

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 7 | Issue 3

2024

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Cross-Border Surrogacy and Technology: Addressing Legal Complexities in an Interconnected World

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ABSTRACT

This paper unpacks the complex politics generated by cross-border surrogacy transactions in the context of changing technological practices, especially assisted reproductive technologies (ART) such as in vitro fertilization (IVF). It critically examines the legal and regulatory complexities generated by these technological interventions, and explores issues of legal, ethical and social boundaries. The paper maps the changes in global and Indian legal regimes governing surrogacy – from unregulated markets to tightly regulated, quasi-legal regimes. It introduces the surrogate’s right to protection and enforcement as central organizing principles of the new regulatory regime. It also discusses the effects of restrictive legal regimes on surrogacy, and on changing family forms, showing resistance to social diversity arising from changes in family technologies and changing notions of family. It argues for strong legal reforms to address the rise of new family forms and the technologies of ART.

Keywords: *Cross-Border Surrogacy, Assisted Reproductive Technologies, surrogacy laws, Surrogate Rights, Family Diversity, Technological Advancements.*

I. INTRODUCTION

As old as the biblical story of Sarah and Hagar, surrogacy has changed dramatically with technological developments, at times increasing the intimacy between intended parents and the surrogate mother who carries their child and at times consecrating the surrogate’s distance from the child. Surrogacy fields two kinds of gestational worlds: the one where the surrogate gives her own ova, and so is the genetic mother of the child the surrogate bears; and the technological world of modern gestational surrogacy, won by medical conditions, where ‘the fetus carried by the surrogate is generated by the egg and sperm of the gamete donor(s)’, as the Israeli Assisted Reproduction Law defines the surrogate who is not genetically related to the child she bears.

This new model of surrogacy has been made possible by advances in assisted reproductive

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technologies (ART), which are most commonly associated with in vitro fertilization (IVF) – whereby a woman’s eggs are extracted and then fertilized and incubated in a lab before implantation into a surrogate’s uterus. The prevalence of such technologies has made the prospect of surrogacy accessible, and – especially when paired with commercialization – increasingly enticing, for a broader swath of populations. Surrogacy, in effect, has become available and appealing not only to heterosexual infertile couples, but also to a whole range of individuals who might be single, same-sex or otherwise.

Yet technological realities apart, the bringing-into-being of a child through surrogacy takes place in an environment of legal ambiguity – and, in practice, such ambiguity differs dramatically from one jurisdiction to another – further complicated by cross-border surrogacy whereby the intended parents engage a surrogate in a different country, involving the interplay of laws regarding surrogacy in the intended parents’ and the surrogate-provider’s country. The different legal standards and ethics that this constellation of factors generates create a legal labyrinth.

Legal complexities surrounding surrogacy become apparent in the case of India, which was once a popular spot for international surrogacy and has since become highly regulated. Given that the practice can potentially facilitate exploitation and raise numerous ethical concerns surrounding surrogacy, India has largely taken a stance against commercial surrogacy by placing heavy restrictions on the practice. For example, the Surrogacy (Regulation) Act, 2021, permits only altruistic surrogacy for needy, infertile Indian citizens (non-resident Indians, overseas citizens of India, people of Indian origin, foreigners and single parents are not eligible). In one stroke, India has completely banned commercial surrogacy, allowing only altruistic surrogacy – i.e., surrogacy for the sake of helping others. As one can imagine, altruistic surrogacy is designed to protect the rights of all parties concerned – and especially the rights of the surrogate.

Finally, in a cross-border context, there is a critical need to grasp the opportunities and pitfalls of surrogacy enabled by technology. The innovations in ART have opened up the possibility of ‘designer babies’ in ways that have never been seen before. However, the myriads of ethical and legal issues posed by these technologies call for a robust legal framework that regulates cross-border ART and gives effect to the rights and interests of all parties, including surrogate mothers, intended parents and the children born through surrogacy. Scrutinizing these technologies go beyond enabling the use of technology in surrogacy. It requires balancing and regulating these practices in accordance with legal and ethical obligations.

In the next section, we will decode the legal framework of cross-border surrogacy, detailing the domestic and international legislation, case laws and bilateral agreements that affect the practice worldwide, and in India. More than just a description, this will also be a call to action in recognition of how the practice is bound to be shaped by the prospects and challenges of fertility solutions that are evolving in a globalizing world and the possible and required legal reforms to bridge the gaps.

