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Seminar on:

“Surrogacy laws in India: Ethical and Legal issues”

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Abstract

Surrogacy is an important development in Assisted Reproductive Technology (ART) that enables individuals and couples facing infertility to achieve parenthood. In India, surrogacy grew rapidly due to affordable medical facilities and weak regulation, making it a hub for reproductive tourism. However, the rise of commercial surrogacy led to serious ethical and legal concerns such as exploitation of surrogate mothers, commodification of childbirth, disputes over parentage and citizenship, and issues relating to reproductive autonomy and equality.

To address these challenges, India enacted the **Surrogacy (Regulation) Act, 2021** and the **Assisted Reproductive Technology (Regulation) Act, 2021**, which prohibit commercial surrogacy and permit only altruistic surrogacy under strict conditions. The framework also regulates fertility clinics and establishes regulatory authorities to protect surrogate mothers and children born through surrogacy.

This study uses a doctrinal and analytical approach based on statutes, case laws, and secondary sources. It examines the legal evolution of surrogacy in India, landmark judicial decisions, ethical and legal issues, and comparative practices in other countries. Key cases such as *Baby Manji Yamada v. Union of India* and *Jan Balaz v. Anand Municipality* highlight legal gaps in the absence of a strong regulatory system.

The study concludes that while the current legal framework is a significant step toward regulation and protection, it remains restrictive and raises concerns regarding equality and reproductive rights. A more balanced approach is needed to ensure protection from exploitation while respecting reproductive autonomy and inclusivity.

List of Abberaviations-

&	AND
SC	SUPREME COURT
SCC	SUPREME COURT CASE
UOI	UNION OF INDIAN
ART .	ASSISTED RERODUCTIVE TECHNOLOGY
SCR	SUPREME COURT REPORT
ORS	OTHERS
ART	ASSISTED REPRODUCTIVE TECHNOLOGY
`IVF	IN VITRO FERTILIZATION
GIFT	GAMETE INTRAFALLOPIAN TUBE TRANSFER
ZIFT	ZYGOTE INTRA-FALLOPIAN TUBE TRANSFER
ICSI	INTRACYTOPLASMIC SPERM INJECTION
ICMR	INDIAN COUNCIL OF MEDICAL RESEARCH
AI	ARTIFICIAL INSEMINATION

List of cases –

1. Baby Manji Yamada v. Union of India (2008) 13 SCC 518
2. Jan Balaz v. Anand Municipality (2009) SCC OnLine Guj 10413
3. Suchita Srivastava v. Chandigarh Administration (2009) 9 SCC 1

Surrogacy Laws in India : Ethical and Legal Issues

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I.) Introduction

The development of assisted reproductive technologies has transformed the concept of parenthood by providing alternative methods for individuals and couples facing infertility. Among these methods, surrogacy has gained considerable importance as a means through which a woman carries and delivers a child for another person or couple. Over the years, surrogacy has evolved from being a rare medical arrangement to a widely discussed social and legal phenomenon. In India, the rapid growth of fertility services and comparatively affordable medical procedures contributed to the expansion of surrogacy practices, attracting both domestic and foreign intended parents.

The rise of surrogacy in India brought with it both opportunities and challenges. On one hand, it offered hope to childless couples and individuals who desired to experience parenthood. On the other hand, the increasing commercialization of surrogacy created concerns about the exploitation of financially disadvantaged women who often became surrogate mothers due to economic necessity. Questions relating to human dignity, women's autonomy, reproductive rights, and the treatment of children born through surrogacy soon became matters of serious debate among legal scholars, policymakers, and society at large. Before the enactment of specific legislation, surrogacy in India operated largely under guidelines issued by the Indian Council of Medical Research, which lacked strong enforceability. The absence of a comprehensive legal framework resulted in several disputes involving citizenship, custody, contractual obligations, and the rights of surrogate mothers. To address these issues, the government enacted the Surrogacy (Regulation) Act, 2021, which prohibits commercial surrogacy and permits only altruistic surrogacy subject to prescribed conditions. The legislation was introduced with the objective of preventing exploitation and ensuring ethical regulation of the practice.

Despite these reforms, the law continues to generate debate regarding its scope and limitations. Critics argue that the restrictions imposed by the legislation may infringe upon reproductive autonomy and exclude several categories of people from accessing surrogacy arrangements. Furthermore, ethical dilemmas surrounding emotional attachment, informed consent, commodification of reproduction, and the welfare of the child remain unresolved. Therefore, the study of surrogacy laws in India is essential to understand the complex interaction between law, ethics, medicine, and human rights. This paper aims to analyze the legal framework governing surrogacy in India and to critically examine the ethical and legal issues arising from

the practice, while assessing whether the existing regulations achieve a fair balance between protection, justice, and reproductive freedom.

1.) Meaning and definition of surrogacy

The term “surrogate” originates from the Latin word *Subrogare*, which means “to substitute” or “to act in place of another.” In the context of reproduction, a surrogate mother refers to a woman who agrees to conceive, carry, and deliver a child for another individual or couple, commonly known as the “intending parents” or “commissioning parents.” Surrogacy provides an alternative path to parenthood for couples or individuals who are unable to conceive or carry a pregnancy due to medical or physical conditions. In such arrangements, the surrogate mother carries the pregnancy until childbirth and subsequently hands over the child to the intended parents after delivery.

