



Surrogacy Regulations In India: Addressing Ethical ,Social, And Human Rights Concern

1Aditi Singh, 2Abhisha k

1Cmr University School of legal studies,

2Cmr University School of legal studies

Abstract

The Surrogacy (Regulation) Act, 2021 and associated regulations have closely regulated surrogacy in India, which has undergone a swift and controversial transformation from an emerging sector meeting domestic and international demand. Critics contend that although the law protects vulnerable women and children, it may be overcorrected by restricting reproductive autonomy and driving practices underground¹. Policymakers primarily justified the legislative change as a response to exploitation, the commodification of reproductive labour, and unethical practices at clinics. In order to balance the protection of vulnerable populations with reproductive autonomy and the best interests of children, this paper traces the historical development of surrogacy in India, examines the current legislative framework and implementation mechanisms, assesses significant ethical, social, and human rights concerns, reviews judicial responses, and suggests workable reforms. In order to create an integrated legal-ethical assessment with policy recommendations, the study draws on legislative texts, governmental regulations and announcements, significant court rulings, academic criticisms, and current reporting.

Keywords: surrogacy, Surrogacy (Regulation) Act 2021, altruistic surrogacy, reproductive rights, commodification, exploitation, child's rights, surrogate mother, assisted reproductive technology.

Introduction

Medical safety, contractual enforceability, the possibility of exploitation, parentage and citizenship of children, and the dignity and autonomy of surrogate mothers are just a few of the interrelated issues raised by surrogacy, an arrangement in which a woman bears and delivers a child for another individual or couple. Due to relatively low costs and a growing network of infertility clinics, India became a global hub for commercial surrogacy in the early 2000s; this created difficult ethical and legal issues.² A legislative ban on commercial surrogacy and the current regulatory framework embodied in the Surrogacy (Regulation) Act, 2021 and its Rules resulted from political and civil society debate sparked by high-profile incidents involving abandoned children, opaque contractual arrangements, and cross-border parentage disputes. The main issues at hand are whether the law effectively addresses socioeconomic drivers of exploitation and complies with international human rights standards, whether

¹ Surrogacy (Regulation) Act, No. 47 of 2021, Acts of Parliament, 2021 (India).

² *id*

enforcement mechanisms are strong, and whether the law sufficiently accomplishes its protective goals without unduly restricting reproductive choices. This study looks closely at these problems, connecting the law to real-world situations and suggesting sensible changes.

Historical Evolution of Surrogacy in India

India became a popular location for commercial surrogacy in the late 1990s and early 2000s due to the expansion of in vitro fertilisation (IVF) and assisted reproductive technology (ART) clinics, low-cost healthcare, and the influx of foreign intended parents. The ensuing "surrogacy industry" came under intense scrutiny: media enquiries revealed instances of low-income women serving as surrogates under dubious contracts, reports surfaced about surrogacy-related child abandonment or custody disputes, and legal gaps complicated citizenship and parentage for children born to foreign commissioning parents. The Supreme Court's ruling in *Baby Manji Yamada v. Union of India* (2008) brought attention to international legal issues and emphasised the necessity of regulating immigration, parentage, and the surrogacy contract.³ Following discussions between the Law Commission and parliamentary committees, a series of government initiatives resulted in a legislative strategy that outlawed commercial surrogacy and only allowed "altruistic" surrogacy, that is, surrogacy that is restricted to a close relative and does not involve financial compensation under strict guidelines. In January 2022, the Surrogacy (Regulation) Act, 2021 officially went into effect along with regulations that established eligibility, registration, and oversight procedures..

Legal and Regulatory Framework

The Surrogacy (Regulation) Act, 2021

Scope and Purpose

The Surrogacy (Regulation) Act, 2021 seeks to protect the rights of children born through surrogacy, limit the exploitation of surrogate mothers, and regulate surrogacy facilities and practices.⁴ The National Assisted Reproductive Technology and Surrogacy Board, State Boards/Authorities to license and regulate clinics, strict eligibility requirements for intending parents (married heterosexual Indian couples married for at least five years, or specific categories like widows/divorcees in certain cases), the ban on commercial surrogacy (allowing only altruistic arrangements where the surrogate is a close relative and no financial compensation beyond medical expenses is paid), and criminals. Additionally, the Act offers procedures for determining parentage and registering births. Definitions, crimes, and the administrative framework for implementation are outlined in the official text and the Government of India's publication.

