



REGULATION OF SURROGACY IN INDIA: A CRITICAL ANALYSIS OF THE SURROGACY (REGULATION) ACT, 2021

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ABSTRACT

The Surrogacy (Regulation) Act, 2021, is India's first dedicated legislation for the governance of surrogacy and assistive reproductive technology. The legislation ensures an absolute ban on commercial surrogacy and allows altruistic surrogacy in certain circumstances. Due to this, it has generated significant criticism for its restrictive and complex eligibility conditions. This article has been made through an analysis of the regulation by analysing its key provisions and its historical development. It critically analyses the merits and concerns regarding the legislation through the perspective of constitutional jurisprudence and lastly suggests some reforms balancing ethical protection and constitutional values.

Keywords: Surrogacy, Commercial Surrogacy, Reproductive Autonomy, Constitutional Morality, Assisted Reproductive Technology.

INTRODUCTION

Being a parent is often seen as an important aspect of a person's social life, but many individuals do not have the privilege because of growing infertility. The progress in reproductive assistance technologies presents a fix for infertility troubles. ART comprises different techniques, namely IVF, ICSI, refrigerated preservation, and surrogacy. This overview article particularly talks about the surrogacy method.

Surrogacy is an arrangement where a woman agrees to carry a pregnancy for another person or couple. India has become a major destination for surrogacy in the world due to the lack of regulation for the matter of surrogacy, the availability of medical experts, low medical costs,

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and lenient regulatory mechanisms.¹ But it leads to the fast commercialisation of surrogacy, exploitation of economically weak women, and no protection for surrogate mothers. In the midst of all these concerns, the government of India passed the Surrogacy (Regulation) Act, 2021,² to ban commercial surrogacy.

The act aims to prevent the exploitation of women, so it made a blanket ban on commercial surrogacy and permits altruistic surrogacy under a few circumstances, which leads to concerns regarding limitations for reproductive autonomy and complex eligibility conditions.³

MEANING OF SURROGACY

According to the WHO, 17.5% of the global adult population faces the problem of infertility during their whole lifetime, and surrogacy has emerged as a hopeful solution for people who are not able to reproduce naturally.⁴ In surrogacy, there are two parties. First, a surrogate mother, and second, the intending couple. Surrogacy is broadly classified into two categories:⁵

Traditional Surrogacy: It is a method in which the surrogate mother uses her own egg for the birth of the child. It is an outdated method that genetically links the child to the surrogate mother. It also leads to legal complexities, because of which gestational surrogacy is widely used as an alternative.

Gestational Surrogacy: It is a method in which the embryo of the intending couple is implanted in the uterus of the surrogate through the IVF process. It is a widely accepted method because of its fewer legal and emotional complexities and is widely recognised by the states.

It is further divided into commercial and altruistic surrogacy.⁶

Commercial Surrogacy: In this form of surrogacy, a surrogate trades her reproductive autonomy for financial profit. It involves monetary compensation beyond the required medical

¹ Priyanka Sharma, 'Womb for Rent: India's Commercial Surrogacy Industry', Harvard International Review (2020) <https://hir.harvard.edu/womb-for-rent-indias-commercial-surrogacy/> accessed 20 May 2026.

² Surrogacy (Regulation) Act 2021.

³ PRS Legislative Research, 'The Surrogacy (Regulation) Bill, 2019' <https://prsindia.org/billtrack/the-surrogacy-regulation-bill-2019> accessed 18 May 2026.

⁴ World Health Organization, '1 in 6 People Globally Affected by Infertility' (4 April 2023) <https://www.who.int/news/item/04-04-2023-1-in-6-people-globally-affected-by-infertility> accessed 18 May 2026.

⁵ Indian Council of Medical Research, National Guidelines for Accreditation, Supervision and Regulation of ART Clinics in India (2005).

⁶ Surrogacy (Regulation) Act 2021.

expense and insurance. This leads to an increase in the exploitation of women by the middlemen who connect the intended couple to the surrogate.

Altruistic Surrogacy: In this type of surrogacy, only the medical expenses and insurance have been covered by the intended couple for the surrogate mother. This form of surrogacy is also recognised in the Surrogacy (Regulation) Act, 2021.