The concept of surrogacy is closely associated with Assisted Reproductive Technology (ART), which involves medical procedures designed to address infertility issues. According to the World Health Organization, infertility is defined as the inability to achieve pregnancy after one year or more of regular unprotected sexual intercourse. Infertility may affect both men and women and has led to the development of advanced reproductive techniques to assist individuals in conceiving children.

“the action of a woman having a baby for another woman who is unable to do so herself”¹ -
Cambridge Dictionary

“Surrogacy is an arrangement by which a woman gives birth to a baby on behalf of someone who is physically unable to have babies themselves, and then gives the baby to that person.”² -
Collins dictionary

¹ <https://dictionary.cambridge.org/dictionary/english/surrogacy>

² <https://www.collinsdictionary.com/dictionary/english/surrogacy>

2.) Need for the Study

The concept of surrogacy has gained considerable importance in recent years due to advancements in reproductive technology and the increasing rate of infertility among individuals and couples. In India, surrogacy emerged as a widely practiced method of assisted reproduction, attracting both national and international intended parents. While this practice has provided an opportunity for many people to experience parenthood, it has simultaneously given rise to several ethical, social, and legal complications that demand careful study and analysis.

One of the major reasons for undertaking this study is the growing concern regarding the exploitation of surrogate mothers, particularly women belonging to economically weaker sections of society. The commercialization of surrogacy raised questions about whether women's reproductive capacities were being treated as commodities for financial gain. Issues related to informed consent, physical and emotional health of surrogate mothers, and the dignity of women have made surrogacy a subject of ethical controversy. In addition, the absence of effective legal regulation in earlier years created uncertainty in matters relating to parental rights, custody of children, nationality of children born through international surrogacy arrangements, and enforcement of surrogacy agreements. To address these concerns, India enacted the Surrogacy (Regulation) Act, 2021. However, despite the enactment of the law, debates continue regarding its effectiveness, constitutionality, and restrictive provisions. Therefore, it becomes essential to examine whether the present legal framework adequately safeguards the interests of surrogate mothers, intending parents, and children born through surrogacy.

The study is further necessary to evaluate the balance between ethical values and reproductive rights in modern society. It seeks to understand how legal regulation can prevent misuse of surrogacy practices while also protecting individual freedom and the right to parenthood. Hence, this research is important for analyzing the evolving legal position of surrogacy in India and for suggesting measures that may help create a more just, ethical, and balanced regulatory system.

3.) Hypothesis

1. **Surrogacy Laws and Protection of Women-** The study hypothesizes that surrogacy laws in India are intended to protect surrogate mothers from exploitation and unethical practices.
2. **Impact of Restrictive Regulations** - It is hypothesized that the restrictions imposed under the Surrogacy (Regulation) Act, 2021 may negatively affect reproductive autonomy and limit access to surrogacy.
3. **Ethical Issues in Commercial Surrogacy** - The research assumes that commercial surrogacy can result in the commodification of women's reproductive capacities and may exploit economically weaker women.
4. **Inadequacy of Existing Legal Framework** - It is hypothesized that the current legal framework does not completely address disputes relating to parentage, custody, and the rights of children born through surrogacy.
5. **Need for Balanced and Inclusive Regulation** - The study hypothesizes that a more balanced and inclusive legal framework is required to ensure ethical practices while protecting the rights of surrogate mothers, intended parents, and children in India.

4.) Research Questions

1. Whether the Surrogacy (Regulation) Act, 2021 effectively balances the protection of surrogate mothers with the reproductive rights and autonomy of intending parents in India?
2. To what extent does the prohibition of commercial surrogacy under Indian law address exploitation while simultaneously creating challenges relating to equality, accessibility, and reproductive justice?

5.) Research Methodology

The research methodology adopted for this study is **doctrinal and analytical in nature**. The research is primarily based on **secondary sources of data**, including statutes, judicial decisions, books, research articles, legal journals, government reports, and online legal databases relating to surrogacy laws in India. The study examines the provisions of the **Surrogacy (Regulation) Act, 2021** and the **Assisted Reproductive Technology (Regulation) Act, 2021** along with relevant constitutional provisions and landmark judicial pronouncements.

An analytical approach has been used to critically evaluate the ethical and legal issues surrounding surrogacy, including exploitation of surrogate mothers, reproductive autonomy, commercialization, and equality concerns. Comparative references to surrogacy laws in other countries have also been considered to understand different regulatory approaches and to suggest reforms for the Indian legal framework.

II.) Surrogacy Overview

The advancement of medical science and assisted reproductive technologies has significantly transformed the concept of parenthood in modern society. Among these developments, surrogacy has emerged as an important method for individuals and couples who are unable to conceive a child naturally. Surrogacy refers to an arrangement in which a woman carries and gives birth to

behalf of individual or become the parents after the child. This practice has provided hope to infertile single and others



a child on another couple, who intended the birth of This practice has provided hope to couples, individuals, seeking to

experience parenthood through alternative reproductive methods. In India, surrogacy gained prominence during the early 2000s due to the availability of advanced medical facilities at comparatively lower costs. The absence of strict regulations and the growth of fertility clinics made India a major destination for reproductive tourism, attracting both domestic and foreign intending parents. However, the rapid expansion of commercial surrogacy also raised several ethical, social, and legal concerns. Issues such as exploitation of economically vulnerable women, commercialization of motherhood, lack of protection for surrogate mothers, citizenship disputes involving children born through international surrogacy arrangements, and questions relating to reproductive autonomy became subjects of serious debate.

