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Surrogacy Laws in India: A Strategy that Aims for a Middle Ground between Procreation and the Exploitation of Women

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ABSTRACT

Surrogacy in India has undergone enormous change, from the unregulated commercial surrogacy era of the 2000s to the heavily regulated regime introduced by the Surrogacy (Regulation) Act, 2021 and its subsequent amendments. Once labelled the “surrogacy capital of the world,” India experienced commercialisation to a degree that posed a serious risk of exploitation of poor women. The Surrogacy (Regulation) Act, 2021 therefore prohibits any form of commercial surrogacy while permitting altruistic surrogacy among close relatives alone.

This paper examines the central human rights conflict surrounding the regulation of surrogacy. The first interest is the right to reproduction and to the creation of a family, which falls under Article 21 of the Constitution of India and other international instruments; the second is the need to protect women from exploitation and commodification. Although the altruistic model seeks to avoid placing financial pressure on women, it has been criticised as paternalistic and unrealistic.

This paper argues that a complete prohibition on any form of payment for surrogacy fails to strike a proper balance between reproductive freedom and dignity, and that a more realistic, rights-based solution is required. Such an approach would situate altruistic surrogacy within a well-regulated framework incorporating fair compensation, independent legal advice, health-insurance coverage, post-delivery medical assistance, and judicial scrutiny. The paper concludes that a rights-based approach recognising both procreative liberty and gender equality is necessary to reconcile these competing interests within India’s diverse society.

Keywords: *Commercial Surrogacy; Gender Equality; Human Rights; Altruistic Surrogacy; Article 21.*

I. INTRODUCTION

Surrogacy is a form of assisted reproductive technique in which a woman becomes pregnant and bears a child on behalf of intended parents who cannot bear children themselves. It is a

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remarkable development in the field of procreation, offering relief to many people across the globe who face difficulties relating to infertility or to family-building as same-sex couples. The global surrogacy industry has grown substantially owing to rising instances of infertility, later pregnancies, and increasing societal acceptance of diverse family structures.

India's place within this story is distinctive and, at times, controversial. With the effective legalisation of commercial surrogacy through informal means in the early 2000s, particularly after the creation of the ICMR guidelines in 2005,¹ India acquired the status of the "surrogacy capital of the world" owing to the low cost of medical services, the availability of English-speaking doctors, superior fertility clinics (numbering more than 3,000), and a supply of poor women willing to act as surrogates. The value of the industry was estimated at roughly \$400 million to \$2.3 billion per year in the early 2010s,² and the practice resulted in the birth of more than 25,000 children through surrogacy arrangements.

This unregulated growth soon exposed exploitative practices within the surrogacy industry. Cases of exploitation, inadequate medical precautions, coerced contract signing, and the commodification of women, especially those belonging to rural and economically disadvantaged communities, raised numerous ethical and legal questions. In response to concerns about "womb renting," maternal health, and the rights of children born through such arrangements, regulation began to emerge. Foreign commercial surrogacy has been prohibited since 2015.³ The Surrogacy (Regulation) Act was subsequently enacted in 2021 and came into force in 2022. The Act bans the entire commercial surrogacy process, while permitting altruistic surrogacy performed by close relatives.

The central problem is the inherent clash between two fundamental human rights principles. First, reproduction and the founding of a family are regarded as an extension of basic human rights, particularly the rights to life and liberty; for many couples who cannot otherwise conceive, surrogacy appears to be the only available route. Second, there is a pressing need to ensure that women, particularly those from economically weaker sections of society, are not exploited or coerced into actions that violate their dignity. The shift towards a purely altruistic

¹ INDIAN COUNCIL OF MEDICAL RESEARCH, NATIONAL GUIDELINES FOR ACCREDITATION, SUPERVISION AND REGULATION OF ART CLINICS IN INDIA (2005).