Rules, Notifications, and the ART Act Interface

Operational elements are provided by the Surrogacy (Regulation) Rules, 2022 (and later changes), including surrogate consent procedures, medical protocols (such as embryo transfer restrictions), forms and fees, registration procedures for surrogacy clinics, and reporting requirements. Complementary regulations for IVF clinics, gamete banks, and ART treatments in general are created by the Assisted Reproductive Technology (Regulation) Act, 2021, which was passed concurrently with the Surrogacy Act. These tools work together to improve the industry's administrative oversight, data collecting, and clinical responsibility. However, rule-making has been iterative, with explanations and revisions (such

³ *Baby Manji Yamada v. Union of India*, (2008) 13 SCC 518.

⁴ Surrogacy (Regulation) Act, No. 47 of 2021, Acts of Parliament, 2021 (India)

as regarding the use of donor gametes and eligibility requirements) indicating changing policy decisions and reactions to implementation difficulties.⁵

Key Provisions and Their Practical Effects

Ban on Commercial Surrogacy and Restriction to Altruistic Surrogacy

The most obvious change made by the Act was to outlaw commercial surrogacy, which eliminated payments for carrying a child other than insurance and medical reimbursement. Instead, only altruistic surrogacy was allowed, in which the surrogate had to be a "close relative" of the intended couple and fulfil stringent eligibility requirements. This, according to policymakers, would reduce exploitation and commercialisation. In reality, the ban severely limited access for intended parents who had previously relied on paid surrogacy, both domestically and internationally. It also eliminated a source of income for many surrogate women, notwithstanding its flaws. Critics point out that replacing regulated markets with legal prohibition frequently pushes techniques underground, lowering medical control and raising the possibility of abuse.

Eligibility Criteria, Age and Marital Requirements

Although the precise details have been contested in court and through rule revisions, the statute says that intended parents must meet certain conditions, usually married heterosexual couples with a minimum marriage term (commonly five years) and age limitations. For example, there have been disagreements regarding the retroactive application of age restrictions in cases where embryos were frozen prior to the law's implementation; the Supreme Court subsequently provided clarification on certain areas of this age-related application. These eligibility requirements were created to ensure parental capability and prevent abuse by commercial actors, but they also deny legal access to single people, live-in partners, LGBT+ couples, and foreign nationals (apart from some NRIs), which raises issues of equality and nondiscrimination. The field is still changing, as seen by recent legislation and court rulings.

Institutional Oversight: Registration, Boards, and Penalties

In order to license and oversee clinics, approve individual cases, and enforce restrictions, the Act establishes a multi-tiered institutional architecture consisting of a National Board, State Boards, and local Appropriate Authorities. The ART Act enhances control of gamete banks and ART clinics, while the Rules mandate clinic registration, cycle and birth reporting, and adherence to medical norms. Penalties for violations like commercial surrogacy, false representations, and aiding and abetting are included in the legal framework. However, political will and administrative capability are necessary for practical enforcement; recent news accounts of raids and illicit clinics demonstrate both the longevity of illegal activities and the need for vigorous enforcement.⁶

⁵ Law Commission of India, Report No. 228, "Need for Legislation to Regulate Assisted Reproductive Technology Clinics as well as Rights and Obligations of Parties to a Surrogacy" (2009).

⁶ Assisted Reproductive Technology (Regulation) Act, No. 45 of 2021, Acts of Parliament, 2021 (India).

Ethical Concerns

Commodification and the Marketization of Reproductive Labour

Commercial surrogacy's treatment of bodies and children as commodities, where financial incentives may influence highly personal decisions, is a major ethical criticism. Opponents contend that when economically disadvantaged women bear children primarily to secure household income, commercial arrangements undermine human dignity by reducing the gestational relationship to a service-for-pay. Proponents of a regulated market argue that strong regulation (fair compensation, informed consent, healthcare, social protections) is preferable to outright prohibition since it ignores agency and the financial reality of women for whom surrogacy generates substantial revenue.

India's move to altruistic-only surrogacy is a policy decision to prioritise preventing commodification, but it is debatable whether the law upholds dignity or limits agency by depriving women who freely sought surrogacy of a potentially empowering economic opportunity. The law, according to academic critics, does not give long-term social and economic support to women who served as gestational carriers prior to the ban, nor does it prioritise the voices of surrogate women in policymaking.