To regulate these concerns, the Government of India enacted the **Surrogacy (Regulation) Act, 2021** and the **Assisted Reproductive Technology (Regulation) Act, 2021**. These laws prohibit commercial surrogacy and permit only altruistic surrogacy under strict conditions. The legislation aims to prevent exploitation, regulate fertility clinics, and safeguard the rights of surrogate mothers and children born through surrogacy. Nevertheless, the laws have also attracted criticism for imposing restrictive eligibility conditions and limiting access to surrogacy for certain sections of society, including single individuals and LGBTQ+ persons. The issue of surrogacy therefore lies at the intersection of law, ethics, medicine, and human rights. It raises important questions regarding reproductive freedom, bodily autonomy, dignity of women, equality, and the role of the state in regulating private reproductive choices. In this context, the present study seeks to examine the legal framework governing surrogacy in India, analyze the ethical and legal challenges associated with the practice, and critically evaluate whether the current regulatory system adequately balances the protection of women with the reproductive rights of intending parents.

1.) Types of Surrogacy

1. Traditional Surrogacy

In traditional surrogacy, the surrogate mother's own egg is used for fertilization, which means she is genetically related to the child. Fertilization usually takes place through artificial insemination using the sperm of the intended father or a donor.

2. Gestational Surrogacy

In gestational surrogacy, the embryo is created through In Vitro Fertilization (IVF) using the egg and sperm of the intended parents or donors and is then implanted into the surrogate mother. In this type, the surrogate mother has no genetic connection with the child.

Types Based on Compensation

3. Commercial Surrogacy

Commercial surrogacy involves payment or financial compensation to the surrogate mother beyond medical expenses and insurance coverage. The surrogate receives monetary benefits for carrying the child. This form of surrogacy is prohibited in India under the Surrogacy (Regulation) Act, 2021.

4. Altruistic Surrogacy

Altruistic surrogacy involves no financial compensation to the surrogate mother except for medical expenses and insurance coverage. The surrogate voluntarily carries the child out of compassion or emotional support for the intending parents. This is the only form of surrogacy permitted in India.

2.) Assisted Reproductive Technology.

It refers to medical techniques and procedures used to help individuals or couples achieve pregnancy when natural conception is difficult or impossible. These technologies involve the handling of human eggs, sperm, or embryos outside the human body to assist reproduction.

Examples of ART include:

- In Vitro Fertilization (IVF)
- Artificial insemination
- Embryo transfer
- Egg or sperm donation
- Surrogacy arrangements

In India, ART is regulated under the Assisted Reproductive Technology (Regulation) Act, 2021, which aims to regulate fertility clinics and protect the rights of patients, donors, and children born through these procedures.

3.) Types of Assisted Reproductive Technology (ART)

1. In Vitro Fertilization (IVF)

In this method, the egg and sperm are fertilized outside the human body in a laboratory. After fertilization, the embryo is transferred into the woman's uterus for pregnancy.

2. Artificial Insemination (AI)

Artificial insemination involves directly inserting sperm into a woman's reproductive tract to facilitate fertilization. It is commonly used when there are fertility issues related to sperm delivery.

3. Intracytoplasmic Sperm Injection (ICSI)

In this technique, a single sperm is directly injected into an egg to assist fertilization. It is often used in cases of male infertility.

4. Gamete Intrafallopian Transfer (GIFT) In GIFT, eggs and sperm are placed directly into the woman's fallopian tube so that fertilization occurs naturally inside the body.

5. Zygote Intrafallopian Transfer (ZIFT)

In this procedure, fertilization occurs in a laboratory, and the resulting zygote is transferred into the fallopian tube.

6. Egg and Sperm Donation

Donor eggs or sperm are used when one or both partners are unable to produce healthy reproductive cells.

7. Surrogacy

Surrogacy is an arrangement in which a woman carries and gives birth to a child for another person or couple who become the intended parents after birth.

8. Cryopreservation

This technique involves freezing and storing eggs, sperm, or embryos for future use in reproductive procedures.

III.) Historical Development of Surrogacy in India

The development of surrogacy in India has undergone significant transformation from an unregulated commercial practice to a strictly regulated legal framework. The evolution of surrogacy laws in India reflects the changing concerns relating to reproductive rights, exploitation of women, medical ethics, and protection of children born through surrogacy.

Early Development of Surrogacy in India

India witnessed the birth of its first surrogate child in 1994. With the advancement of Assisted Reproductive Technology (ART), surrogacy gradually became a popular option for infertile couples. During the early 2000s, India emerged as a global center for surrogacy due to affordable medical treatment, skilled fertility specialists, and the absence of strict legal regulations.

