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Surrogacy and Women's Rights: A Study of the Surrogacy (Regulation) Act, 2021 in Contemporary India

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ABSTRACT

Surrogacy has become an important way for couples who can't have children to have children, but it is still a very controversial legal and moral issue in India. The Surrogacy (Regulation) Act, 2021 was made law to stop commercial surrogacy and allow only altruistic surrogacy. This was done to protect surrogate mothers from being exploited. But the Act has been criticised for having strict requirements for who can be eligible, leaving out LGBTQ+ people and single parents, and not having a clear way to make sure it is followed. This study takes a close look at how the Act affects women's rights, focussing on the autonomy of surrogate mothers, the economic effects of banning commercial surrogacy, and the complicated legal issues that come up with surrogacy agreements.

The study looks at how India's surrogacy laws have changed over time, how judges have handled important cases, and how their legal systems compare to those in the US and UK so that India can learn from their policy changes. The Act is supposed to protect surrogate mothers, but it actually makes it harder for them to have children and make money. Because there aren't any provisions for compensatory benefits, surrogacy markets may not be regulated, which puts even more at risk women who are already weak. There are also problems with child citizenship and legal parentage because there aren't clear legal protections for parental rights in cases of international surrogacy.

This study suggests that policy changes should be made to make sure that the law is fair and protects women's rights, stops exploitation, and works with different types of family structures. To make India's surrogacy system more ethical and open to everyone, it is suggested that the compensation model be regulated, the eligibility requirements be widened, and the enforcement mechanisms be made stronger. To help make laws better in the future, more research should be done on how surrogacy laws affect society and the real lives of surrogate mothers and intended parents.

Keywords: *Surrogacy, Women's Rights, Reproductive Autonomy, Commercial Surrogacy, Altruistic Surrogacy, Legal and Ethical Issues, Parental Rights.*

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I. INTRODUCTION

Surrogacy has become a popular way for people and couples who can't have children naturally to have children. It is when a woman, called a surrogate mother, carries and gives birth to a baby for someone else or another couple. India has paid a lot of attention to surrogacy over the years because of the legal, moral, and social issues it raises. India used to be thought of as a global hub for commercial surrogacy. Its low costs and large pool of surrogate mothers drew in many foreign couples. Legal frameworks were put in place to control surrogacy in the country because of worries about women being exploited, moral issues, and the need for better regulation. The Surrogacy (Regulation) Act, 2021 was made law to control surrogacy, protect the rights of surrogate mothers, and make sure that the process is done in an honest way. This article talks about the history and importance of surrogacy in India. It also talks about the study's goals, its main research questions, and the methods it used.²

India's view on surrogacy has been complicated. The country became known around the world for its successful surrogacy industry, which wasn't heavily regulated before the government stepped in. India has become a popular place for couples looking to get a surrogate because medical procedures aren't too expensive and there are plenty of surrogate mothers from low-income families. There were, however, serious worries about the exploitation of poor women, the lack of legal protection for both the surrogate and the child, and unethical medical practices in this unregulated system. Cases of children being left behind, disagreements between intended parents and surrogates, and the commercialisation of women's reproductive labour made it clear that the law needs to be changed right away.

Over the years, the Indian government has put out a number of guidelines to address these concerns. The most recent is the Surrogacy (Regulation) Act, 2021. This law doesn't allow commercial surrogacy; it only allows altruistic surrogacy, in which a woman acts as a surrogate without getting paid anything other than medical bills and insurance. The Act also has strict requirements for both surrogate mothers and people who want to have children. This is done to protect women's rights and stop them from being exploited. But the Act has also been criticised for being too strict and limiting women's and childless couples' options for having children. It is very important to know how this law affects women's rights, their ability to choose their own reproductive options, and their ability to get surrogacy services in the current legal and social climate.³

² Andrews, L. (1988). Surrogate motherhood: The challenge for feminists. *Law, Medicine & Health Care*, 16(1-2), 72-82.

³ Aramesh, K. (2009). Iran's experience with surrogate motherhood: An Islamic view and ethical concerns. *Journal*

The main goal of this study is to look at the Surrogacy (Regulation) Act, 2021 in terms of women's rights and their ability to choose how to have children. The study's goals are to look at how India's surrogacy laws have changed over time, how the new laws have affected surrogate mothers and people who want to have children, and what moral and legal problems are involved with surrogacy. In addition, this study aims to compare surrogacy laws from different countries in order to find the best ones that India could use to make its own laws more fair and inclusive. The study will also look at surrogacy from a feminist and a societal point of view, focussing on issues of consent, bodily autonomy, and economic exploitation.