Informed Consent, Autonomy, and Power Asymmetries

Surrogate mothers must be aware of the long-term consequences, contractual duties, and medical concerns in order to give their ethical permission. Genuine informed consent was hampered in many early business agreements by power disparities brought on by poverty, low levels of education, and middlemen. Legal protections cannot replace structural equity, even though the Act and Rules require required consent procedures, legal consultation, and medical counselling. In addition to procedural consent, ethical practice necessitates substantial autonomy, autonomous decision-making without coercion, access to independent legal counsel, and the capacity to revoke consent under specified circumstances.

Health Risks and Medical Ethics

There are health hazards associated with pregnancy, particularly when IVF and several embryo transfers are involved. Although the regulations mandate medical supervision and insurance for surrogates and set clinical restrictions (such as embryo transfer counts), enforcement lapses and unregistered facilities may expose women to risky procedures. Clinics are also required by medical ethics to guarantee surrogate health after pregnancy, including postpartum care, mental health support, and insurance coverage for difficulties. Continuity of care, open reporting of adverse events, and responsibility for careless professional practice are all essential components of ethically sound regulation.

Social Concerns

Socioeconomic Drivers and Vulnerability

Financial need was a primary motivator for many women from economically disadvantaged homes to become surrogates, according to empirical research and reporting. Proponents of prohibition highlighted the exploitative circumstances in which low-income women consented to surrogacy, while opponents contended that regulation of commercial surrogacy, as opposed to a complete ban, would have better safeguarded their interests through social protections, enforceable contracts, and minimum compensation. Without addressing the underlying causes of poverty that first made surrogacy appealing, the law's restriction to altruistic surrogacy and close relatives alters the economic calculation and runs

the risk of eliminating a (flawed) revenue mechanism. Therefore, social welfare programs and livelihood assistance must be combined with reproductive restriction in order for policy to be effective.⁷

Stigma, Family Dynamics, and Gendered Implications

Gender norms and surrogacy interact: in certain situations, surrogate mothers are stigmatised by their communities for bearing a child who will be adopted by another family. Limitations on "close relatives" may reduce social tension, but they can also lead to complicated family dynamics, conformity pressure, and possible coercion in homes. Furthermore, limiting access for LGBTQ+ couples and single individuals raises concerns about whose family-building decisions are socially acceptable and whose are prohibited by the government. Therefore, the law's gendered consequences go beyond surrogate mothers to influence larger societal conceptions of kinship, family, and reproductive legitimacy.

Child Welfare and Identity Concerns

Particularly in cross-border situations, children born through surrogacy present practical concerns like citizenship, paternity, and identity. In an effort to eliminate statelessness and abandonment, the Act establishes processes for parental assignments and birth registration. However, examples from the pre-regulatory era (as well as sporadic current scandals) serve as a reminder that children's rights to legal identity and parental care can be compromised by administrative errors, unregulated clinics, and cross-border difficulties. Simplified birth registration, easily accessible adoption/guardianship remedies for abandoned instances, and unambiguous nationality regulations in international surrogacy situations are all necessary to ensure the child's best interests.

Human Rights Analysis

Reproductive Rights and Bodily Autonomy

Reproductive autonomy is acknowledged by international human rights standards as essential to freedom and dignity. Accordingly, constraints on surrogacy, particularly those that prohibit consenting individuals from engaging in paid agreements, might be seen as restrictions on the right to procreate. States do, however, also have a positive duty to protect people against exploitation and to ensure their welfare and health. India's legislative strategy demonstrates a delicate balancing act, giving protection from exploitation and commercialisation precedence over broad freedom of contract in reproductive affairs. Therefore, human-rights assessment asks whether the state's limitations are reasonable, nondiscriminatory, and supported by measures that address the socioeconomic circumstances that lead to vulnerability.⁸

Women's Rights and Non-Discrimination

CEDAW and other human rights agreements mandate that nations defend women's rights and end discrimination. A rights-based analysis of the Surrogacy Act poses the following questions: does the legislation paternalistically restrict surrogate women's economic agency (bad impact), or does it safeguard them from exploitation and health risks (positive obligations)? It is also possible to portray the exclusion of same-sex couples, single women, and certain groups of prospective parents as discriminatory. A sophisticated interpretation of human rights underlines the need for protective laws to be combined with social services (healthcare, insurance, social security) and to refrain from general exclusions that favour some family structures over others without good reason.

⁷ Amrita Pande, "Commercial Surrogacy in India: Manufacturing a Perfect Mother-Worker", 35 *Signs: Journal of Women in Culture and Society* 969 (2011).