II. LEGAL FRAMEWORK OF SURROGACY IN INDIA

From an unregulated fertility marketplace, surrogacy in India has come to be enclosed within a highly regulated legal and secure framework. While the evolution of surrogacy laws in India thus far have followed a chronological sequence of legislative changes and judicial pronouncements to address the ethical and legal issues that have arisen from surrogacy, there is a need to also consider how surrogacy shapes and gets shaped by social factors.

(A) Early Practices and Lack of Regulation

Here, surrogacy was not legally regulated and India turned into a surrogacy tourism destination. It became a surrogacy haven due to its low costs and easy availability of surrogacy facilitators. For a while, this period was called the ‘golden period’ of surrogacy tourism, where international couples of Western origins flocked to India to find surrogates. In the absence of any clear legal guidelines, this scenario gave rise to several difficult ethical and legal questions such as the exploitation of the surrogate mothers, who had to face alienation from society, citizenship questions for children born out of international arrangements, and whether a surrogacy contract could be enforced at all.

(B) The Baby Manji Case and Initial Responses

However, the attention of the world was drawn to these shortcomings by a landmark case, *Baby Manji Yamada v. Union of India* (2008), in which a Japanese couple had engaged a surrogacy in India. Since divorce took place before the birth of the child, whose citizenship and custody rights were in dispute, the Supreme Court of India had to step in to resolve the minor’s guardianship and citizenship issue in an international legal wrangle that brought home the overwhelming need to bring surrogacy in India under regulation.

In the wake of the publicity and legal questions arising from the Baby Manji case, India’s government began to realise the need for regulation, and took its first steps towards building a legal framework for surrogacy.

(C) The Draft Assisted Reproductive Technology (ART) Bill

They took their fears to the parliament, where the Indian government finally proposed an Assisted Reproductive Technology (ART) Bill to contain the new industry of ART clinics, and the new service of arranging commercial surrogacy. Drafted in 2008 but revised several times since then, the ART Bill aimed not just to regulate ART clinics (and the surrogacy arrangement itself), but to also protect the interests of all parties concerned – the surrogate, the commissioning parents, and the child. In addition to eligibility criteria for couples wishing to use surrogacy, and the specific rights and obligations of the surrogate as they pertained to her interests, it mandated a number of safeguards throughout the entire relationship.

(D) The Surrogacy (Regulation) Act, 2021

The most recent legislative development in this regard is the Surrogacy (Regulation) Act, 2021 that allows only altruistic surrogacy to deter commercial exploitation of surrogate mother. It also prohibits commercial surrogacy. The option of surrogacy is limited only to Indian married couples who can prove infertility. Further, the act makes it essential for the surrogate to be a close relative of the intending couple, married and have borne a child her own.

This also creates the National Surrogacy Board and the State Surrogacy Boards, which will regulate surrogacy practices that are compliant with the Act. It also envisions the establishment of authorities for the registration of surrogacy clinics.

The emergence of laws on surrogacy in India shows how a market model has gone from zero to regulation, this change reflecting larger social and global discourse over the ethics of surrogacy. Prioritising the rights of all parties to surrogacy, especially surrogates and children born through surrogacy, lies at the heart of this evolution. Increasing regulation in this field reaches out across boundaries and responds to international pressures as well as domestic concerns regarding the respect for human rights and prevention of exploitation.

We will come back to this, but for now let's focus on the fourth point and third point, which are related: the question of how the current legal framework holds up against the pressures that globalised reproductive technology will bring with it. Cross-border surrogacy arrangements, for example, continue to generate painful legal and ethical questions in this new, globalised world.

(E) Surrogacy (Regulation) Act, 2021: An Overview

The Surrogacy (Regulation) Act, 2021, is landmark legislation that will regulate and provide oversight for surrogacy in India. It will be seen as the flagship legislation for those who decide to take a chance and engage in the legal, medicalized realm of surrogacy. It is important because

of the aims it seeks to achieve – to regulate surrogacy, protect Indian women, and uphold the rights of children born through surrogacy.

