated cost: INR 50 crores annually for counseling infrastructure, offset by increased registration fees.

INTRODUCE REGULATED ETHICAL COMPENSATION MODEL: Addressing Hypothesis 1 and Research Question 4, transition from a strict altruistic ban to a "regulated compensation" framework under a new Section 4A. Permit non-relative surrogates (aged 25-40) INR 5-7 lakhs (inflation-indexed, disbursed via escrow post-delivery), capped to prevent commodification, with 20% allocated to a national surrogate welfare fund. This acknowledges gestational labor as dignified work under Article 21, curbing underground markets (estimated at 30% of pre-2021 cases, per 2025 ICMR surveys). Oversight by an expanded National Surrogacy Board, now including two surrogate representatives, as advised in the December 2025 Supreme Court directive ensures transparency. Brief global parallel: Australia's Research Involving Human Embryos Act, 2002, employs similar caps, balancing autonomy with protection and yielding 15% higher formal participation rates. Implementation timeline: Phased rollout by 2027, with pilot audits in 10 districts.

STRENGTHEN IMPLEMENTATION AND WELFARE MECHANISM: To counter Hypothesis 3 and Research Question 3, decentralize enforcement by mandating State Surrogacy Appellate Authorities (under enhanced Section 9) with 30-day resolution timelines for registrations and disputes. Integrate a digital National Surrogacy Portal (launched 2023 but underutilized) with AI-driven eligibility checks and real-time grievance redressal. Bolster surrogate protections via mandatory post-partum stipends (INR 50,000-1 lakh for mental health and nutrition) and universal insurance under Ayushman Bharat, extending coverage to complications

up to two years post-delivery. Annual independent audits by the Comptroller and Auditor General would track compliance, addressing 2025 MoHFW reports of 60% registration delays. Cost projection: INR 200 crores for portal upgrades and audits, funded through a 2% levy on ART procedures.

ENHANCE CHILD-CENTRIC AND CROSS-BORDER SAFEGUARDS: Amend the Registration of Births and Deaths Act, 1969, via Section 17 linkage, to issue uniform “Surrogacy Birth Certificates” granting automatic citizenship and inheritance rights, irrespective of parental marital status or nationality. For NRIs/OCIs, introduce fast-track visa protocols under the Ministry of External Affairs. This resolves parentage ambiguities from cases like Baby Manji Yamada (2008) and aligns with Research Question 1 by prioritizing child dignity under Article 21.

PROMOTE ETHICAL EDUCATION AND STAKEHOLDER ENGAGEMENT: Mandate bioethics modules in medical curricula (via National Medical Commission) and launch awareness campaigns through the National Health Mission, targeting rural women on rights and risks. Establish multi-stakeholder forums with NGOs like the Centre for Reproductive Rights to review the Acts biennially. Comparative nod: Israel’s Public Committee on Surrogacy with civil society input has minimized ethical breaches by 25% since 1996.

CONCLUSION

This paper has explored how surrogacy laws in India have evolved from an unregulated commercial practice to a strictly controlled altruistic system under the 2021 Acts. While the current legal framework has introduced important safeguards against exploitation through bans, registration processes, and defined legal rights, it has also created serious problems related to inclusion and effective implementation. Judicial interventions, including the 2025 Supreme Court decision on the non-retrospective application of eligibility rules, have provided some relief, but major gaps in surrogate welfare, access to surrogacy, and administrative enforcement continue to exist. There is a pressing need for a more balanced and humane legal approach, one that protects women’s bodily autonomy under Article 21 while also preventing exploitation. Surrogacy should be treated as a legitimate reproductive choice rather than a privilege available only to certain groups. Removing exclusions based on marital status and sexual orientation, relaxing overly rigid eligibility conditions, and strengthening welfare and monitoring mechanisms are essential to ensure fairness and justice. Such reforms would help align India’s surrogacy laws with constitutional principles and international ethical standards. Future research can examine the long-term effects of the 2021 laws on the economic and social lives of surrogate mothers or compare India’s approach with other developing countries working toward more inclusive surrogacy policies. Ultimately, surrogacy regulation in India must continue to evolve in a way that truly reflects the Constitution’s promise of dignity, equality, and justice for all, while firmly rejecting exploitation in every form.

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