EVOLUTION OF SURROGACY LAWS IN INDIA

The commercialisation of reproductive labour transformed surrogacy from a medical arrangement into a profit-driven industry, raising serious ethical and human rights concerns. Before any legal regulation for commercial surrogacy, India had emerged as one of the biggest centres for global commercial surrogacy arrangements. It had become one of the major economic activities in our healthcare sector. During its peak years, our healthcare industry was generating approximately USD 400 million from these arrangements.⁷ In states like Maharashtra and Gujarat, there were expansions of fertility clinics, where surrogacy services cost significantly less than in Western countries.

The first major attempt to regulate this came through the Indian Council of Medical Research (ICMR) guidelines in 2005.⁸ These guidelines tried to establish standards and address issues like consent, privacy and responsibilities of the parties, but these guidelines were not binding in nature; they were merely advisory, so they did not affect the commercial culture of surrogacy.

The issue of commercial surrogacy came under judicial oversight in the cases of *Baby Manji Yamada v. Union of India*⁹ and *Jan Balaz v. Anand Municipality*.¹⁰ In both of the cases, issues arose regarding the citizenship of the surrogate children and complex cross-border legal disputes, respectively.

⁷ Arindam Nandy and others, 'Commercial Surrogacy in India', *The Lancet* (2012) 380(9855) 1633.

⁸ Indian Council of Medical Research, *National Guidelines for Accreditation, Supervision and Regulation of ART Clinics in India* (2005).

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

¹⁰ *Jan Balaz v Anand Municipality*, AIR 2010 Guj 21.

As the industry of commercial surrogacy expanded in our healthcare system, it led to the exploitation of vulnerable women. Scholars and reports suggest concerns regarding the lack of bargaining power, inadequate healthcare and inaccessibility of insurance for the surrogate.¹¹

As a result, the GOI introduced the Assisted Reproductive Technology (Regulation) Bill, but it could not become an act. Subsequently, the Surrogacy (Regulation) Bill, 2016, was introduced and went under several modifications, reintroduced in 2019, and accepted in 2021. The parliament also enacted the Assisted Reproductive Technology (Regulation) Act, 2021,¹² to regulate fertility clinics and ART procedures. These frameworks are considered to be some of the first pieces of legislation that are designed to deal with surrogacy.

SURROGACY (REGULATION) ACT, 2021¹³

Objectives of the Act: The main objective of the regulation is to stop the exploitation of economically vulnerable women by the implementation of a complete ban on commercial surrogacy. This act promotes altruistic surrogacy under strict supervision by the government. By this act, the government sought to protect the health, dignity, and rights of the surrogate and also safeguard the legal status and welfare of the child. This act also regulates the surrogacy clinics as per the regulations of the state and central authorities.¹⁴

Eligibility: This regulation follows very stringent eligibility conditions for the intending couples and the surrogate mother.¹⁵ The intending couple must be a heterosexual married couple and possess the certificate of essentiality and eligibility issued by the authority. They also need proof of infertility, which will prove their inability to conceive a child. In addition to married couples, there are certain categories of women who can choose surrogacy to conceive a child, such as widows or divorced women. There is also an age bracket for the intending couple; for men, it is between 26 and 55 years, and for women, it is between 23 and 50 years. A woman can become a surrogate mother only once in her lifetime by fulfilling various conditions, such as being a married woman with at least one biological child, and must fall within the age bracket. The authorities also demand a physiological fitness certificate before the surrogacy procedure.

¹¹ Sharmila Rudrappa, *Discounted Life: The Price of Global Surrogacy in India* (NYU Press 2015).

¹² Assisted Reproductive Technology (Regulation) Act 2021.

¹³ Surrogacy (Regulation) Act 2021.

¹⁴ Surrogacy (Regulation) Act 2021, Statement of Objects and Reasons.

¹⁵ Surrogacy (Regulation) Act 2021, s. 4(ii).

Regulatory Authority: To ensure proper regulatory oversight, the legislation established regulatory bodies at 4 different levels.

National Assisted Reproductive Technology and Surrogacy Board (NART Board): This is an apex body at the central level that advises the central government in matters of surrogacy, lays down a code of conduct and practices, and supervises the state surrogacy boards.