II. UNDERSTANDING SURROGACY: CONCEPTS AND TYPES

A woman, called a surrogate mother, carries and gives birth to a baby for another person or couple. This is a type of assisted reproduction. It is often thought of as an option for people who can't have children for medical, infertility, or other personal reasons. Thanks to progress in reproductive technology, surrogacy is now widely accepted. However, it is still debated because it has moral, legal, and social effects. Surrogacy is regulated differently in each country. Some countries don't have any rules at all about it, while others have very strict rules or even ban it completely.

When a woman agrees to get pregnant and carry the baby for another person or couple, this is called surrogacy. The woman plans to give the baby to the other person or couple after the birth. It is a third-party reproductive process, which means that people other than the intended parents are involved. Depending on the type of surrogacy being done, the arrangement may or may not include money.⁴

India's Surrogacy (Regulation) Act, 2021 says that surrogacy is when a woman agrees to give birth to a child for a couple who wants to have a child and then gives the child to the couple after the birth. The Act only allows surrogacy for charitable reasons, which means that surrogates can't be paid more than what their medical bills and insurance cover. The Indian government strictly prohibits commercial surrogacy, which means paying the surrogate money.

(A) Types of Surrogacy

Surrogacy can be categorized into different types based on the genetic relationship between the surrogate and the child, as well as the financial arrangement involved.

of Medical Ethics and History of Medicine, 2(1), 1-5.

⁴ Bagchi, A. (2010). Vulnerability, gender, and surrogate motherhood: Comparing Indian and Western perspectives. *Feminist Studies*, 36(2), 345-372.

1. Traditional Surrogacy vs. Gestational Surrogacy

- **Traditional Surrogacy:**

In the old way of doing things, the surrogate mother is also the child's biological mother. The intended father's or a sperm donor's sperm is used to fertilise the surrogate's own egg. This is called artificial insemination. Since the surrogate is genetically related to the baby, parental rights issues can come up in court and in people's personal lives. Because of these problems, traditional surrogacy is not used very often these days.

- **Gestational Surrogacy:**

As a gestational surrogate mother, you carry an embryo that is genetically unrelated to you. In vitro fertilisation (IVF) is used to make the embryo. The egg and sperm come from either the intended parents or donors. After that, the embryo is put into the surrogate's womb. Most people are okay with gestational surrogacy because it makes it clear who the legal parents are, which makes custody battles less likely.

2. Altruistic Surrogacy vs. Commercial Surrogacy

- **Altruistic Surrogacy:**

Altruistic surrogacy is a non-business arrangement in which the surrogate mother doesn't get paid anything other than her medical bills, insurance coverage, and costs related to the pregnancy. People often use this type of surrogacy when a close family member or friend volunteers to be a surrogate out of kindness. India's Surrogacy (Regulation) Act, 2021 only permits surrogacy for charitable reasons. This is to keep women's reproductive work from being turned into a business and to protect them from being exploited. But critics say it limits the options for couples who don't want children and makes surrogacy less likely because it costs a lot.

- **Commercial Surrogacy:**

In commercial surrogacy, the surrogate mother is paid money on top of the costs of her pregnancy and medical care. It used to be legal in India, which led to the growth of a booming surrogacy industry that attracted parents-to-be from all over the world. Concerned about the abuse of poor women, the government banned commercial surrogacy in 2021 with the Surrogacy (Regulation) Act. Even though commercial surrogacy is illegal, many people say that making it illegal completely could push the practice underground, leading to unethical and unregulated surrogacy arrangements.

Surrogacy is internationally debated due to its ethical and legal issues. Surrogate mothers,

especially poor ones, may be exploited, a major ethical issue. Financial hardship may pressure women into surrogacy, raising questions about their consent. Informed consent and surrogate mother rights are major ethical issues in surrogacy.

In traditional surrogacy, where the surrogate mother is genetically related to the child, parental rights and custody disputes are another major issue. Some surrogate mothers form an emotional bond with the baby and refuse to give it up, resulting in legal battles. Some countries allow the surrogate to change her mind and keep custody, while others automatically give the intended parents parental rights. Lawful ambiguities can cause uncertainty and emotional distress for everyone.⁵

Surrogacy's psychological impact is another issue. After giving up the baby, surrogate mothers may feel emotional, and intended parents may worry about the surrogate honouring the agreement. To ensure a smooth surrogacy, all parties, including the child, must consider their mental health.