² SAMA RESOURCE GROUP FOR WOMEN AND HEALTH, BIRTHING A MARKET: A STUDY ON COMMERCIAL SURROGACY IN INDIA 14-16 (2012); *see also* KISHWAR DESAI, ORIGINS OF LOVE app. (2012) (placing industry estimates at \$400 million to \$2.3 billion annually).

³ MINISTRY OF HOME AFFAIRS, Office Memorandum No. 25022/74/2011-F.I, *Visa Norms for Commissioning Surrogacy* (Nov. 3, 2015) (India).

regime was intended to reduce the commercial element of surrogacy, but the approach appears unduly restrictive and, in some respects, self-defeating.

This paper argues that, although the Surrogacy (Regulation) Act, 2021 is a commendable effort to strike a balance, a more sophisticated approach informed by a human rights perspective is required. Specifically, it contends that a well-balanced framework incorporating regulated compensatory elements can successfully reconcile reproductive autonomy with women's dignity.

The study adopts a doctrinal legal method, analysing primary materials including the 2021 Act, judicial decisions, and international human rights instruments. It also employs a comparative approach, drawing on the jurisdictions of the United Kingdom, Israel, and selected U.S. states, together with a socio-legal lens and feminist theory concerning gender justice.

II. THE HISTORICAL DEVELOPMENT OF SURROGACY IN INDIA

Although surrogacy is a relatively new phenomenon in terms of reproductive technology, references to analogous practices appear throughout ancient Indian history, particularly in mythology. Epic narratives such as the *Mahabharata* contain examples of comparable practices, including the birth of Gandhari's sons through pots or surrogacy aided by some form of divine assistance.

Commercial surrogacy in its modern form originated in India in the early years of the new millennium. The practice was effectively legalised in 2002, following judicial reasoning premised on the absence of any law prohibiting it. In 2005, the Indian Council of Medical Research issued non-statutory guidelines offering a basic framework for the operation of Assisted Reproductive Technology (ART) clinics.⁴ However, there were no legal measures to compel compliance with these guidelines, which contributed to the rapid growth of commercial surrogacy. India came to be labelled the "surrogacy capital" largely owing to its low costs, the availability of poor women willing to act as surrogates, advanced clinics, English-speaking medical professionals, and the absence of strict regulation.

Between the mid-2000s and the early 2010s, the industry generated an estimated \$400 million to \$2.3 billion per year.⁵ The practice resulted in the birth of more than 25,000 children through surrogacy, many involving foreign parents. The absence of regulation, however, raised

⁴ INDIAN COUNCIL OF MEDICAL RESEARCH, *supra* note 1.

⁵ See *supra* note 2.

numerous ethical concerns, including the exploitation of poor women, health risks, coercion, and questions of citizenship.

One relevant instance of judicial intervention was *Baby Manji Yamada v. Union of India* (2008),⁶ in which Japanese intended parents had arranged a surrogate mother in Anand, Gujarat. The couple separated before the birth, and the intended mother declined to take custody of the child. The father subsequently sought legal custody and attempted to take the child to Japan; passport-related issues, however, delayed the grant of custody.

The 228th Report of the Law Commission of India addressed this developing situation by proposing a ban on commercial surrogacy while permitting regulated altruistic surrogacy.⁷ The report emphasised the need to safeguard the rights of surrogate women and to regulate ART clinics. Between 2008 and 2014, a series of assisted reproductive technology Bills was drafted, though none was enacted.

The status of commercial surrogacy in India underwent a number of changes. The Government introduced legal controls in response to concerns about surrogacy, including restrictions on commercial surrogacy, particularly for foreign nationals. Among the more notable measures were the Surrogacy (Regulation) Bill, 2016 and the Assisted Reproductive Technology (Regulation) Act, 2021.⁸ While commercial surrogacy is not lawful in India, altruistic surrogacy is permitted subject to certain conditions.