⁸ Sama Resource Group for Women and Health, "Birthing a Market: A Study on Commercial Surrogacy" (2012).

Rights of the Child

States are required under the UN Convention on the Rights of the Child to guarantee each child's legal identity, nationality, and protection from enforcement gaps and ongoing illegal practices related to trafficking or abandonment. Child-rights objectives are in line with India's legal emphasis on guaranteeing parentage determination and outlawing illegal business agreements. However, the most important human rights violations to look out for are enforcement gaps that result in statelessness or abandoned babies. Upholding children's rights in the surrogacy setting requires strong administrative processes, fast birth registration, protection mechanisms for abandoned children, and cross-border cooperation on parentage and citizenship.

Research Methodology

This study employs a doctrinal approach, using international human rights treaties, legislative discussions, Supreme Court and High Court rulings, statutory provisions, and academic works from feminist and socio-legal viewpoints. The paper also places surrogacy in the context of larger discussions about the political control of familial ties, reproductive labour, and the commercialisation of the body.

Literature Review

Two prevailing perspectives are seen in the scholarly debate on surrogacy in India. According to the first, commercial surrogacy commodifies women's reproductive abilities and disproportionately impacts low-income women who enter into surrogacy agreements out of financial need, making surrogacy intrinsically exploitative. This school's detractors claim that commercial surrogacy maintains worldwide disparities between affluent commissioning parents and underprivileged surrogate moms. Research by Amrita Pande and others shows that during pregnancy, surrogate mothers frequently reside in hostels with little liberty, frequent surveillance, and little interaction with their family.

The second school contends that prohibiting commercial surrogacy deprives women of agency and economic opportunity, infantilising them. Like other types of care work, feminist academics contend that reproductive labour must be seen as genuine labour deserving of just wages and labour safeguards. They contend that patriarchal conceptions of parenting as a solely altruistic act rooted on family and emotional attachment rather than a logical labour exchange are reflected in the state's moral position against paid surrogacy.

However, both schools concur that in order to provide informed consent, healthcare rights, and protection from coercion, surrogacy in India has to be regulated rather than outlawed. Recognising the surrogate as a labouring subject with physical autonomy, economic rights, and dignity under Article 21 is necessary for a balanced regulatory approach.

Judicial Responses and Landmark Cases

Baby Manji Yamada v. Union of India (2008)

An early precedent that highlighted the legal issues raised by overseas surrogacy was the Baby Manji case. In a case involving paternity, passport and immigration status, and child custody, the Supreme Court considered a baby delivered to a surrogate in India to Japanese commissioning parents who had divorced. The ruling was crucial in advancing the policy discussion towards formal regulation by drawing administrative and judicial attention to the lack of explicit statutory guidelines on parentage and

international surrogacy. The case demonstrated the necessity of administrative procedures and legislative clarity to stop surrogate infants from becoming stateless and being abandoned.⁹

Recent Judgments on Age Limits and Rights of Intended Parents

Eligibility requirements and retroactive effects have been the subject of post-Act litigation, most notably court scrutiny about the applicability of age restrictions and other limitations in cases where embryos were held prior to the law's passage. Courts have been vigilant in making sure that administrative regulations do not result in unjust deprivation for those who previously possessed legally frozen embryos. Judicial involvement with proportionality and justice in the implementation of new surrogacy regulations is shown in a recent Supreme Court opinion challenging the rationale of some age restrictions. These judicial actions show that case-by-case scrutiny will continue to influence how the law operates.

Implementation Challenges and Recent Developments

Recent news reports show that unregistered fertility clinics and illicit surrogacy/IVF operations continue despite legislative restrictions; these practices are occasionally connected to genetic material trafficking, deception, and inappropriate storage. The extent of non-compliance and the significance of aggressive regulatory control are demonstrated by criminal investigations and cracked-down clinics in different states.

These developments highlight the need for enforcement capability, monitoring data systems, whistleblower protections, and public awareness in addition to legislative prohibition.

Rule Amendments and Policy Iteration

The Surrogacy Rules have been modified to address clinical and social concerns. For instance, modifications that allow the use of donor gametes in specific circumstances following previous limitations demonstrate how the regulations are sensitive to advocacy and medical realities. Iteration of policy is required, but frequent or unclear regulation changes put clinics, intended parents, and surrogate mothers at risk of legal confusion. Legitimacy and practical feasibility would be strengthened by open engagement with stakeholders, including physicians, civil society organisations, surrogate advocates, and child rights organisations.