Legal Recognition of Commercial Surrogacy (2002)

In 2002, commercial surrogacy was legally permitted in India. This led to rapid growth of fertility clinics and reproductive tourism, attracting foreign couples seeking low-cost surrogacy services. However, the lack of proper regulation resulted in concerns regarding exploitation of poor women, unethical medical practices, and inadequate protection for surrogate mothers.³

ICMR Guidelines, 2005

To regulate Assisted Reproductive Technology clinics, the Indian Council of Medical Research (ICMR) issued the National Guidelines for Accreditation, Supervision and Regulation of ART Clinics in India, 2005. These guidelines attempted to establish standards for fertility clinics and surrogacy arrangements. However, the guidelines were not legally binding, which limited their effectiveness in preventing misuse and exploitation.⁴

Growing Concerns and Judicial Intervention

As commercial surrogacy expanded, several legal disputes arose regarding citizenship, custody, and parentage of children born through international surrogacy arrangements. Cases such as Baby Manji Yamada v. Union of India (2008) and Jan Balaz v. Anand Municipality (2009) highlighted the absence of a clear legal framework governing surrogacy in India. These cases emphasized the urgent need for comprehensive legislation.⁵

Surrogacy (Regulation) Act, 2021

After several legislative attempts, the Parliament enacted the Surrogacy (Regulation) Act, 2021 and the Assisted Reproductive Technology (Regulation) Act, 2021. These laws prohibit commercial surrogacy and permit only altruistic surrogacy under specific conditions. The Acts also establish National and State Boards for supervision and regulation of surrogacy practices and fertility clinics.⁶

Thus, the historical development of surrogacy in India demonstrates a transition from an unregulated commercial industry to a regulated legal framework aimed at balancing reproductive rights with ethical and social concerns.

³ [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(12\)61933-3/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(12)61933-3/fulltext)

⁴ <https://prsindia.org/billtrack/prs-products/issues-for-consideration>

⁵ <https://blog.ipleaders.in/commercial-surrogacy-and-its-impact-on-a-surrogate/>

⁶ <https://indiankanoon.org/doc/28139915/>

IV.) Legal Framework Governing Surrogacy in India

The legal framework governing surrogacy in India has evolved significantly over the years. Initially, surrogacy operated in a largely unregulated environment, which resulted in the rapid growth of commercial surrogacy and reproductive tourism. Due to increasing concerns regarding exploitation of women, commercialization of reproduction, child trafficking, and disputes over parentage and citizenship, the Government of India introduced strict legislation to regulate surrogacy practices. Presently, surrogacy in India is primarily governed by the **Surrogacy (Regulation) Act, 2021** and the **Assisted Reproductive Technology (Regulation) Act, 2021**.

1. Indian Council of Medical Research (ICMR) Guidelines, 2005

The first significant attempt to regulate surrogacy and assisted reproductive technology in India was made through the **National Guidelines for Accreditation, Supervision and Regulation of ART Clinics in India, 2005**, issued by the Indian Council of Medical Research (ICMR).

These guidelines aimed to regulate fertility clinics and establish ethical standards for Assisted Reproductive Technology (ART) procedures. The guidelines recognized surrogacy arrangements and laid down conditions regarding consent, confidentiality, and responsibilities of parties involved. However, these guidelines were not legally binding, which limited their effectiveness. Commercial surrogacy continued to expand rapidly in India.⁶

Important Features

- Regulation of ART clinics
- Recognition of surrogacy agreements
- Requirement of informed consent
- Protection of confidentiality of donors and surrogate mothers

⁶ <https://www.barandbench.com/columns/assisted-reproductive-technology-act-a-timely-legislation-for-atimeless-problem>

2. Legalization of Commercial Surrogacy (2002–2015 Phase)

Although no specific legislation existed, commercial surrogacy was effectively permitted in India after 2002. India became a global destination for reproductive tourism because surrogacy procedures were comparatively inexpensive and poorly regulated.⁷

During this period, several legal controversies emerged concerning exploitation of women, trafficking, citizenship disputes, and custody issues involving foreign couples. This phase highlighted the urgent need for statutory regulation.

3. Assisted Reproductive Technology (Regulation) Bill, 2010

A revised version of the ART Bill was introduced in 2010. The Bill sought to strengthen regulation of fertility clinics and address ethical concerns relating to surrogacy.

Major Provisions

- Registration of ART clinics
- Regulation of sperm and egg donation
- Protection of surrogate mothers
- Establishment of National Advisory Boards

Despite revisions, the Bill was not passed.⁸

4. Ban on Foreign Commercial Surrogacy (2015)

In 2015, the Government of India prohibited foreign nationals from commissioning surrogacy in India. This decision was taken due to increasing controversies surrounding reproductive tourism and exploitation of Indian surrogate mothers.⁹

The Ministry of Home Affairs issued notifications restricting foreign couples from accessing surrogacy services in India.

⁷ <https://timesofindia.indiatimes.com/readersblog/legal-writing/surrogacy-provisions-in-india-35429/>

⁸ <https://ylcube.com/c/blogs/overview-assisted-reproductive-technology-regulation-bill-2010/>

⁹ <https://rsisinternational.org/journals/ijrias/articles/transnational-surrogacy-and-the-legal-vacuum-rethinkingindian-regulation-in-a-globalized-reproductive-market/>

5. Surrogacy (Regulation) Bill, 2019

The **Surrogacy (Regulation) Bill, 2019** introduced modifications to the earlier Bill after recommendations by parliamentary committees.¹⁰

Important Changes

- Inclusion of widows and divorced women under certain conditions
- Stricter penalties for commercial surrogacy
- Regulation of surrogacy clinics

The Bill was later revised and enacted in 2021.

6. Assisted Reproductive Technology (Regulation) Act, 2021

The **Assisted Reproductive Technology (Regulation) Act, 2021** was enacted to regulate ART clinics and reproductive procedures such as IVF, embryo transfer, and gamete donation.