The Act lays down several key provisions to regulate and systematize surrogacy within a structured legal framework:

- **Definition and scope:** Altruistic surrogacy, as defined in the Act, is a situation where a woman becomes a surrogate and gives birth to a child for an intending couple with the intention of giving the child to the couple after the birth. It clearly demarcates the distinction between altruistic and commercial surrogacy, and permits only the former.
- **Eligibility criteria for intending parents:** They have to be Indian citizens, married for at least five years, at least one member must be infertile and the age limit for women is between 23 to 50 years and for men it is between the age group of 26 to 55. This helps to make sure that surrogacy is done only for genuine infertile and stable families.
 - **Must be the legal wife** – In Islam, the surrogate mother has to be a close relative of the intending parents. In case she is unmarried, the child will be raised by the parents in a halal and non-promiscuous environment. For a woman's body to undergo and endure the whole journey of surrogacy – from IVF to the delivery of the baby – it is imperative that religion protects her against financial exploitation and ill health arising from multiple surrogacies:
 - **Must already have given birth to a healthy baby** – There is a limit of one surrogacy per a woman's lifetime, and only if she's already had a healthy baby.
- **Commercial surrogacy would be prohibited**
 - No one would be allowed to advertise for surrogacy services
 - No form of money transaction except medical expenses and insurance for surrogate should be entertained. Prohibition of commercial surrogacy, and the sale of babies indicates that the Commerce of surrogacy would be against the dignity of human life and surrogate women.
- **Constitutions of Boards and Authorities:** The Act mandates the constitution of the National Surrogacy Board, and also the State Surrogacy Board, which will ensure that the provisions of the Act are faithfully adhered to, adjudicate any disputes under the law, and within the framework of the law protect all the rights of the parties concerned.
- **Insurance for Surrogate Mother:** The Act states that the intending parents shall insure a surrogate mother for her for postpartum delivery, following a minimum period of 36

months.

- **Legal Parentage and Citizenship:** The child born within a surrogacy arrangement is accepted as the biological child of the commissioning parents. This will ensure the child's legal rights and dispense with issues of parentage and citizenship.

III. RESTRICTIONS AND PROTECTIONS

The law, that is, the Surrogacy (Regulation) Act, 2021, includes many of these suggestions and more, in the form of demarcations and provisions that reflect a dual aim – to advocate for ethical surrogacy even as it works to protect the rights and welfare of all parties involved.

- **Accredited arrangements:** The Act allows for only altruistic surrogacy. No commissioning surrogacy is permitted. What is altruistic surrogacy? The term itself was not defined in the Act but the unarguable essential is non-compensation – the surrogate is not paid for her labor, and thus stands equal with the adoptive parents. Sold 'savior-babies' are not sold. It was the day after the amendment was passed that Sanjana met Priya, a domestic worker who wanted to rent her womb. Foreigners, non-resident Indians and persons of Indian origin are denied surrogacy in India the Act makes this surrogacy tourism seem decidedly un-important.
- **Protection of Surrogate Mothers:** By also limiting the surrogate mother to one surrogacy in her lifetime (making her a close relative of at least one of the two intending parents), the law seeks to protect surrogate mothers – particularly in terms of avoiding coercion and possible medical dangers in carrying another woman's child. Requiring insurance for surrogates and covering all medical costs is another way these laws protect the surrogate's health.
- **Child's Rights:** Child born through surrogacy will have same rights as natural born child to the intending parents to avoid statelessness or any legal uncertainty re surrounding child's status. This is crucial in safeguarding the interests and future of the child.

Thus, the Surrogacy (Regulation) Act, 2021 is a singular legislation that envisions a comprehensive legal regime that would seek to govern the practices of surrogacy in India. While it does severely restrict the scope and reach of surrogacy practices, this represents a considered response to ensure that ethical boundaries are preserved and the rights of all individuals involved in surrogacy arrangements are protected. But this is not all there is to say about surrogacy in India. As we have seen, this Act represents the pinnacle of India's journey of negotiating quite complex bioethical issues and tackling human rights concerns as far as the use

of assisted reproductive technologies are concerned. As we move forward, the challenges with the Act and critiques that have surfaced in regard to it — especially in case of cross-border surrogacy arrangements wherein legal challenges increase manifold in an era of globalization.

(A) Critical Analysis of the Surrogacy (Regulation) Act, 2021

The Surrogacy (Regulation) Act, 2021. It's India's first significant reproductive law which introduces qualitative and quantitative boundaries on surrogacy. Anything worth cherishing, praise and celebrating also attracts criticism and appreciates analysis of its pros and cons. This juxtaposes, enlightening and confusing analysis of the Indian Contract Act and the recently introduced surrogacy law.