State Assisted Reproductive Technology and Surrogacy Boards (SART Board): These boards operate at the state/UT level and monitor the implementation of the act and review the work of the local authorities.

Appropriate Authorities: These are the frontline administrative and enforcement bodies, appointed at both the state and the central levels. Their work is to regulate the registration of surrogacy clinics, checking the quality and facility standards of the clinics, and investigating complaints under the act.

District Medical Boards: These local medical bodies play a crucial role in verifying the eligibility of the intending parents. They issue the "Certificate of Essentiality" and the 'Certificate of Eligibility'.

Offences and Penalties: There are some activities which are prohibited under this act, such as exploitation of women, commercial surrogacy, trade of embryos, abandonment of a child, and operation of an unregistered surrogacy clinic. All these offences are punishable under the act, and penalties include imprisonment and hefty fines.

CRITICAL ANALYSIS AND CHALLENGES

Excessive Restriction: One of the most important criticisms of the Surrogacy (Regulation) Act is its ideal provisions. It completely bans commercial surrogacy and allows altruistic surrogacy in certain strict conditions. The altruistic-only framework reflects a protectionist approach of the government, which overrides the reproductive autonomy of a person, as recognised in the case of *Suchita Srivastava v. Chandigarh Administration*.¹⁶ Pregnancy is part of reproductive autonomy and involves significant labour and pain; denying the compensation completely discourages women from becoming surrogate mothers. Critics of the complete ban on compensated surrogacy argued that a government-regulated compensated surrogacy would

¹⁶ *Suchita Srivastava v Chandigarh Administration* (2009) 9 SCC 1.

be more practical than a complete ban, which may lead to a reduction in the availability of surrogate mothers.¹⁷

Exclusionary Nature of the Legislation:¹⁸ According to this regulation, only a certain category of persons can avail themselves of surrogacy. The law primarily permits heterosexual married couples and certain categories of widowed or divorced women, who are within the brackets of the age limit, to avail themselves of surrogacy. Homosexual couples, unmarried couples and many LGBTQ+ individuals are excluded from the eligibility list, which raises serious violations of Article 14 of the Constitution, which gives us equality before the law and equal protection of law. The exclusion of LGBTQ+ individuals also remains inconsistent with the case of *Navtej Singh Johar v. Union of India*,¹⁹ in which the Supreme Court recognised the rights of sexual minorities in India.

Risk of Underground and Illegal Surrogacy Markets: After initiating a complete ban on commercial surrogacy, the illegal surrogacy markets have emerged in large quantities for the parents who want to seek illegal alternatives because of restrictive legal avenues. India, Thailand, Nepal, Cambodia, and Mexico have become the global hubs of illegal underground surrogacy.²⁰ These illegal arrangements expose the economically vulnerable women to greater exploitation. There is a case in mid-2025 in Hyderabad, “Fake DNA & Baby Trafficking Scam.”²¹ The police raid the Universal Shushi Fertility Centre, which operated in an extensive network in the south. They charge 35 lakhs from desperate couples for a legal IVF procedure, but instead of a legal IVF procedure, they forge the DNA profiling and birth certificates of infants, which are purchased from economically backward communities, and pass them off as the couple's biological surrogate children.

Concerns Regarding Surrogate Mothers’ Autonomy: There is an ongoing debate between feminist scholars about the exploitation vs. autonomy of women under the Surrogacy (Regulation) Act, 2021. Supporters argue that this regulation ensures that reproductive labour should not be commodified by or transformed into a profit-making enterprise and stops the

¹⁷ Sonia Allan, ‘Commercial Surrogacy and Reproductive Autonomy’ (2019) 27 Medical Law Review 112.

¹⁸ Constitution of India, art. 14.

¹⁹ *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.

²⁰ Amrita Pande, *Wombs in Labour: Transnational Commercial Surrogacy in India* (Columbia University Press, 2014).