Major Provisions

- Mandatory registration of ART clinics and banks
- Regulation of sperm and egg donation
- Protection of rights of donors and patients
- Maintenance of records and confidentiality
- Establishment of National and State ART Boards

The Act aims to ensure ethical standards and accountability in reproductive medicine.¹¹

7. Surrogacy (Regulation) Act, 2021

The **Surrogacy (Regulation) Act, 2021** became the primary legislation governing surrogacy in India.

Objectives

- Prohibit commercial surrogacy
- Permit only altruistic surrogacy
- Prevent exploitation of women
- Protect children born through surrogacy

¹⁰ <https://indianexpress.com/article/explained/fine-tuning-the-surrogacy-bill-6261564/>

¹¹ <https://www.lawgratis.com/blog-detail/the-assisted-reproductive-technology-regulation-act-2021>

- Regulate surrogacy clinics



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8. Surrogacy (Regulation) Rules, 2022

The Government framed the **Surrogacy (Regulation) Rules, 2022** to implement the provisions of the 2021 Act.¹⁴

Important Features

- **Gamete Source Flexibility:** The Central government has modified the Surrogacy (Regulation) Rules, 2022 and notified that both gametes need not come from a married couple in case they are certified as suffering from a medical condition.
- **Couple Requirement:** As per the latest amendment, the couple can have a child born through surrogacy but must have at least one gamete from the intending couple.
- **Single Women Requirement:** Single Women (widow or divorcee) undergoing surrogacy must use self-eggs and donor sperm to avail of surrogacy procedures.

V.) Ethical Issues in Surrogacy

¹³ <https://drritabakshi.in/the-surrogacy-regulation-act-2021-a-new-era-for-surrogacy-in-india/> ¹⁴ <https://pwonlyias.com/current-affairs/surrogacy-rules-2022/>

Surrogacy has become one of the most debated issues in the field of reproductive technology because it involves complex questions relating to morality, human dignity, women's rights, reproductive autonomy, and commercialization of childbirth. While surrogacy offers hope to infertile couples and individuals who wish to become parents, it also raises several ethical concerns regarding exploitation, commodification of women's bodies, emotional trauma, and rights of children born through surrogacy arrangements. These ethical concerns became particularly significant in India during the period when commercial surrogacy expanded rapidly without strict regulation.

1. Exploitation of Women

One of the most serious ethical concerns in surrogacy is the exploitation of economically vulnerable women. In many cases, women from poor socio-economic backgrounds become surrogate mothers due to financial pressure rather than genuine free choice. Critics argue that poverty forces women into surrogacy arrangements where their bodies become tools for financial survival.

In India, during the period of commercial surrogacy, many women reportedly received inadequate compensation and were subjected to poor living and medical conditions. Feminist scholars have argued that surrogacy contracts often reflect unequal bargaining power between wealthy intending parents and economically vulnerable surrogate mothers.¹²

Recent investigations into illegal surrogacy rackets in India have also revealed cases where vulnerable women were exploited and children were trafficked under the guise of surrogacy arrangements.¹³

2. Commercialization and Commodification of Reproduction

Commercial surrogacy raises ethical concerns because it transforms pregnancy and childbirth into commercial transactions. Critics argue that commercialization reduces motherhood and reproduction to market commodities that can be bought and sold.

Some scholars believe that treating pregnancy as a paid service undermines the dignity of women and children. Opponents of commercial surrogacy argue that it creates a "baby market" where children become products and women's reproductive capacities are commodified.¹⁷

This concern was one of the major reasons why India prohibited commercial surrogacy under the Surrogacy (Regulation) Act, 2021.

¹² <https://link.springer.com/article/10.1186/1747-5341-8-10>

¹³ https://timesofindia.indiatimes.com/city/hyderabad/ed-raids-clinics-seizes-evidence-in-illegal-surrogacyracket/articleshow/124167642.cms?utm_source=chatgpt.com ¹⁷ <https://link.springer.com/article/10.1007/s11019-020-09976-x>

3. Reproductive Autonomy and Women's Choice

Another major ethical debate concerns reproductive autonomy. Supporters of surrogacy argue that women should have the freedom to make decisions regarding their own bodies, including the choice to become surrogate mothers.

From a liberal feminist perspective, surrogacy can be viewed as an exercise of bodily autonomy and reproductive freedom. However, critics argue that true consent may not exist where poverty and social inequality influence decisions.¹⁴

This creates a conflict between protecting women from exploitation and respecting their individual autonomy.

4. Emotional and Psychological Impact on Surrogate Mothers

Pregnancy often creates a strong emotional bond between the surrogate mother and the child. After childbirth, separation from the child may cause emotional trauma, psychological stress, and feelings of loss for the surrogate mother.

There are also concerns regarding emotional pressure from intended parents or clinics during pregnancy. Surrogate mothers may have limited control over medical decisions affecting their bodies during the surrogacy process.¹⁵

5. Ethical Concerns Regarding the Child

Surrogacy also raises ethical questions concerning the rights and welfare of children born through surrogacy arrangements. Issues may arise regarding:

- identity of the child
- citizenship and nationality
- parentage disputes
- abandonment of children born with disabilities

Several international surrogacy cases in India created controversies regarding the legal status and citizenship of children born through cross-border surrogacy arrangements.