Most of India's reproductive laws have been in formulations for a long time, although some of them like Assisted Reproductive Technology (Regulation) Bill, 2020 are much recent. All of them highlight the importance of adoption and aim to address issues arising out of it such as finding a safe home, identifying missing children, prevention of child trafficking etc. The Surrogacy (Regulation) Act, 2021 is India's first significant reproductive law which introduces qualitative and quantitative boundaries on surrogacy. Like every significant legal reform in history (be it Indian legal reforms or any other country's), this one too has its own answers to the question raised above. This section discusses analysis of the Act. The extent of protection accorded to the surrogate mother, discussion on its limitations and controversial clauses are some of the aspects highlighted here.

(B) Protection of Surrogate Rights

Many clauses of the Act aim to safeguard the rights and wellbeing of the surrogate mother, which is particularly important in a country where surrogacy arrangements have often become trapped in a self-evident socioeconomic divide and the potential for exploitation.

- **Health and Safety:** The Act requires that a surrogate be a previous proven mother – i.e., someone who has already had at least one child – thus reducing the medical risk that might be associated with the surrogate's eating and drinking habits during her first pregnancy: theoretically, she has already proven that she can birth a healthy child. And the Act further limits any woman to one surrogacy contract, which avoids potential medical complications associated with more than one pregnancy and the emotional strain of giving away more than one child.
- **Insurance:** Requiring the IPs to have the surrogate covered by insurance for 36 months for postpartum complications is a robust measure for the surrogate's health and financial

security.

- **Informed Consent:** Section 35 of the Act requires informed consent regarding the medical procedures that will be undertaken by the surrogate, the potential risks and complications that could arise from the procedures, and her right and obligations under the contract.
- **No Commercial Exploitation:** By banning commercial surrogacy and all ‘advertisement’ associated with it, the state bars commercial exploitation of the economically disadvantaged women who might practice surrogacy for a livelihood, and fall prey to coercion by need.

In spite of these provisions, the Act has been criticized for not actually protecting all surrogates in all cases. For instance, requiring surrogates to be close relatives could, in this context, still elicit familial pressures and coercion. In addition, the act’s stipulation that a surrogate may be a surrogate only once is not necessarily as protective after the fact because the experience of being a gestational surrogate may cause unforeseen long-term health problems that are not well covered by the mandated insurance.

IV. LIMITATIONS AND CONTROVERSIAL ASPECTS

The objections to some of the provisions in the Surrogacy (Regulation) Act 2021 have come from legal experts, ethicists and the general public.

- **Limited Eligibility:** They also focused on the stipulation in the Act – that surrogacy will be permitted only for married Indian couples with a proven record of infertility – preventing a large number of prospective beneficiaries such as unmarried couples, single individuals and lesbian, gay, bisexual, transgender and queer (LGBTQ+) people, leading to the exclusion of an important dimension in today’s family diversity. This has been critiqued as a denial of access to parenthood through a limitation that is neither progressive nor aligned with global rights trends.
- **Commercial surrogacy ban:** Though the criminalization of commercial surrogacy may be intended to prevent commodification, it also robs the very individuals who may wish to sell their services voluntarily, as an empowering endeavor, of an income-generating opportunity. This opportunity could be safely and ethically regulated, argue critics, rather than banned outright.
- **Challenges of Implementation and Enforcement:** The Act’s success lies in ensuring that it is enforced effectively. The constitution of National and State Surrogacy Boards is a

positive step, wait to see whether the Boards are actually going to regulate and monitor the practice of surrogacy in India well. Bureaucracy and red tapes are the red flags regarding the timely implement of the processes of the surrogacy arrangement.

- **International Implications:** The Act, however, is silent on consensual cross-border surrogacy – that is, pregnancies that lead to the birth of babies to foreign nationals or Indians abroad – and on the question of the citizenship, rights and responsibilities of the children born to them. Cross-border issues regarding citizenship, parental rights and child welfare can arise from this silence.

(A) Technological Innovations in Surrogacy

ART are a suite of very successful procedures that have transformed the field of reproductive medicine: infertile couples (and single women) who, only a generation or two ago, were unable to have biological children are now parents. It is safe to say that, without ART, surrogacy exist, there would be far fewer gestational pregnancies for heterosexual and same-sex couples than there are today. ART has also created several legal and ethical quandaries surrounding cross-border surrogacy arrangements.