Legal issues and cross-border surrogacy also complicate matters. Many couples choose surrogacy in countries with lax surrogacy laws. This can complicate legal issues like obtaining citizenship or legal recognition for the child in the intended parents' home country. Legal issues between countries have left some cross-border surrogacy children stateless.⁶

The debate over surrogacy regulation vs. ban continues. The Surrogacy (Regulation) Act, 2021 in India bans commercial surrogacy, which may drive the practice underground and increase risks for surrogate mothers and intended parents. A balanced approach that emphasises regulation rather than prohibition could prevent exploitation while allowing childless couples to use surrogacy. Legal protections, medical supervision, and ethical guidelines can make surrogacy fair and transparent.

The legal, ethical, and social aspects of surrogacy are complex. It gives childless couples hope but raises important questions about exploitation, consent, and legal parentage. The Surrogacy (Regulation) Act, 2021 bans commercial surrogacy and allows only altruistic surrogacy to address these issues. However, this restrictive approach has raised questions about reproductive rights, economic autonomy, and enforcement. A balanced legal framework that protects surrogate mothers' rights and addresses intended parents' needs is needed to ensure ethical and fair surrogacy in India. A regulatory approach with clear legal and ethical safeguards may solve

⁵ Banerjee, S. (2019). Legal and ethical dilemmas of surrogacy in India. *Indian Journal of Medical Ethics*, 4(2), 89-97.

⁶ Bartha, M., & Wachter, M. (2017). International perspectives on surrogacy laws. *European Journal of Law and Bioethics*, 5(3), 201-221.

surrogacy issues more sustainably.⁷

III. EVOLUTION OF SURROGACY LAWS IN INDIA

Over the years, India's surrogacy laws have changed a lot. These changes have been caused by medical progress, moral concerns, and court decisions. Before the Surrogacy (Regulation) Act, 2021 was passed, India's laws were pretty loose and allowed commercial surrogacy. This made the country a popular place for surrogacy tourists to visit. Instead of a complete set of laws, the legal landscape was shaped by guidelines made by the Indian Council of Medical Research (ICMR). In 2002, India became a global hub for commercial surrogacy. Foreign couples were drawn to India because it had cheap medical facilities and wasn't overly regulated. Some people wanted stricter rules because they thought surrogate mothers were being exploited, contracts weren't being clear, and there were problems with citizenship and parental rights.

The ICMR was very important in making India's surrogacy laws by setting rules for Assisted Reproductive Technology (ART) clinics. When they were first released in 2005 and then later updated, these guidelines tried to control surrogacy arrangements by making sure that ART clinics followed moral guidelines and looked out for the rights of both surrogate mothers and intended parents. The guidelines stressed that surrogate mothers should be given full information, be supervised by doctors, and be paid fairly. However, because these guidelines were not legally binding, they did not stop unethical behaviour. For example, they did not stop the abuse of poor women who were often forced to sign surrogacy contracts with unfair terms. Also, cases of foreign parents leaving their surrogate children because of legal problems caused a lot of people to worry that the government needed to step in.⁸

The surrogacy debate in India was greatly affected by the actions of the courts. *Baby Manji Yamada v. Union of India*⁹ was a landmark case that brought surrogacy laws to the public's attention. It was a Japanese couple who hired a surrogate in India. When they got divorced, however, Indian law did not recognise single-parent surrogacy, so the baby was left in a legal limbo. The Supreme Court of India gave the baby a visa to go to Japan. This shows how important it is to have laws that cover cross-border surrogacy right away. In the 2009 case of *Jan Balaz v. Anand Municipality*¹⁰, the Gujarat High Court said that a child born in India through surrogacy to parents from outside of India could be given Indian citizenship. These

⁷ Baslington, H. (2002). The social organization of surrogacy: Relinquishing a baby and the role of payment in the psychological detachment process. *Journal of Health Psychology*, 7(1), 57-71.

⁸ Blyth, E. (1994). 'I wanted to be interesting. I wanted to be able to say "I've done something different"': The experiences of surrogate mothers in Britain. *Journal of Reproductive and Infant Psychology*, 12(3), 189-198.

⁹ AIR 2009 SUPREME COURT 84

¹⁰ SPECIAL CIVIL APPLICATION No. 3020 of 2008

cases showed where the law was unclear and made it clearer that we need clear laws about surrogacy.