Critics argue that commercialization of surrogacy may result in children being treated as products rather than human beings with rights and dignity.¹⁶

¹⁴ <https://journals.sagepub.com/doi/10.1177/097185241101600101>

¹⁵ <https://peh-med.biomedcentral.com/articles/10.1186/1747-5341-8-10>

¹⁶ <https://link.springer.com/article/10.1007/s11019-020-09976-x>



VI.) Legal Issues in Surrogacy

Surrogacy raises several complex legal issues relating to parentage, custody, citizenship, reproductive rights, contractual obligations, and protection of surrogate mothers and children. In India, the growth of commercial surrogacy before the enactment of the **Surrogacy (Regulation) Act, 2021** created numerous legal disputes and exposed gaps in the legal framework. Even after the enactment of regulatory laws, several constitutional and legal challenges continue to exist.

1. Parentage and Custody Disputes

One of the major legal issues in surrogacy is determining the legal parentage of the child. Disputes may arise regarding who should be recognized as the legal parents of the child — the surrogate mother or the intending parents.

In cases where the surrogate mother changes her decision after childbirth or where intended parents refuse to accept the child, legal conflicts regarding custody and guardianship may occur. The issue became significant in cross-border surrogacy arrangements where foreign intended parents faced legal complications regarding recognition of parentage in their home countries.

In the case law of **Baby Manji Yamada v. Union of India (2008)**

This case involved a Japanese couple who entered into a surrogacy arrangement in India. Before the child was born, the couple divorced, creating disputes regarding custody and guardianship of the child. The Supreme Court recognized surrogacy arrangements and emphasized the need for proper legislation governing surrogacy in India.¹⁷

¹⁷ <https://thelegalquorum.com/case-summary-baby-manji-yamada-v-union-of-india-2008-13-scc-518/>

2. Citizenship and Nationality Issues

International surrogacy arrangements created major legal complications regarding citizenship and nationality of children born through surrogacy. Different countries follow different nationality laws, which often created situations where children born through surrogacy became stateless or faced delays in obtaining citizenship.

In the case law of Jan Balaz v. Anand Municipality (2009)

In this case, a German couple had twins through an Indian surrogate mother. The dispute concerned whether the children were entitled to Indian citizenship. The case exposed legal uncertainties regarding nationality and citizenship in international surrogacy arrangements. The court highlighted the absence of a clear legal framework dealing with cross-border surrogacy.¹⁸

3. Enforceability of Surrogacy Contracts

Surrogacy arrangements generally involve agreements between intended parents and surrogate mothers. Legal questions arise regarding the enforceability of these contracts.

Issues include:

- validity of consent
- compensation agreements
- medical decision-making authority
- obligations of intended parents
- rights of surrogate mothers

Critics argue that surrogacy contracts may violate public policy if they commercialize reproduction or exploit women. Before the enactment of statutory laws, India lacked clear rules regarding enforceability of surrogacy agreements.¹⁹

4. Exploitation and Protection of Surrogate Mothers

Legal concerns exist regarding protection of surrogate mothers from exploitation, coercion, and unsafe medical practices.

Before the Surrogacy (Regulation) Act, many surrogate mothers reportedly lacked:

- adequate healthcare
- insurance coverage
- informed consent
- legal representation
- post-pregnancy medical support

¹⁸ <https://indiankanoon.org/doc/1239685/>

¹⁹ <https://meritbeacon.com/legal-implications-of-surrogacy-contracts/>

The current law attempts to address these issues through medical certification, insurance requirements, and regulation of clinics. However, concerns remain regarding implementation and monitoring.²⁴

5. Constitutional Issues and Reproductive Rights

The Surrogacy (Regulation) Act, 2021 has raised constitutional debates regarding reproductive autonomy and equality.

Article 21 – Right to Reproductive Autonomy

The right to reproductive choice is considered part of the Right to Life and Personal Liberty under Article 21 of the Constitution. Critics argue that strict restrictions under the law interfere with reproductive freedom.

Article 14 – Right to Equality

The exclusion of unmarried couples, live-in partners, single individuals, and LGBTQ+ persons from accessing surrogacy has raised concerns regarding discrimination and violation of equality rights under Article 14.

Critics argue that the law creates unjustified classifications regarding who can become parents through surrogacy.²⁵

VII.) Comparative Perspective on Surrogacy Laws

Surrogacy laws differ significantly across countries depending on their ethical, social, religious, and legal approaches to reproduction. While some countries completely prohibit surrogacy, others regulate it through strict conditions, and a few permit commercial surrogacy under regulated frameworks. A comparative analysis helps in understanding how India's legal position aligns with global practices.

1. India

India follows a **restrictive altruistic surrogacy model** under the **Surrogacy (Regulation) Act, 2021**.

Key Features

- Commercial surrogacy is completely prohibited.
- Only altruistic surrogacy is permitted.
- Restricted to legally married heterosexual Indian couples.
- Single persons, live-in partners, and LGBTQ+ couples are excluded.
- Surrogate mother must be an ever-married woman with a child.²⁶

²⁴ <https://link.springer.com/article/10.1186/1747-5341-8-10> ²⁵ <https://www.livelaw.in/articles/supreme-court-and-commercial-surrogacy-surrogacy-regulation-act-259962> ²⁶ <https://indiankanoon.org/doc/28139915/>

2. United Kingdom

The United Kingdom allows **altruistic surrogacy only**, similar to India, but with more liberal eligibility rules.