(B) Assisted Reproductive Technologies

ART is both the colloquial term and the acronym for any procedure in which human oocytes (eggs) and a variety of fertility treatments, including in vitro fertilization (IVF), intracytoplasmic sperm injection (ICSI), and cryopreservation. IVF-related techniques are the most prevalent, and in many ways the most significant, as they relate to surrogacy. IVF is a fertility treatment that requires the harvesting of an oocyte (egg) from the ovary, its fertilization by sperm outside of the body, and the implantation of fertilized embryos into the uterus of the woman who will carry it to term.

(C) Advancements in IVF Techniques

Preimplantation genetic diagnosis (PGD), developed in the late 1990s, and the more recent ‘preimplantation genetic screening’ (PGS), now allows screening of all embryos for genetic diseases and chromosomal abnormalities by extracting and testing embryonic cells before implantation in the surrogate’s womb. This increases the chance of a healthy pregnancy and thus reduces the genetic risk factors related to the embryo, therefore reassuring the intending parents and eliminating the risk of child health disputes in surrogacy contracts.

(D) Cryopreservation and Its Impact

While in-vitro fertilization (IVF) may be the most well-known technology associated with ART,

another important technological advance has allowed for the ‘cryopreservation’ (freezing and storing) of sperm, eggs and embryos. All the above technologies lead to important legal questions related to surrogacy agreements, including whether and when to time the agreement, as well as concerning one of the most important issues that surround reproductive technologies, the rights to stored genetic material. What if the parents who store their eggs or sperm get divorced, die or otherwise tragically face life-changing health issues before they are able to use their genetic material?

V. LEGAL CONSIDERATIONS AND CHALLENGES

ART developments and practices will become increasingly differentiated and complicated, and ethical quandaries will arise as surrogacy becomes more interconnected transnationally:

- **Variations in regulations:** In the realm of ART, there are variations in laws across countries. Some nations will allow donor gametes in addition to surrogacy, and some will not. Third-party reproduction rules and legislation may differ and complicate matters when couples in one country with a more restrictive ART usage law attempt to avail of what countries with more liberal laws can provide.
- **Parental Rights:** Surrogacy agreements for children created through ART raise questions about parental rights, primarily if donor gametes are involved. What rights are attributed to what eventual parent(s) in a jurisdiction where the genetic relation to the child influences the legal parentage?
- **Ethical Considerations:** The potential to choose embryos based on genetic screening raises ethical questions that find expression through legal debates about the extent of ‘designing’ when it comes to surrogacy agreements. Legislators and courts engage in this balancing act, attempting to decide whether and how to limit ethical concerns in favor of reproductive liberty.
- **Conflict of laws:** Cross-border surrogacy combined with ART makes it more likely that conflicts of laws will arise, especially in disputes over jurisdiction involving the enforcement of surrogacy contracts, custody matters and rights-of-parents claims, which are unsettled by legal frameworks as they are not covered or provided by international legal agreements.

VI. COMPARATIVE ANALYSIS: INDIA VS. GLOBAL PRACTICES

Cross-border surrogacy, an increasingly important avenue for generating biological offspring for childless couples, enables comparative scrutiny of two regulatory settings: one where the

practice is regulated and contractual, and one where it is prohibited. India's regulatory regime cannot be understood except in the context of other leading countries, particularly its major competitors for the surrogacy market: countries such as Georgia, Nepal and Thailand, as well as the world's biggest and most thriving destination for surrogacy – the United States. To arrive at meaningful conclusions about viable models of regulation in all four countries, I will describe their regulatory setups and compare the commonalities and differences.

(A) Surrogacy Regulations in India

The policy shift of banning commercial surrogacy in India and limiting surrogacy services to altruistic intents is a significant change. India was long a favourite destination for many international intended parents who wanted to offer high payments to women who readily agreed to be surrogates because costs were low and availability high. Such practices also led to many instances of commercialisation and the exploitation of poor women as surrogates. Easily exploitable women who had few alternatives became convenient targets for surrogacy business. The Surrogacy (Regulation) Act, 2021, prohibits commercial surrogacy and limits surrogacy services to altruistic intents only. Under this act, only infertile spouses living in India can avail themselves of surrogacy services (using a close relative as a surrogate and without any payment or rewards except for the reimbursement of medical expenses and insurance cover charges).