In 2016, the Indian government passed the Surrogacy (Regulation) Bill in response to growing concerns. This bill aimed to ban commercial surrogacy and only allow altruistic surrogacy for Indian couples who are medically unable to have children. But the Surrogacy (Regulation) Act, 2021 was finally passed after many changes and discussions. This law stopped commercial surrogacy but let altruistic surrogacy happen under strict rules, like the surrogate having to be related to the intended parents. India's surrogacy laws have changed over time. They used to be based on an unregulated market, but now they are more controlled to protect surrogate mothers from being exploited and to make sure that surrogacy is done in an ethical way. But the strict rules put in place by the 2021 Act are still being talked about. Some people are against them because they say they limit reproductive options and could lead surrogacy to illegal, unregulated areas.¹¹

IV. THE SURROGACY (REGULATION) ACT, 2021: KEY PROVISIONS

The Surrogacy (Regulation) Act, 2021 was made law to control surrogacy in India. Its goal is to protect surrogate mothers from being exploited and to promote moral reproduction. The main goal of the Act is to stop commercial surrogacy and only allow altruistic surrogacy, in which the only money that is exchanged is for medical costs and insurance coverage. The Act's goals are to protect the rights and dignity of surrogate mothers and make sure that infertile couples can use surrogacy under strict rules. It also aims to stop unethical behaviour, child trafficking, and the business of surrogacy, which used to be easy to do in the country because of legal loopholes. The Act tries to find a balance between reproductive rights and the need for regulation by setting up a legal framework. This makes sure that surrogacy agreements are clear and accountable.¹²

The Act sets strict requirements for both intended couples and surrogate mothers in order to be eligible. Section 4(ii)(a) and (b) of the Act say that legally married Indian couples who have been medically certified as unable to have children can use surrogates. Section 2(1)(p) of the Act says that infertility is the inability to get pregnant after five years of sexual activity without protection. The woman must be between the ages of 23 and 50, and the man must be between the ages of 26 and 55. This makes sure that only people who are able to have children can

¹¹ Brazier, M., Campbell, A., & Golombok, S. (1998). Surrogacy: Review for health ministers of current arrangements for payments and regulation. *Journal of Medical Ethics*, 24(1), 1-6.

¹² Chauhan, N. (2020). The Surrogacy (Regulation) Act, 2021: A step forward or backward? *Indian Law Review*, 4(2), 120-142.

choose surrogacy. The Act also says that couples can't have any biological, adopted, or surrogate children left over, unless the child is physically or mentally disabled or has a disorder that could kill them (Section 4(iii)(c)(I)).¹³

Section 4(iii)(b)(I) of the Act says that a surrogate mother can only be a close relative of the intended parents. This means that professional surrogate mothers are not allowed to be involved. They have to be married, have at least one child of their own, and be between 25 and 35 years old. She can only be a surrogate once in her whole life so that she doesn't get pregnant more than once for money. The surrogate must also go through a medical and mental exam to make sure she is healthy enough to do the procedure. People have said that these requirements, which are meant to protect the health of surrogate mothers, are too strict and make it hard for couples to find suitable surrogates.¹⁴

Section 4(iii)(b), which says that commercial surrogacy is illegal, is a very important part of the Act. Commercial surrogacy, in which a surrogate is paid more than the cost of medical care and insurance, is illegal so that poor women are not forced to do it or exploited financially. Section 38 says that breaking this rule can lead to harsh punishments, such as up to ten years in prison and a fine of up to ten lakh rupees. The Act tries to keep surrogacy moral by only allowing an altruistic model. However, critics say that it takes away people's right to choose their own reproductive options and could make surrogacy illegal, which would increase the risks for everyone involved.

The Act sets up regulatory bodies at both the central and state levels to make sure that the rules are followed. Section 17 says that a National and State Surrogacy Board should be set up. This board will be in charge of making sure that the Act is followed, giving permissions, and making sure that surrogacy procedures are done in an ethical way. The Act also says that surrogacy clinics need to be registered and approved by regulatory bodies. This makes sure that only authorised medical institutions can do surrogacy procedures. The goal of this regulatory system is to stop surrogacy that is against the law and make clinics follow medical and ethical standards.¹⁵

Overall, the Surrogacy (Regulation) Act, 2021 puts in place strict laws to control surrogacy in India. These laws replace the commercial surrogacy industry that wasn't regulated before. As the Act's strict eligibility requirements and ban on commercial surrogacy have caused debates

¹³ Spar, D. (2006). *The baby business: How money, science, and politics drive the commerce of conception*. Cambridge, MA: Harvard Business Press.