These changes reflect ongoing incremental modification. For instance, the Surrogacy (Regulation) Amendment Rules, 2024 relaxed certain previously imposed rules so that donor reproductive cells (sperm or eggs) may be used where either spouse suffers from a relevant medical condition, subject to certification by a District Medical Board.⁹ This development illustrates India's transition from an unregulated system to a more closely regulated, altruism-based model.

III. IMPORTANT PROVISIONS OF THE SURROGACY (REGULATION) ACT, 2021 AND THE REGULATIONS MADE THEREUNDER

The Surrogacy (Regulation) Act, 2021 came into force on 25 December 2021 and commenced operation on 25 January 2022.¹⁰ It represents a shift in India's policy on surrogacy from the

⁶ *Baby Manji Yamada v. Union of India*, (2008) 13 S.C.C. 518 (India).

⁷ LAW COMMISSION OF INDIA, NEED FOR LEGISLATION TO REGULATE ASSISTED REPRODUCTIVE TECHNOLOGY CLINICS AS WELL AS RIGHTS AND OBLIGATIONS OF PARTIES TO A SURROGACY, Rep. No. 228 (2009).

⁸ The Surrogacy (Regulation) Bill, 2016, Bill No. 257 of 2016 (India); the Assisted Reproductive Technology (Regulation) Act, 2021, No. 32, Acts of Parliament, 2021 (India).

⁹ The Surrogacy (Regulation) Amendment Rules, 2024, G.S.R. 130(E) (India).

¹⁰ The Surrogacy (Regulation) Act, 2021, No. 47, Acts of Parliament, 2021, § 1(3) (India).

recognition of commercial surrogacy to the recognition of altruistic surrogacy alone. The Act defines surrogacy as “a practice whereby a woman carries and delivers a child for intending couples and hands over the child born to the intending couple” (Section 2(1)(zd)).¹¹ The Act principally addresses gestational surrogacy, a process in which the surrogate has no genetic relation to the resulting child, the embryo being created using the gametes of the intending couple (or donor gametes under permitted conditions) through assisted reproductive technology. Altruistic surrogacy is surrogacy in which nothing beyond the surrogate’s healthcare costs is paid to her (Section 2(1)(b)).¹² Its purpose is to prevent financial exploitation while permitting surrogacy for genuine health-related reasons.

A. Eligibility Criteria

For the intending couple (Section 4): the couple must be Indian citizens married for a minimum of five years; the wife must be aged between 23 and 50 years and the husband between 26 and 55 years; infertility must be certified by a District Medical Board; the couple must not have any biological, adopted, or surrogate child (save where an existing child has a mental or physical disability or a serious illness); and the couple must obtain two certificates, namely a “Certificate of Essentiality” and a “Certificate of Eligibility.”¹³

For an intending woman (widow or divorcee) (Section 2(1)(s) and Section 4): she must be an Indian national aged between 35 and 45 years (with relaxations available in certain cases).

For the surrogate mother (Section 4): she must be an ever-married woman who has given birth to at least one child of her own before opting for surrogacy; she must be a close relative of the intending couple; she must be aged between 25 and 35 years; and she may act as a surrogate only once in her lifetime.

B. Commercial Surrogacy and Penalties for Breach (Sections 3 and 38)

Any person who conducts or advertises commercial surrogacy, exploits a surrogate mother, abandons a surrogate child, or imports or exports an embryo in contravention of the Act is liable to imprisonment for a term that may extend to ten years and to a fine that may extend to ₹10 lakh.¹⁴

C. Regulatory Framework (Chapters V, VI and VII)

¹¹ *Id.* § 2(1)(zd).

¹² *Id.* § 2(1)(b).

¹³ *Id.* § 4.

¹⁴ *Id.* §§ 3, 38.