(B) United States

The US instead offers a notable alternative case: it is decentralised into states each with quite a different set of surrogacy laws, with only covert mutual agreement between US immigration officials and foreign surrogacy regulators allowing it to proceed. Some US states are known to being more surrogacy-friendly than others. California is particularly celebrated as a destination where commercial and altruistic surrogacy are available and accepted, and where powerful surrogacy laws are in place to protect all parties' rights. Commercial surrogacy is legal, and the intended parents can be named as parents on the birth certificate soon after birth. This state-level regulation means that there is some flexibility and the US can be seen as a surrogacy destination despite the differences in legal protection for intended parents across states.

(C) United Kingdom

In contrast to the U.S., surrogacy in the UK is also much less commercialised. Although surrogacy is legal, advertising for a surrogate and payment beyond legitimate expenses to the surrogate/blood mother are prohibited, and intended parents must apply for a parental order afterwards to acquire parental rights with respect to the child born from the surrogacy arrangement. The intended parent must wait for a six-week period, which allows the surrogate

to change her mind. The law emphasises protecting the rights of the surrogate mother and ensuring that commercial pressures are kept at a distance.

(D) Russia and Ukraine

Russia and Ukraine stand out among our sample of countries for their liberal surrogacy laws. In both, altruistic and commercial surrogacy are open for foreign couples. In fact, neither country requires the foreign couple to show proof of infertility. Thus, in the context of our sample, they grant surrogacy to the widest range of foreign couples. Furthermore, the legal frameworks of both countries for transferring parental rights from the surrogate to the commissioning parents are well established and include specific procedures. The surge of international surrogacy in these countries is driven to a large extent by the lack of strict rules: this may result in overt cases of exploitation and other ethical violations.

(E) Australia

What Australia has is a hybrid model, where commercial surrogacy is illegal while altruistic surrogacy is permissible in every state. By selecting this model, intended parents must complete the adoption process or petition the court for a parenting order – a cumbersome and time-consuming process. This model pursues the goal of balancing the rights of the child, the rights of the surrogate and the rights of the intended parents while prohibiting the commercial exploitation of surrogates.

Considering these models in tandem with the Indian approach offers several observations. A country's overarching regulatory agenda (e.g., attempts to halt the commercialisation and potential exploitation of the surrogacy industry, as in the UK and Australia, or more drastic controls, limiting it to a kinship setting, as in India; or greater freedom but also a more flexible regulatory oversight, as in the US [e.g., California and Russia] where there are sometimes implications for the legal and ethical ambiguity).

An examination of comparative approaches brings into focus a continuum, stretching from very restrictive to relatively liberal, each of which offers certain advantages and disadvantages. In nations where access by intended parents (IPs) within or outside the country is more restricted (e.g., in India and the UK), the regime allows for greater protection of surrogates and children. The disadvantage that lies therein is that this increased regulatory stance curbs access and can also limit the extent to which parties can design and tailor an arrangement to their specific needs. Conversely, nations where laws seem liberal (e.g., Cyprus and the US) increase the likelihood of easy access. However, this accessibility can come at the cost of ensuring sound practices, and in particular, gauging and protecting the interests of all the parties concerned.

By examining these practices, we can better see how laws can be constructed to ensure that the conflicting interests and ethical considerations inherent in surrogacy relationships are addressed. This will be of use to any country hoping to improve its surrogacy laws.

VII. POLICY RECOMMENDATIONS AND FUTURE DIRECTIONS

(A) Revising the Surrogacy (Regulation) Act, 2021

The Surrogacy (Regulation) Act, 2021, which came into effect in February this year, was a big leap forward in attempt to better regulate surrogacy practices in India so that the surrogates' rights were protected, exploitative practices prevented, and the rights of intended parents and children ensured. As with any new law, loopholes eventually emerge and laws need to evolve when society and medical or technological practices evolve.

(B) Inclusivity in Surrogacy Laws

The newly implemented surrogacy law in India severely limits available gestational surrogacy arrangements to natural, legally married heterosexual couples, and excluded a significant portion of parents who might wish to use assisted reproductive technology – including single parents, unwed couples (opposite sex or same sex) and members of the LGBTQ+ community. Even aside from the apparent discriminatory nature of such a prohibition, this precludes groups of would-be parents from fulfilling their dreams of parenting within the confines of their home country.