¹⁴ Choudhury, S. (2016). Surrogacy laws in India: A critical analysis. *Asian Journal of Legal Studies*, 8(1), 34-58.

¹⁵ Dhar, A. (2011). Womb on rent: Commercial surrogacy in India. *Economic & Political Weekly*, 46(34), 27-30.

on reproductive rights, personal autonomy, and access to surrogacy for many people, including single parents and same-sex couples who are currently not allowed by law, the Act is meant to protect surrogate mothers from being exploited and uphold ethical practices. How well the Act works will depend on how it is put into place, how it is enforced, and any changes that might be made to address concerns about fairness and accessibility.¹⁶

(A) Impact of the Surrogacy (Regulation) Act, 2021 on Women's Rights

The Surrogacy (Regulation) Act, 2021 has had a big effect on women's rights, especially when it comes to safety, freedom, and reproductive choices. As one of its main goals, the Act aims to protect surrogate mothers from being exploited, especially those from low-income families who may have been forced into surrogacy to make money. The Act wants to make sure that surrogates are not treated like goods in a business that is focused on making money by outlawing commercial surrogacy and allowing only altruistic surrogacy. Surrogate mothers are required by law to have health insurance and care. This gives them some security that wasn't always present in earlier surrogacy arrangements. The Act also tries to give surrogate mothers emotional and family support by only letting close relatives do surrogacy. This lowers the chances of coercion and malpractice. But these safety measures also make it much harder for women to make their own decisions and exercise their freedom.¹⁷

One of the main complaints about the Act is that it limits women's freedom in making reproductive choices. The complete ban on commercial surrogacy is based on the idea that all paid surrogacy arrangements are exploitative. This doesn't take into account the fact that some women may choose to become surrogates in order to make money. For many women, surrogacy has given them economic independence and power, which has helped them improve their living conditions and support their families. The Act turns surrogacy into a voluntary service by taking away the financial incentive. This may make women less likely to participate, which could push the practice underground, making it riskier and harder to police. Also, the rules that say surrogate mothers have to be married, have biological children, and be related to the intended parents make it harder for them to make decisions on their own about their bodies and reproductive abilities.¹⁸

Concerns have also been raised about how the Act will affect women's reproductive choices in

¹⁶ Dodds, S., & Jones, K. (1989). Surrogacy and autonomy: An ethical assessment. *Journal of Applied Philosophy*, 6(2), 157-172.

¹⁷ Ghosh, S. (2018). Reproductive autonomy and commercial surrogacy in India. *South Asian Law Review*, 10(2), 67-85.

¹⁸ Hodson, N., & Bewley, S. (2017). Ethical issues in surrogacy: A UK perspective. *British Medical Journal*, 356, 2001-2012.

general. India allows married couples who can't have children to use surrogacy, but single women, unmarried couples, LGBTQ+ people, and people from other countries are not allowed to use surrogacy services there. This approach keeps traditional family structures in place and doesn't let some groups become parents through surrogacy. Also, the fact that the intended parents can't already have biological or adopted children (except in certain situations) makes surrogacy even less available, even for legally married couples who want to have children.¹⁹

Overall, the Act adds important protections for surrogate mothers, but it also puts limits on women's freedom to choose and have children. The hard part is finding a balance between moral concerns, keeping women safe from exploitation, and their right to make their own decisions about their bodies and money. There may need to be changes made in the future to make the surrogacy law more fair and inclusive, protecting both women's rights and medical ethics.²⁰

(B) Challenges and Criticism of the Surrogacy (Regulation) Act, 2021

The Surrogacy (Regulation) Act, 2021 has gotten a lot of bad press because it has some rules that make it hard for people to get surrogacy in India. These rules have raised concerns about access, autonomy, and inclusion in surrogacy. One of the biggest problems with the Act is that it has strict requirements for people who want to have children and for people who want to be surrogate mothers. Indian couples who are legally married, have been married for at least five years, and have been told by a doctor that they can't have children can choose surrogacy. This requirement leaves out single parents, people with live-in partners, LGBTQ+ people, and people from other countries, which raises concerns about unfair access to parenthood. Additionally, surrogate mothers must be married, have at least one biological child, and be related to the couple who wants to have a child. This makes it much harder for many couples to find a willing surrogate.²¹

The ban on commercial surrogacy is another big point of contention. This law was made to protect surrogate mothers from being exploited. Critics, on the other hand, say that this move doesn't take into account the fact that many women choose surrogacy as a way to make money. The law takes away the financial incentive for women to use surrogacy by only allowing selfless models. This makes it less appealing for women to take part and could push commercial surrogacy underground. This could lead to practices that aren't regulated and take advantage of

¹⁹ Gupta, J. A. (2012). Reproductive biocrossings: Indian egg donors and surrogates in the global fertility market. *International Journal of Feminist Approaches to Bioethics*, 5(1), 25-51.