Key Features

- Commercial surrogacy is illegal.
- Surrogates can only receive reasonable expenses.
- Surrogacy agreements are not legally enforceable in advance.
- Legal parenthood must be transferred through a parental order after birth. □
Inclusive approach allows single parents and same-sex couples. ²⁰

3. United States of America

The United States follows a **liberal and state-specific approach**. Surrogacy laws vary from state to state.

Key Features

- Commercial surrogacy is legal in many states (e.g., California).
- Enforceable surrogacy contracts are recognized.
- Strong legal protection for intended parents and surrogate mothers. □ High level of professional regulation.
- Expensive but legally secure system. ²¹

4. Canada

Canada permits **only altruistic surrogacy** under the Assisted Human Reproduction Act.

Key Features

- Commercial surrogacy is strictly prohibited.
- Only reasonable expenses can be reimbursed.
- Surrogacy contracts are legal but must comply with federal law. □ Intended parents must obtain legal parentage orders after birth. ²⁹

5. Australia

²⁰ <https://www.gov.uk/legal-rights-when-using-surrogates-and-donors>

²¹ <https://www.americansurrogacy.com/surrogacy/surrogacy-laws-in-the-united-states> ²⁹
<https://laws-lois.justice.gc.ca/eng/acts/A-13.4/>

Australia allows **altruistic surrogacy with strict state-level regulation.**

Key Features

- Commercial surrogacy is illegal.
- Regulations vary across states.
- Surrogacy agreements are not enforceable.
- Eligibility includes married, de facto, and sometimes single individuals depending on state law.²²

Country	Type of Surrogacy Allowed	Commercial Surrogacy	Legal Status of Agreements	Eligibility Rules	Key Features
India	Altruistic surrogacy only	✗ Completely prohibited	Partially regulated under law	Only legally married heterosexual couples; excludes single, live-in, LGBTQ+	Strict and restrictive model under Surrogacy (Regulation) Act, 2021
United Kingdom	Altruistic surrogacy only	✗ Illegal	Not legally enforceable in advance	Allows single and same-sex couples	Surrogates receive only reasonable expenses; parental order required after birth
United States of America	Both altruistic and commercial (statespecific)	✗ Legal in many states (e.g., California)	Fully enforceable contracts	Highly inclusive (varies by state)	Strong legal protection, expensive but legally secure system
Canada	Altruistic surrogacy only	✗ Strictly prohibited	Legally recognized with conditions	Inclusive but regulated	Only reasonable expenses allowed; parentage order required after birth
Australia	Altruistic surrogacy only	✗ Illegal	Not enforceable	Married, de facto, and some single parents (statebased variation)	Regulation varies across states; strict legal supervision

²² <https://www.businessage.com/post/what-is-altruistic-surrogacy-in-australia>

VIII.) Landmark Judicial Decisions Related to Surrogacy

Surrogacy in India has largely developed through judicial interpretation in the absence of a comprehensive statutory framework until 2021. The courts have played a crucial role in addressing issues relating to parentage, citizenship, reproductive rights, and the legal status of surrogacy agreements. The following are some of the most important landmark judgments in this area.

1. Baby Manji Yamada v. Union of India (2008)

Facts of the Case

A Japanese couple entered into a surrogacy agreement in India. Before the birth of the child, the couple divorced, creating uncertainty regarding the custody and nationality of the child born through the surrogate mother. The biological father wished to take custody, but legal complications arose due to lack of clear legislation.

Issues

- Legal status of the surrogate child
- Custody rights after divorce of intended parents
- Citizenship of the child
- Validity of surrogacy arrangements in India

Judgment

The Supreme Court recognized surrogacy as a legitimate arrangement and highlighted the urgent need for legislation to regulate surrogacy in India. The Court allowed the child to travel with the biological father and emphasized that the welfare of the child is of paramount importance.²³

2. Jan Balaz v. Anand Municipality (2009)

Facts of the Case

A German couple commissioned surrogacy in India and twins were born through an Indian surrogate mother. However, Germany refused to recognize the children as citizens, and India also faced legal confusion regarding their nationality.

Issues

- Citizenship of children born through surrogacy
- Cross-border surrogacy legality
- Legal parentage of surrogate-born children

²³ <https://thelegalquorum.com/case-summary-baby-manji-yamada-v-union-of-india-2008-13-scc-518/>

Judgment

The Gujarat High Court and later the Supreme Court dealt with the issue and highlighted the absence of a clear legal framework governing international surrogacy. The Court suggested that legislative intervention was necessary to resolve such conflicts.²⁴

3. Suchita Srivastava v. Chandigarh Administration (2009)

Facts of the Case

The case involved a woman with mental disability who was denied the right to continue her pregnancy. Although not directly a surrogacy case, it dealt with reproductive rights.

Issues

- Whether reproductive choices are part of personal liberty
- State intervention in reproductive autonomy

Judgment

The Supreme Court held that reproductive autonomy is a fundamental right under Article 21 of the Constitution. A woman has the right to make decisions regarding her reproductive choices, including whether or not to bear a child.²⁵

IX.) Critical Analysis of the Existing Legal Framework on Surrogacy in India

The existing legal framework governing surrogacy in India, primarily the **Surrogacy (Regulation) Act, 2021** and the **Assisted Reproductive Technology (Regulation) Act, 2021**, represents a significant step towards regulating reproductive technologies and preventing the exploitation of surrogate mothers. The laws aim to eliminate commercial surrogacy, ensure ethical medical practices, and safeguard the interests of children born through surrogacy. However, despite these progressive intentions, the framework has been widely debated and criticized on several legal, ethical, and constitutional grounds.