The Act establishes a tiered regulatory regime comprising a National ART and Surrogacy Board, chaired by the Union Health Minister, which formulates policy and oversees implementation (Section 17); State Surrogacy Boards to be constituted in each State (Section 14); and Appropriate Authorities at the district and State levels to approve and monitor surrogacy clinics (Section 35).¹⁵ The Assisted Reproductive Technology (Regulation) Act, 2021 supports this framework through provisions governing ART facilities, gamete banks, and the broader regulatory apparatus.¹⁶

D. Rights and Safeguards (Sections 4 and 37)

The Act provides a number of rights and safeguards.¹⁷ It mandates a compulsory insurance policy for the surrogate mother covering a period of 36 months, including post-birth complications. It requires the surrogate's informed consent and permits her to withdraw from the process prior to implantation. A child conceived through surrogacy is deemed the biological offspring of the intending parents, with legal parentage conferred through an order of a Magistrate's court. The Act prohibits abandonment of the child, who enjoys the same rights as a child born naturally, and provides that embryo transfer may be carried out only with the surrogate's consent.

E. Revised Rules and Judicial Decisions

The Surrogacy (Regulation) Amendment Rules, 2024 modified the 2023 provision concerning the use of donor gametes (Section 4). A couple may use donated gametes where the District Medical Board identifies a need for such use in either spouse, so that the revised law accommodates couples in which at least one spouse has no available genetic material.¹⁸

In a landmark decision in *Vijaya Kumari S. v. Union of India* (2025),¹⁹ the Supreme Court held that the provisions of the Act concerning age limits do not apply to couples who had conceived and preserved their embryos before 25 January 2022. The Court reasoned that embryo preservation constituted the first step in the surrogacy process and was therefore protected under the reproductive rights guaranteed by Article 21. Linkage with the ART Act ensures clinic registration, the ethical management of gametes, and data reporting through the National ART and Surrogacy Registry.

¹⁵ *Id.* § 17 (National Board); *Id.* § 14 (State Boards).

¹⁶ The Assisted Reproductive Technology (Regulation) Act, 2021, No. 32, Acts of Parliament, 2021 (India).

¹⁷ The Surrogacy (Regulation) Act, 2021, No. 47, Acts of Parliament, 2021, §§ 4, 37 (India).

¹⁸ The Surrogacy (Regulation) Amendment Rules, 2024, *supra* note 8.

¹⁹ *Vijaya Kumari S. v. Union of India*, 2025 INSC 1209 (India) (also reported as 2025 SCC OnLine SC 2195).

IV. ANALYSIS OF INDIAN SURROGACY FROM THE PERSPECTIVE OF HUMAN RIGHTS

Surrogacy in India raises numerous concerns, including conflicts relating to human rights. It requires a balance to be struck between the fundamental right of individuals to procreate and the need to protect them from exploitation and abuse.

A. The Right to Procreate and Reproductive Autonomy

The right to procreate, as a reproductive right, is guaranteed under Article 21 of the Constitution of India as part of the right to life and personal liberty. Reproduction has come to be recognised as a basic right of the individual, as held in *Suchita Srivastava v. Chandigarh Administration* (2009).²⁰ Reproduction has likewise been identified as an essential element of the right to privacy in *K.S. Puttaswamy v. Union of India* (2017),²¹ and reproductive rights entail the right to make decisions free from coercion, as recognised in *Devika Biswas v. Union of India* (2016).²² International protection for this right is provided by Article 16 of the UDHR²³ and Article 23 of the ICCPR,²⁴ which secure the rights to marriage and to the founding of a family. While Section 4 of the Surrogacy (Regulation) Act, 2021 safeguards this right for eligible intending couples, the proportionality of the Act's stringent conditions is a matter of concern.