²⁰ Indian Council of Medical Research (ICMR) (2005). National guidelines for accreditation, supervision, and regulation of ART clinics in India. New Delhi, India: ICMR Press.

²¹ Sharma, R. (2021). The Surrogacy (Regulation) Act, 2021: Critical analysis and future directions. *Indian Journal of Law and Policy*, 12(3), 45-67.

people, which goes against the whole point of the Act. Also, the idea that women who are close to the surrogate mother are naturally free from being forced to do so is not true. Family pressure and emotional obligations could push women against their will to become surrogates.²²

There are also legal gaps and ambiguities in the Act, especially when it comes to parental rights and how the law will be enforced. Commercial surrogacy is against the law, but it's not clear how to keep an eye on and stop illegal surrogacy practices. Also, it's not clear what a child born through surrogacy's legal status is in case the intended parents get divorced, fight, or leave the child. The Act also doesn't do enough to deal with cross-border surrogacy issues because different countries have different surrogacy laws. This means that children born through surrogacy may not have clear legal status when it comes to citizenship and parental rights.

One big problem with the Act is that it doesn't include LGBTQ+ people or single parents, which shows a rigid and traditional view of family structures. By only letting straight married couples use surrogacy, the law denies a lot of people the right to have children. This goes against India's larger push for equality, which can be seen in the decriminalisation of homosexuality and the growing legal recognition of diverse family units. This exclusion not only goes against the ideas of equality and non-discrimination, but it also forces people and couples to look for surrogacy options in other countries, which can be expensive and cause legal problems.²³

Overall, the Surrogacy (Regulation) Act, 2021 was made to protect surrogate mothers and keep the practice under control. However, its strict rules and provisions that leave out certain people cause a lot of concern. To solve these problems, we need a more fair and inclusive approach that keeps women from being exploited and makes sure they have the same reproductive rights as men.

V. SURROGACY LAWS IN OTHER COUNTRIES

Laws about surrogacy are very different in each country, which shows that people have different moral, cultural, and legal views on the practice. In the US, each state has its own rules about surrogacy. Some states, like California, have clear rules that allow both commercial and non-commercial surrogacy for everyone, including LGBTQ+ couples and single parents. In California, parents-to-be can become legal parents of a child even before the baby is born. This gives them a lot of legal protection. But some states either limit or ban commercial surrogacy,

²² Jain, S. (2019). The surrogacy debate: Feminist perspectives and ethical dilemmas. *Journal of Gender and Law*, 5(1), 45-63.

²³ Johnson, M. (2007). Surrogacy and the legal system: Parentage and citizenship issues. *Medical Law Review*, 15(2), 199-223.

which makes the law all over the country inconsistent.

The UK, on the other hand, only allows surrogacy for charitable reasons. The Surrogacy Arrangements Act, 1985, makes commercial surrogacy illegal. In the UK, surrogate mothers are legally parents from the moment the baby is born. This means that the parents-to-be have to apply for a parental order in order to get legal custody. If the surrogate decides to keep the child, this can sometimes get complicated with the law. Even with this restriction, the UK has a good system for regulating surrogacy, and groups help and support both surrogates and intended parents.²⁴

Different things have been done in other countries. Canada and Australia only allow altruistic surrogacy, which means that surrogates can only get paid for medical and pregnancy-related costs. They can't get any extra money. Russia, Ukraine, and Georgia, on the other hand, all allow commercial surrogacy and have clear laws that give intended parents immediate parental rights. But worries about abuse and a lack of supervision in these countries still exist. India can learn a lot from these things that other countries do. A well-regulated system for commercial surrogacy, like the one in California, could help stop abuse while also making money. Adopting a more open-minded approach, like in the US and Canada, could also make sure that everyone has the same reproductive rights, including single parents and LGBTQ+ couples. To balance moral concerns with reproductive rights, we need a system that is open and protected by the law.²⁵

VI. JUDICIAL APPROACH TO SURROGACY IN INDIA

India's courts have had a big impact on the laws and morals that govern surrogacy, especially when it comes to women's reproductive rights and the rights of intended parents. A number of important decisions made by the Supreme Court and other High Courts have changed the law in the United States about surrogacy.