²¹ Ajay Tomar, ‘Hyderabad surrogacy racket: Infant bought for Rs 90,000, sold as IVF baby for Rs 35 lakh; how clinic faked procedures, forged papers and gave away newborns for years’ *The Times of India* (Hyderabad, 28 July 2025) <https://timesofindia.indiatimes.com/city/hyderabad/2-docs-6-others-arrested-for-surrogacy-scam-trafficking-infants/articleshow/122939958.cms> accessed 19 May 2026.

exploitation of the economically vulnerable women. On the other hand, critics argue that a complete ban on compensated surrogacy undermines the autonomy of a woman by denying her the right to decide on behalf of her body and criticise the legislation for its paternalistic nature and approach towards surrogate mothers.

Administrative and Procedural Challenges: One of the most concerning challenges in this regulation is the administrative and procedural complexities of this act. It has many eligibility requirements and registration procedures that make the surrogacy arrangements very complex. It requires multiple certificates and medical approvals, which leads to unnecessary delays in the process of surrogacy. The procedural complexities are one of the reasons that lead the intending couple to bypass the legal procedures and avail themselves of surrogacy through illegal means. The government needs to understand that overregulation creates procedural barriers that undermine access to reproductive health care.

SUGGESTIONS AND REFORMS

Need for a Regulated Compensated Surrogacy Model: The main objective of the Surrogacy (Regulation) Act, 2021, is to prevent the exploitation of economically vulnerable women, but a complete ban does not effectively address the concerns of the bodily autonomy of women. Instead of a complete ban on compensated surrogacy, we need a dedicated framework to regulate it, with limits set by the government evaluation. It will encourage women to participate in surrogacy as a surrogate mother.

Inclusion of LGBTQ+ Individuals and Diverse Family Structures: The Surrogacy (Regulation) Act, 2021, also highly violates Article 14 of the Indian Constitution. It restricts the availability to opt for surrogacy to a limited section of society based on their marital status and sexuality. The reproductive opportunities of an infertile person should not be denied just based on their sexuality and marital status. The governing body should adopt a more inclusive framework that will include homosexual couples, live-in couples and people from LGBTQ+ communities.

Strengthening Protection of Surrogate Mothers: The core aim of the act is to protect the surrogate mother from exploitation, but it is not possible just by a complete ban on commercial surrogacy. We need a ground-level monitoring system for surrogate mothers that will provide psychological support to ensure consent of the surrogate and independent legal advice before

the process of surrogacy.²² Long-term health insurance, proper medical examination and financial security mechanisms will also protect the surrogate mothers from exploitation.

Removal of Illegal Surrogacy Arrangements: After the enactment of the Surrogacy (Regulation) Act, 2021, the number of illegal underground fertility clinics is on the rise. The government should strengthen the monitoring and regulatory system for clinics. Online registration and digitalisation of records of each surrogacy will improve transparency and ensure the accountability of the clinics.

CONCLUSION

Surrogacy is a solution for people who are suffering from infertility. Surrogacy helps an infertile person to experience parenthood. Historically, India has become an international destination for fertility tourism, triggering the abuse of surrogate mothers in the absence of a regulatory framework. In 2021, the authorities prepared the Surrogacy (Regulation) Act, 2021, a recent statute to deal with the issues related to surrogacy. The key purpose of this policy is to mitigate the abuse of surrogate mothers and the commercialisation of reproductive work. The legislation completely bans commercial surrogacy and allows altruistic surrogacy if the eligibility conditions of the intending couple and surrogate mother are met. The legislation also excludes a very large section of society from availing surrogacy for themselves, and then it creates a very strict eligibility mechanism that is very tough to follow. The question also arises about the bodily autonomy of a woman; the legislation draws a paternalistic approach towards women and assumes that women require the state's protection from engaging in surrogacy practices. There is a demand for a balanced legal framework that respects reproductive autonomy and also protects against exploitation.²³ The legislation should amend its complex procedures and add the excluded section of society, with the changing dynamics of society. Its future lies in balancing ethical protection with constitutional values.

²² World Health Organization, 'WHO Recommendations on Health Policies and System Support to Optimise Community Health Worker Programmes' (2018).

²³ Observer Research Foundation, 'Surrogacy Regulation in India' <https://www.orfonline.org/expert-speak/surrogacy-regulation-india/> accessed 20 May 2026.