B. Women's Rights and Exploitation Concerns

The exploitation of women's bodies through commercial surrogacy has been a central criticism of the practice. Altruistic surrogacy under Section 2(1)(b) of the Act prohibits any financial transaction beyond medical and insurance payments, with the aim of reducing economic compulsion. Nonetheless, this policy has been criticised as potentially undermining women's dignity and agency. The relevant international instruments include Article 23 of the UDHR²⁵ and Article 7 of the ICESCR.²⁶ Considerable health hazards remain, including complications during pregnancy, the risks associated with caesarean delivery, and psychological harm. The mandatory "close relative" requirement (Section 4) may also impose undue pressure within the family, thereby compromising informed consent. The Act makes insurance coverage for the surrogate mother for 36 months following childbirth mandatory.

C. Rights of the Child

²⁰ *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 S.C.C. 1 (India).

²¹ *K.S. Puttaswamy v. Union of India*, (2017) 10 S.C.C. 1 (India).

²² *Devika Biswas v. Union of India*, (2016) 10 S.C.C. 726 (India).

²³ Universal Declaration of Human Rights art. 16, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

²⁴ International Covenant on Civil and Political Rights art. 23, Dec. 16, 1966, 999 U.N.T.S. 171.

²⁵ Universal Declaration of Human Rights, *supra* note 23, art. 23.

²⁶ International Covenant on Economic, Social and Cultural Rights art. 7, Dec. 16, 1966, 993 U.N.T.S. 3.

The Act protects the rights of the child by prohibiting abandonment (Section 3) and by declaring that a surrogate-born child is the natural child of the intending couple, with parentage determined by order of a Magistrate. Article 7 of the United Nations Convention on the Rights of the Child (CRC) addresses the protection of the child's identity by recognising the child's right to know their origins.²⁷ *Baby Manji Yamada v. Union of India* (2008) raised various legal issues, including the rights of the surrogate-born child within such arrangements.²⁸

D. Equality and Non-Discrimination

Articles 14 and 15 of the Constitution are engaged because the Act restricts surrogacy to heterosexual married couples (married for a minimum of five years) and to certain single individuals (widows and divorcees aged 35 to 45). The exclusion of LGBTQ+ persons, single men, and couples in live-in relationships has been challenged as arbitrary and contrary to the constitutional morality articulated in *Navtej Singh Johar v. Union of India* (2018).²⁹

E. The Dignity versus Agency Conflict

On the altruistic view, the approach is intended to protect women's dignity by limiting their exploitation. Many researchers and feminist scholars argue, however, that it curtails women's agency by undervaluing their reproductive labour. At the international level, the UN Special Rapporteur on violence against women and girls, Reem Alsalem, in her 2025 report to the United Nations General Assembly (*The Different Manifestations of Violence Against Women and Girls in the Context of Surrogacy*, A/80/158), characterised surrogacy as "a system of violence, exploitation, and abuse against women" and called for global recognition of surrogacy as a commodification of women's bodies.³⁰

F. Finding an Equitable Middle Ground

The 2021 Act is a commendable effort to balance procreative rights against protection from abuse, though it leans towards restriction. A rights-based middle ground would consist of regulated, compensated altruistic surrogacy featuring state-regulated compensation, independent legal counsel for surrogates, broader yet carefully monitored eligibility criteria, counselling for all parties concerned, and oversight throughout the process. Such an approach would secure both reproductive rights under Article 21 and the dignity of women, without

²⁷ Convention on the Rights of the Child art. 7, Nov. 20, 1989, 1577 U.N.T.S. 3.

²⁸ *Baby Manji Yamada v. Union of India*, *supra* note 6.

²⁹ *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1 (India).

³⁰ Reem Alsalem (Special Rapporteur on Violence Against Women and Girls), *The Different Manifestations of Violence Against Women and Girls in the Context of Surrogacy*, U.N. Doc. A/80/158 (July 14, 2025).

resorting to the extreme of full commercialisation. India should accordingly develop a more evolved and nuanced framework that balances the interests of all parties involved.