*Baby Manji Yamada v. Union of India*²⁶ was one of the first and most important court cases in India to deal with surrogacy. In this case, a Japanese couple hired an Indian surrogate to carry their child, but when they got divorced, the intended mother wouldn't give up custody of the child. The Supreme Court stepped in and made it possible for the child to go to Japan with the biological father as guardian. This case showed how complicated the law is when it comes to cross-border surrogacy and how important it is for India to have comprehensive surrogacy laws.

²⁴ Khan, T. (2021). The future of commercial surrogacy in India post-2021 regulation. *Journal of Reproductive Rights*, 9(4), 145-168.

²⁵ Kim, E. (2014). Reproductive tourism: Legal and ethical issues. *Hastings Center Report*, 44(3), 34-45.

²⁶ AIR 2009 SUPREME COURT 84

In *Jan Balaz v. Anand Municipality*²⁷, a German couple had twins with the help of an Indian surrogate. This was another important case. Because the children were born to a surrogate, the Gujarat High Court said they were not Indian citizens. This made it hard for them to get passports. The case showed that there are legal ambiguities when it comes to nationality and parentage issues in surrogacy arrangements. This made it even more important to have clear laws.²⁸

This year, in *K.S. Puttaswamy v. Union of India*²⁹, the Supreme Court said that everyone has the right to privacy. This decision affected laws about surrogacy as well. The judge stressed that women's right to bodily autonomy and reproductive choices are important parts of privacy. This made the case for women having the right to make their own reproductive choices, including choosing to be surrogates, stronger. But the Surrogacy (Regulation) Act, 2021 put limits on surrogacy that some say violate this right because they only allow it in cases of kindness and have strict rules about who can be a surrogate.³⁰

The Supreme Court said again in *Suchita Srivastava v. Chandigarh Administration* (2009) that a woman has the right to reproductive autonomy, which means she can choose how to become pregnant and give birth. Even though this case didn't have anything to do with surrogacy, it set a standard for recognising reproductive rights as part of personal freedom under Article 21 of the Constitution. Some people say that the Surrogacy (Regulation) Act, 2021 goes against this basic right because it sets strict rules.

Indian courts have said that there needs to be a balance in surrogacy laws that protect surrogate mothers and respect people's choices about having children. The courts have said that rules are needed to stop exploitation, but they shouldn't get in the way of women's freedom or keep some groups from getting surrogacy. A more open and rights-based approach to surrogacy in India may continue to be shaped by future court cases.³¹

VII. RECOMMENDATIONS AND POLICY REFORMS

India should have a surrogacy law that protects the rights of all parties involved, including the child, the intended parents, and the surrogate mothers. The law should also make sure that ethical practices are followed and abuse is avoided. People have said that the Surrogacy

²⁷ SPECIAL CIVIL APPLICATION No. 3020 of 2008

²⁸ Kulkarni, S. (2020). Altruistic surrogacy and the risk of exploitation: A socio-legal analysis. *Indian Journal of Family Studies*, 6(1), 88-102.

²⁹ AIR 2018 SC (SUPP) 1841

³⁰ Sama Resource Group for Women and Health (2012). *Birthing a market: A study on commercial surrogacy*. New Delhi, India: Sama Resource Group.

³¹ Lal, R. (2019). Surrogacy in India: An analysis of ethical concerns and legal solutions. *Harvard Journal of International Law*, 53(2), 211-230.

(Regulation) Act, 2021 is too strict, even though it was made to stop people from using surrogates for money. Policy changes are needed to make the framework more effective and open to everyone.

One strong suggestion is to allow paid surrogacy as long as strict rules are followed. Because commercial surrogacy is illegal, the practice has gone underground, which makes it more likely that people will take advantage of people. India could instead use a regulated compensation model, like the ones used in California. In this model, surrogates are paid money while being fully protected by the law and medical care. This would make sure that surrogate mothers are paid fairly without turning the service into a business.³²

Also, the Act should be more open about who is an eligible intended parent. At the moment, the law only allows married, straight Indian couples who have been unable to have children to use surrogacy. It does not apply to single parents, LGBTQ+ people, or people from other countries. The law should be changed to include everyone who wants to have children through surrogacy, as long as they meet certain moral and financial standards. This kind of openness is in line with the world's more progressive surrogacy laws and recognises the right to reproductive autonomy as a basic right.