One of the most significant criticisms of the current framework is the **complete prohibition of commercial surrogacy**. While this step was taken to prevent the commodification of women's bodies and exploitation of economically vulnerable women, it may unintentionally push

²⁴ <https://www.casemine.com/judgement/in/56b48efa607dba348fff6a16>

²⁵ <https://indiankanoon.org/doc/1500783/>

surrogacy practices underground. This could lead to the rise of unregulated or illegal surrogacy arrangements, thereby increasing the risk of exploitation rather than eliminating it. A regulated commercial system with strict safeguards, as seen in some jurisdictions like the United States, could arguably provide better protection and transparency.

Another major concern is the **restrictive eligibility criteria** under the Act. Surrogacy is limited only to legally married heterosexual Indian couples, excluding single individuals, live-in partners, and LGBTQ+ persons. This raises serious questions under **Article 14 of the Constitution**, which guarantees equality before law. Critics argue that the law creates an unjust classification of who is allowed to become a parent, thereby denying reproductive rights to several sections of society. Similarly, this restriction may conflict with the broader interpretation of **Article 21**, which includes reproductive autonomy and personal liberty.

The requirement that a surrogate mother must be an “ever-married woman with at least one child” also raises concerns. While intended to ensure emotional maturity and reduce risks, it may unnecessarily limit the autonomy of women who may voluntarily wish to become surrogates. Additionally, the condition that a woman can act as a surrogate only once in her lifetime may restrict her economic and personal choices.

Furthermore, the framework raises issues related to **reproductive autonomy and bodily integrity**. Although the law seeks to protect women from exploitation, it simultaneously limits their freedom to make informed choices regarding their own bodies. The balance between protection and autonomy remains a key constitutional dilemma in surrogacy regulation.

Another challenge is the **implementation and enforcement gap**. Despite strict provisions, reports of illegal fertility clinics and surrogacy rackets continue to surface. This indicates that regulatory mechanisms and monitoring systems are still weak. Without effective enforcement, the objectives of the Act may not be fully achieved.

On a positive note, the legal framework has strengthened protections for surrogate mothers by mandating insurance coverage, medical screening, and regulation of clinics. It also ensures that children born through surrogacy are legally protected and not left in situations of abandonment or statelessness.

In conclusion, while the current legal framework is a strong attempt to regulate surrogacy ethically and prevent exploitation, it is not without limitations. A more balanced approach is required—one that ensures **protection of surrogate mothers, respects reproductive autonomy, promotes inclusivity, and strengthens regulatory enforcement**. The future of surrogacy law in India lies in achieving harmony between ethical safeguards and fundamental constitutional rights.

X.) Suggestions and Recommendations

The existing surrogacy framework in India, though well-intentioned, requires certain reforms to make it more balanced, inclusive, and effective. First, India may consider introducing a regulated commercial surrogacy model instead of a complete ban. A tightly monitored system with strict safeguards, transparent contracts, and government oversight could help reduce illegal practices and protect surrogate mothers more effectively.

Second, the eligibility criteria under the Surrogacy (Regulation) Act, 2021 should be expanded to include single parents, live-in partners, and LGBTQ+ individuals. This would ensure greater compliance with the constitutional principles of equality under Article 14 and reproductive autonomy under Article 21.

Third, stronger monitoring and enforcement mechanisms should be established to prevent illegal surrogacy rackets and unethical practices in fertility clinics. Regular inspections, licensing audits, and strict penalties for violations are necessary to ensure compliance with the law.

Fourth, surrogate mothers should be provided with comprehensive protection measures, including adequate financial security, post-delivery medical care, psychological counseling, and legal aid. Even in altruistic surrogacy, the physical and emotional burden on the surrogate must be acknowledged and supported.

Fifth, clear and uniform rules regarding parentage, citizenship, and custody in cross-border surrogacy cases should be developed to avoid legal uncertainty and statelessness of children born through surrogacy.

Finally, public awareness programs should be promoted to educate people about ethical surrogacy practices, legal rights, and responsibilities of all parties involved.

XI.) Conclusion

Surrogacy represents a remarkable advancement in reproductive technology, offering hope to individuals and couples who are unable to conceive naturally. However, it also raises complex ethical, legal, and constitutional challenges involving exploitation, commercialization, reproductive rights, and social justice.

The Surrogacy (Regulation) Act, 2021 and the Assisted Reproductive Technology (Regulation) Act, 2021 mark a significant step towards regulating surrogacy in India. These laws aim to prevent exploitation of women and protect the dignity of motherhood by prohibiting commercial surrogacy and allowing only altruistic arrangements.

However, the current legal framework is not without limitations. Its restrictive eligibility conditions, potential exclusion of certain social groups, and enforcement challenges highlight the need for further reform. A balanced legal approach is essential—one that protects surrogate

mothers from exploitation while respecting individual reproductive autonomy and ensuring equality before law.

Ultimately, the future of surrogacy law in India should focus on achieving a harmonious balance between ethical regulation, constitutional rights, and social inclusivity, ensuring that surrogacy remains both humane and legally sound.

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