V. BALANCING PROCREATION AND EXPLOITATION: A CRITICAL ANALYSIS OF THE “MIDDLE GROUND” STRATEGY

The Surrogacy (Regulation) Act, 2021 represents India’s effort to balance procreation, as guaranteed by Article 21 of the Constitution, against the prevention of the exploitation of women. By restricting surrogacy to altruistic surrogacy alone (Section 2(1)(b)), the Act attempts to adopt a middle path. This section considers the strengths and weaknesses of that strategy and situates it against comparative experience.

A. Advantages of the Existing Model

The model is effective in curbing the uncontrolled commercialisation that once made India the “surrogacy capital of the world.” By prohibiting commercial surrogacy and related activities (Section 3), it combats the commodification and exploitation of poor women. Restricting altruistic surrogacy to close relatives (Section 4) seeks to prevent financial exploitation while permitting surrogacy based on genuine medical need. Ethical considerations are given significant weight, as reflected in the establishment of national and State surrogacy boards (Sections 13 and 14) and Appropriate Authorities (Section 35), together with the ART (Regulation) Act, 2021.³¹ Protective features of the Act include compulsory insurance cover for three years, informed consent, the prohibition of abandonment (Section 3), and the conferral of legal parentage by order of a Magistrate, all aimed at protecting the best interests of the child, consistent with Article 3 of the CRC.³² Underground practices are deterred by penalties of up to ten years’ imprisonment and fines of up to ₹10 lakh.

B. Shortcomings and Criticisms

Notwithstanding its protective aims, the Act has attracted considerable criticism for its rigidity. It excludes single men, gay, lesbian, bisexual, transgender, and queer persons, persons of other gender identities, and couples in live-in relationships from access to surrogacy. This raises questions about its compatibility with Articles 14 and 15 (equality and non-discrimination), and these exclusions have been argued to be arbitrary and inconsistent with the constitutional morality established in *Navtej Singh Johar v. Union of India* (2018).³³

³¹ The Assisted Reproductive Technology (Regulation) Act, 2021, *supra* note 16.

³² Convention on the Rights of the Child, *supra* note 27, art. 3.

³³ *Navtej Singh Johar v. Union of India*, *supra* note 29.

Altruistic surrogacy presents several practical obstacles. It is difficult to find a “close relative” aged between 25 and 35 years who has already given birth to a child and is willing to undergo the procedure only once. The requirement may also generate family pressure and compromise bodily integrity. Surrogate mothers continue to lack support, particularly where psychological or financial assistance is required. As some critics observe, prohibiting commercial surrogacy removes an income-earning opportunity for economically disadvantaged women, thereby affecting their economic rights. Constitutional concerns also arise: stringent requirements such as the five-year marriage condition are regarded by some as excessively restrictive under Article 21. Empirical studies conducted before 2021 indicate that, although most surrogates did not belong to the very poorest category, economic necessity (or *majboori*) remained a significant factor among them.³⁴

C. Insights from Comparison

United Kingdom. Like India, the United Kingdom operates a surrogacy policy reflecting the altruistic approach, under the Surrogacy Arrangements Act 1985 and the Human Fertilisation and Embryology Act 2008.³⁵ Surrogate mothers may claim only their reasonable expenses, and surrogacy contracts are not legally enforceable. At birth, the surrogate is recognised as the legal parent, and the transfer of legal parentage is effected only after birth through a parental order of the court. Although proposals have been made to improve the system through better support and the possible involvement of non-profit organisations, no such steps have yet been taken.³⁶

Israel. Israel operates a structured, state-regulated model of compensated altruism under the Embryo Carrying Agreements Law, enacted in 1996.³⁷ Payments to surrogates are made in accordance with statutory provisions and must be approved by a government-appointed committee. This is a more open framework than many comparable regimes, permitting a wider range of intended parents, including married couples, divorced individuals, single persons, and same-sex couples, provided that at least one intended parent is an Israeli citizen.