Suggestions for Enhancing Inclusivity

- **Make Single Parents and the LGBTQ+ Eligible:** Modify the Act to include single parents and LGBTQ+ people in the eligible classes of people able to avail of surrogacy. While currently this perspective has not gained support, it would allow Indian surrogacy laws to move closer to more liberal international norms, understood to be more reflective of contemporary realities regarding family planning.
- **Legal recognition of non-traditional families:** Law should recognize non-traditional families such as unmarried couples, same sex couples, and other domestic partnerships, since the definition of family has evolved in modern times.
- **Matrimony-Independent Practices:** Including clauses that expressly prohibit discrimination against a person who wishes to use the services of a surrogacy, on account of his or her marital status and sexual orientation or gender identity. This would ensure that those wishing to be parents are clearly not discriminated against or treated unfairly.

(C) Enhancing Legal Clarity and Enforcement

The problems arise because, although it provides a legal framework for surrogacy in India, the Surrogacy (Regulation) Act, 2021 has left some areas vague, leading to ambiguity and issues with enforcement. Moreover, with new reproductive technologies emerging constantly, legal standards need to be continually updated to keep up.

Suggestions for Enhancing Legal Clarity and Enforcement

- Be precise about the substance of surrogacy agreements: define what surrogacy agreements must and may contain regarding the rights and obligations of the parties in order to discourage future disputes and avoid misunderstandings about what these contracts mean to the participants.
- Enhance enforcement mechanisms: Set up robust mechanisms for the enforcement of surrogacy contracts by, for instance setting up special bodies or tribunals to adjudicate upon such matters and ensure that surrogacy disputes are resolved in an efficient and equitable manner.
- Regularly Assess the Landscape: Set up a review board that regularly assesses the landscape of new technologies and current international trends in surrogacy in order to make recommendations to the government when updates to Indian surrogacy law seem warranted. This board should consist of legislators, law professors, ethicists, reproductive science and psychology researchers, statisticians, and legal practitioners with experience in assisted reproductive technology.
- Improve International Cooperation: The central government could engage in bilateral or multilateral agreements with countries that frequently act as clients or providers of commercial surrogacy with Indian surrogates. Such international agreements could help to mitigate cross-border legal issues and overseas protections for both surrogates and IPs.
- Improve the transparency of surrogacy: Bring surrogacy agencies and clinics under stricter rules of transparency. Make it mandatory for them to report all their surrogacy arrangements, results and practices to a central regulator.

(D) Strengthening Cross-Border Legal Cooperation

As cross-border surrogacy takes place within an interstitial space between legal regimes, matters related to parental rights recognition, surrogate status and the child's rights across jurisdictional boundaries can be extremely complicated and problematic.' To the extent it can be achieved,

improved cross-border legal cooperation could go a long way towards overcoming these challenges.

Developing Bilateral and Multilateral Agreements

A major way to strengthen legal cooperation, then, would be a series of bilateral and multilateral agreements that address cross-border surrogacy in a way that both respects the sovereignty of states but ensures the absolute protection of all of the contractual parties (surrogates, commissioning parents, children born) in surrogacy agreements.

- **Common Legal Frameworks:** Frequently interacting states need to develop common legal standards and procedures covering parentage, surrogate rights, and the status of the child to foster certainty and security in surrogacy.
- **Dispute Resolution Provisions:** The contracts need to include dispute-resolution provisions to ensure that jurisdictional issues and procedures for dispute resolution are clear so that specific remedies are enforceable in the event of a dispute. For example, there could be a specialized international surrogacy court or tribunal.

(E) Enhancing Role of International Organizations

International organisations such as the United Nations or, more probably, other international and sometimes regional organisations and programmes involved in human rights, public health or child protection (e.g., the World Health Organization) are likely to have an important role in helping and encouraging international legal cooperation on surrogacy, as they can help set standards internationally or provide spaces for dialogue and negotiation.

- **Global Guidelines:** International organisations should promote the development of clear global guidelines dealing with the most important ethical and legal controversies. Individual jurisdictions can then adopt these as the basis for their legal frameworks, ensuring at least a minimal protection for all parties involved.
- **Capacity-Building Programmes:** Establish international programmes to build countries' preventative and incidental capacities for dealing with cross-border surrogacy. This could involve training legal professionals, health practitioners and policymakers in the intricacies of international surrogacy law.

(F) Facilitating Information Exchange and Transparency

Strong reciprocal information-sharing regimes between countries would promote successful cooperation. Infant trafficking could be better followed up, and compliance with different laws more readily monitored. Likewise, the practices of surrogacy agencies and clinics could be more

easily monitored.