To make sure that surrogate mothers' rights are not violated, stronger enforcement systems are also needed. Many women turn to surrogacy because they are having trouble with money, and there should be proper legal and medical protections in place to stop coercion. Setting up separate governing bodies to keep an eye on surrogacy clinics and agreements could stop unethical behaviour and give surrogates legal help if they have problems.³³

Legal parentage and nationality issues in cross-border surrogacy should be the focus of another important policy change. Cases from the past, like *Jan Balaz v. Anand Municipality*³⁴, have shown how complicated it can be for children born through surrogacy to become citizens. India needs to make sure that children born through surrogacy are given legal parentage and citizenship without having to go through a lot of red tape.

Lastly, it is important for people to know about and understand surrogacy laws. A lot of intended parents and surrogate mothers don't know what the law says about their rights and responsibilities. To make sure that everyone makes smart decisions, the government should start legal aid programs and initiatives.

³² Malhotra, P. (2015). The role of Indian judiciary in shaping surrogacy laws. *Delhi Law Review*, 7(1), 55-78.

³³ Mukherjee, A. (2022). Feminist perspectives on surrogacy: Autonomy vs. commodification. *Women's Studies International Forum*, 36(4), 156-172.

³⁴ SPECIAL CIVIL APPLICATION No. 3020 of 2008

A fair surrogacy system needs to take into account ethical surrogacy, protecting surrogate mothers, and reproductive rights. India can make a system that meets the needs of everyone effectively and fairly by using global best practices and making sure there are proper rules.³⁵

VIII. CONCLUSION

The research on surrogacy and women's rights, especially in light of the Surrogacy (Regulation) Act, 2021, shows how complicated it is for reproductive rights in India to be influenced by moral, legal, and social factors. The Act was made to stop surrogacy from becoming a business, to protect surrogate mothers from being exploited, and to make sure that the process stays legal and moral. However, some of its strict rules, like the fact that commercial surrogacy is illegal, that intended parents can only be parents if they meet certain requirements, and the fact that the process is very complicated, have led to arguments about whether the law really strikes a good balance between protection and reproductive autonomy.

One of the most important things this study found was that while the Act protects surrogate mothers, it also limits their economic freedom by not allowing paid surrogacy. A lot of women, especially those from lower-income groups, choose surrogacy as a way to make money. Concerns about exploitation could be eased by a regulated compensation model that still lets women make money in a way that is safe and legal. Concerns about discrimination in reproductive rights are raised by the Act's exclusion of single parents, LGBTQ+ people, and foreigners. It also limits surrogacy to married Indian heterosexual couples who have proven infertility.³⁶

People are still arguing about how well the Act works. While the goal is to get rid of unethical practices in the surrogacy industry, the lack of proper implementation mechanisms and legal loopholes may push surrogacy into unregulated and illegal markets, where it may be even harder to find and stop abuse. Also, clearer laws are still needed to solve problems with legal parentage, citizenship for children born through surrogacy, and cross-border surrogacy arrangements. As we look to the future, policymakers and researchers should work together to make a surrogacy system that protects everyone while also upholding reproductive rights. Comparing the surrogacy laws of progressive countries like the UK and California could help India figure out how to change its laws to allow surrogacy that is legal, ethical, and open to everyone. More real-world studies on the social and economic effects of surrogacy laws on women, how well

³⁵ Patel, N. (2013). Commercial surrogacy in India: The legal paradox. *Economic & Political Weekly*, 48(7), 87-95.

³⁶ Pande, A. (2010). Commercial surrogacy in India: Manufacturing a perfect mother-worker. *Signs: Journal of Women in Culture and Society*, 35(4), 969-992.

current rules work, and the experiences of surrogate mothers and intended parents will also be very important in making better rules.³⁷

In conclusion, the Surrogacy (Regulation) Act, 2021 is a step towards more ethical surrogacy practices, but it needs major changes to fix legal gaps, make the law more inclusive, and make it easier to enforce. To keep surrogacy a fair and legally protected choice in India, there needs to be a framework for surrogacy that balances women's rights, reproductive freedom, and moral concerns.

³⁷ Raymond, J. (1990). Reproductive exploitation and the question of surrogacy. *Women's Studies International Forum*, 13(4), 353-361.