Selected states in the United States (such as California). California operates a fully compensated, contract-based system for gestational surrogacy agreements under California

³⁴ AMRITA PANDE, WOMBS IN LABOR: TRANSNATIONAL COMMERCIAL SURROGACY IN INDIA 52-68 (2014); SAMA RESOURCE GROUP FOR WOMEN AND HEALTH, *supra* note 2, at 22-27.

³⁵ Surrogacy Arrangements Act 1985, c. 49 (U.K.); Human Fertilisation and Embryology Act 2008, c. 22 (U.K.).

³⁶ LAW COMMISSION & SCOTTISH LAW COMMISSION, BUILDING FAMILIES THROUGH SURROGACY: A NEW LAW, Law Com No. 411, Scot Law Com No. 262 (2023); *see also* Letter from Baroness Merron, Parliamentary Under Secretary of State for Patient Safety, Women's Health and Mental Health, to the Law Commission (Apr. 2025) (noting the Government's inability to prioritise surrogacy reform).

³⁷ Embryo Carrying Agreements (Approval of Agreement and Status of Newborn) Law, 5756-1996 (Isr.).

Family Code §§ 7960-7962.³⁸ Pre-birth parentage orders are permitted, and any eligible person, whether single or LGBTQ+, may undertake the process. While California law is highly protective of all parties and may empower the surrogate through better compensation (often exceeding \$60,000), it also carries a risk of exploitation.

D. Path Towards an Accommodating Solution

The highly idealistic Indian framework, in its effort to protect dignity and autonomy, sacrifices accessibility. A possible solution would be to regulate the level of payment, as in Israel; to provide counselling alongside a regulated expansion of eligibility; and to increase the medical and psychological support provided after the birth of the child. The judiciary has already shown the necessity of such flexibility by retrospectively relaxing the age limit for intending couples in cases involving frozen embryos. There is now an urgent need for India to adopt a more accommodating solution.

VI. MOVING TOWARDS THE MIDDLE GROUND: RECOMMENDATIONS AND THE PATH FORWARD

The Surrogacy (Regulation) Act, 2021 is commendable but flawed in its effort to balance the constitutional right to reproduce against the protection of women from exploitation. The altruistic model has successfully resisted the commodification of surrogacy; its rigidity, however, calls for further reform.

A. Policy Recommendations on Regulated Compensation

The most appropriate approach is the adoption of a regulated, compensated altruism framework. The provision under Section 2(1)(b) of the Act prohibiting any compensation beyond medical expenses should be amended to enable the surrogate to receive fair, state-mediated compensation for her effort and the opportunities forgone. Compensation could be modelled on the Israeli approach, with a maximum amount set by the National Surrogacy Board and payment made through escrow accounts. Additional measures should include independent legal representation for the surrogate, separate from that of the intended parents; psychological screening and counselling both before and after the surrogacy period; insurance coverage beyond the initial 36-month period, with lifetime health checks for complications; and recognition of reproductive labour in a manner that values the woman rather than treating her as an object to be exploited. The eligibility criteria under Section 4 should be extended to cover unmarried individuals, including members of the LGBTQ+ community, provided that they

³⁸ Cal. Fam. Code §§ 7960-7962 (West 2024).

satisfy a rigorous psychological-suitability screening, consistent with the equality guaranteed by Articles 14 and 15 of the Constitution.³⁹

B. Strengthening Monitoring and Data Collection

Effective enforcement depends upon strengthening institutional mechanisms. The National and State Surrogacy Boards (Sections 13 and 14) must be adequately resourced to ensure proper oversight. An online platform connected to the National ART and Surrogacy Registry is essential for monitoring all surrogacy cases, and audits of clinics together with strict action against violations (Section 38) must be implemented effectively.