Comparative Perspective

Surrogacy is regulated by nations in a variety of ways. Certain states in the United States are among the jurisdictions that allow paid surrogacy within legally and medically protected contractual frameworks. On the other hand, some European nations only permit altruistic surrogacy, while others outright forbid it. Each strategy has trade-offs: restrictive systems aim to stop exploitation but frequently drive the practice underground; permissive systems can provide clearer safeguards for all participants but may raise dangers of commercialisation and cross-border reproductive markets. India's existing altruistic-only strategy is consistent with nations that place a higher priority on protection than market autonomy. However, global experience demonstrates that robust clinic supervision, surrogate women's support networks, and child rights safeguards are necessary for successful regulation.

⁹ Baby Manji Yamada v. Union of India, (2008) 13 SCC 518.

Policy Critiques and Scholarly Debates

Several issues have been brought forward by academics and civil society organisations:

Protection against Paternalism: Critics contend that the legislation restricts surrogate women's agency by assuming they are incapable of making their own decisions. Strict controls are justified, according to defenders, since structural poverty undermines genuine consent.

Inadequate Social Supports: The Act's intended protection of women may be harmed since the prohibition on compensation was not supplemented by livelihood programs or welfare assistance.

Exclusionary Eligibility Rules: Limitations that exclude foreign nationals, LGBTQ+ couples, and single people raise privacy and equality issues, implying moral rather than rights-based reasoning.

Implementation and Data Gaps: The disconnect between law and reality is exemplified by lax enforcement, a dearth of trustworthy documentation, and the persistence of illicit clinics. (Tripura High Court)

Recommendations

Consider a Regulated Compensation Model: Replace the total ban with fair, monitored compensation secured through escrow accounts, legal counselling, and insurance protections. (PMC)

Provide Social and Economic Support: Offer healthcare, skill-training, and social security measures to reduce vulnerability among surrogate women.

Broaden Eligibility: Permit access for single persons and LGBTQ+ couples subject to safeguards, ensuring non-discrimination.

Ensure Child-Centered Processes: Streamline birth registration and citizenship procedures to avoid statelessness and abandonment risks.

Strengthen Data and Research: Maintain national databases and conduct long-term outcome studies.

Enhance Medical Accountability: Enforce clinical protocols, informed consent standards, and long-term health insurance coverage.

Include Surrogate Voices: Engage surrogate women in policymaking and review processes.

Limitations

This analysis is based on statutes, judicial decisions, research literature, and media sources. Due to limited on-ground empirical data, the lived experiences of surrogate women and informal practices may not be fully represented. More primary field research is needed.

Conclusion

The Surrogacy (Regulation) Act, 2021 aims to prevent exploitation and protect the rights of children and surrogate mothers by banning commercial surrogacy and allowing only altruistic arrangements. While the law addresses earlier abuses, it also raises concerns regarding autonomy, equality, and practical enforceability. If regulation is to be both ethical and effective, it must balance protection with reproductive autonomy, expand eligibility in non-discriminatory ways, provide social and healthcare support to surrogate women, and ensure strong oversight of ART clinics. A rights-based, evidence-driven, and inclusive approach is essential to create a humane, equitable, and sustainable surrogacy framework in India.

Primary Sources and Selected References

1. The Surrogacy (Regulation) Act, 2021 (Government of India) . ([India Code](#))
2. Surrogacy (Regulation) Rules, 2022 (Government of India). ([High Court of Tripura](#))
3. Assisted Reproductive Technology (Regulation) Act, 2021 materials and ICMR resources. ([Indian Council of Medical Research](#))
4. *Baby Manji Yamada v. Union of India* (Supreme Court of India, 2008). ([Sci API](#))
5. Kashyap S., “The Surrogacy (Regulation) Act, 2021: A Critique” peer-reviewed analysis (PMC/NCBI). ([PMC](#))
6. The India Forum, “Surrogacy Biomarkers in India: Troubling Stories” — critical commentary on the 2021 Act’s impact. ([The India Forum](#))
7. PRS Legislative Research, legislative brief and chronology of the Surrogacy Bill and debates. ([PRS Legislative Research](#))
8. Recent news coverage on enforcement and illegal IVF/surrogacy clinics (Times of India reports 2025). ([The Times of India](#))