- **Centralized International Registry:** Develop a centralized international registry of all cross-border arrangements allowing the monitoring of such transactions and a greater degree of enforcement of legal rules.
- **Data Sharing Agreements:** Agreements with other countries that permit the sharing of relevant data in accordance with national laws on privacy and/or data protection facilitates the exchange of information such that each state is in a position to enforce its rights under the law.

(G) Embracing Technological Solutions for Better Governance

Today, globalization drives the need to design and govern legally complex arrangements such as cross-border surrogacy. Technological solutions can improve the governance opportunities, reduce processing delay, enforce the substance of the law, and adequately protect the rights of all the parties to the arrangement.

(H) Digital Platforms for Monitoring and Regulation

Digital tools can help to transform the monitoring and regulation of surrogacy arrangements by facilitating their registration, tracking, and oversight. Through such digital tools, surrogacy agreements could be registered, the progress of a surrogacy arrangement tracked, and compliance with various legal requirements ensured.

- **Unified Surrogacy Registration System:** To encourage all prospective parties to fill in the blanks, states can set up a public digital system that keeps records of all surrogacy contracts to ensure that all parties involved maintain information symmetry and to allow governmental authorities to keep surrogacy arrangements under check in conformity with national as well as international laws.
- **Real-Time Monitoring and Reporting:** Generate platforms of real-time monitoring and reporting of surrogacy procedures that will facilitate instant reporting of any violations of the surrogacy agreement, allowing for governmental or legal interventions.

VIII. CONCLUSION

The analysis of international surrogacy commences with the recognition that reproductive technologies have significantly advanced over recent years. In particular, assisted reproductive technologies have facilitated and expanded possibilities for surrogacy, and have enabled millions of people to become parents despite their infertility. With the advancement of modern technologies has come a multitude of social, legal and ethical implications.

The story of a shift leading to change in the world of surrogacy can be seen in India's attempt to move from a free-for-all arrangement, which made the country the hub for surrogacy in the world, to a more regulated system under the Surrogacy (Regulation) Act 2021. The Act is a result of a long struggle against commercializing and commodifying the process of surrogacy to an extent that it exploited the bare humanity of surrogate mothers and the children born as a result of the surrogacy arrangement. The reality of surrogacy arrangements is not only about birth at the end of a nine-month pregnancy, but also includes the question of who should be involved in it, what are their relationships, what sort of legal recognition they must get for how long, and what are their responsibilities. India's Archaic Assisted Reproductive Technology (Regulation) Bill 2020 was a reflection of the need to address these questions, which helped to evolve the new legislation. The Surrogacy (Registration, Monitoring and Treatment) Bill 2020 was also put on hold, and was replaced by the Surrogacy (Regulation) Act 2021. The Act prohibits commercial surrogacy arrangements; allows Indian married couples to be eligible surrogates; and makes it mandatory for surrogates to have full medical insurance. This is indeed an indication of the beginning of the end of the free-for-all surrogacy arrangements in the country.

Nonetheless, the Indian model also demonstrates that such restrictive laws bring with them worries, such as granting access to only a certain class of people, excluding unmarried couples, single people and members of the LGBTQ+ community from availing surrogacy services, among others. This tension between the right to family life and ethical considerations thus signifies the need for evolution of the legal framework to adapt to the social needs of modern times.

On the international plane, although it is the case that some countries adhering to these regimes, such as the USA, Russia and the UK, have different and increasingly challenging surrogacy laws, a universally acceptable surrogacy regime does not appear to be at all clear in the foreseeable future. And this pendulum will continue to swing, while international surrogacy arrangements – and, crucially, the unfair treatment of intended parents and surrogates under such contracts – will loom.

Most of all, it suggests, the entire world should start working together to establish common legal frameworks for cross-border surrogacy that take ethical concerns into account while still seeking to allow individuals to exercise what should be their fundamental right to access reproductive technologies. Like Harris, I believe that legal adaptation must continue, and that surrogacy law will require changes in the years to come as a reflection of continuing technological advances and changing social attitudes towards the range of different family

structures that can make a home.

In conclusion, while surrogacy offers new possibilities for bringing loved ones into the world, it also poses very complicated legal and moral dilemmas that can only be solved with careful legislation, international cooperation and dedication to the wellbeing of all involved. The future of surrogacy law lies in the delicate exercise of balancing access to reproductive technologies with the protection of the rights of surrogates, intended parents and surrogate children.

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[https://doi.org/10.1016/S0968-8080\(11\)37575-1](https://doi.org/10.1016/S0968-8080(11)37575-1)