C. Integration within Frameworks of Women's Rights and Labour Law

Surrogacy should be integrated within a broader framework of women's rights and labour law. Understanding reproductive labour as distinct from other forms of care work may enable surrogates to benefit from social-security provisions under labour law. This perspective finds support in Article 7 of the ICESCR⁴⁰ and in CEDAW,⁴¹ both of which seek to eradicate gender-based exploitation. Legislation must also address the socio-economic conditions that give rise to *majboori*.

D. International Cooperation and Transborder Concerns

To regulate transnational surrogacy, India must cooperate internationally. It could conclude bilateral agreements with other countries permitting commercial surrogacy, so as to prevent exploitation and to settle questions of citizenship and parentage, in light of the problems raised by *Baby Manji Yamada v. Union of India* (2008).⁴²

E. The Role of Technology, Ethics Committees, and Public Awareness

Technology has significant transformative potential, including blockchain-based tracking of consent and artificial-intelligence-driven matching systems operating in accordance with ethical standards. Each surrogacy facility should maintain an established Ethics Committee for case-by-case review, and nationwide public-education programmes should raise awareness of the ethical issues surrounding surrogacy.

F. Concluding Remarks

³⁹ INDIA CONST. arts. 14, 15.

⁴⁰ International Covenant on Economic, Social and Cultural Rights, *supra* note 26, art. 7.

⁴¹ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

⁴² *Baby Manji Yamada v. Union of India*, *supra* note 6.

A truly balanced approach requires the avoidance of both extremes, namely full commercialisation and pure altruism. A rights-oriented regulatory system based on adequate remuneration and robust safeguards may honour both the reproductive goals of prospective parents and the dignity of the surrogate mother. This will require the cooperation of Parliament, the judiciary, and civil society in amending the Surrogacy (Regulation) Act, 2021 so as to prioritise human rights. In doing so, India can develop an exemplary surrogacy regime.

VII. CONCLUSION

This paper has argued that India's surrogacy laws must strike a realistic balance between securing the freedom to reproduce and preventing the exploitation of women. The Surrogacy (Regulation) Act, 2021, although a major policy shift from an entirely unregulated, market-driven approach to an altruistic system, requires improvement in several respects. The preferable solution lies in a carefully crafted regulatory scheme that combines regulation with compensation, protection, and expanded eligibility.

The evolution of surrogacy in India, from its designation as the global surrogacy hub at the start of the 2000s to the enactment of the 2021 Act, shows that the law has developed in response to genuine concerns about the exploitation of poor women. The key features of the Act include an explicit definition of altruistic surrogacy (Section 2(1)(b)), rigorous eligibility requirements (Section 4), the prohibition of commercial transactions (Section 3), and supervision by the National and State Surrogacy Boards. Yet, when analysed from the perspective of human rights under the Constitution of India, several difficulties arise, as the framework unduly restricts reproductive rights under Article 21 and raises questions of equality under Articles 14 and 15.

The critical analysis in this paper shows that, although the altruistic arrangement preserves dignity and the interests of the child, its drawbacks hinder its workability: the difficulty of locating willing family members, the risk of coercion within families, the exclusion of same-sex couples and single parents, and the possibility of an underground trade in compensated surrogacy. A comparative analysis of the United Kingdom's altruistic system, Israel's regulated compensated system, and California's contractual arrangement suggests that hybrid options may be better suited to resolving the underlying rights conflicts.

In the Indian context, characterised by socio-economic disparities, entrenched social beliefs, and gendered patriarchy, neither a purely paternalistic nor a purely libertarian perspective can adequately address the problem. A human rights perspective implies that, while reproductive labour must be recognised as valuable, the process must be secured through legal, psychological, and medical support extending beyond the 36-month insurance period. It is

essential to ensure adequate compensation and to maintain oversight throughout the entire process.

Ultimately, the development of surrogacy legislation in India should focus on empowering women rather than restricting them. Through the approach proposed in this paper, India can fulfil its constitutional obligations and set an example for other countries in the Global South. The next step should be achieved through the collaboration of legislative, judicial, and social forces.

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