

Surrogacy Law in India: Issues and Challenges

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Abstract- Surrogacy has become a complicated legal, ethical and social problem in India, especially when the nation is shifting between a liberal business-surrogacy cultures to a highly controlled altruistic culture. During the last ten years, more and more concerns were raised about the exploitation of economically disadvantaged women, the absence of coherent medical legislation, and uncertainties about parentage and citizenship basis, which led to the adoption of laws. The introduction of Surrogacy (Regulation) Act, 2021 constitutes a major change in the reproductive governance, trying to regulate the assisted reproductive activities but at the same time provide ethical safeguard and protection to all the parties involved in surrogacy plans. In the current paper, the author discusses the history of the development of the surrogacy regulation in India; analysing the history of the act, the main points of the legislation, the criteria an intending parent and a surrogate mother should meet to become eligible and the system of institutional control created to guarantee compliance with the new regulations. The paper also discusses the ways the legal system aims at balancing reproductive autonomy with social justice factors, which include the protection of surrogate mums by the way of informed consent, medical examination, and insurance coverage, as well as the legal status and well-being of the children born as a result of surrogacy. Besides, the study emphasizes the influence of judicial interpretation in the development of the application of the surrogacy legislations and especially the rulings of the Supreme Court of India concerning transitional cases and the exposition of the eligibility requirements in the present legal framework. Although these regulatory improvements have been made, the law still has criticism because it is limited in its coverage, excludes some groups, and has implementation problems. Problems like ambiguity of the definitions, the non-existence of enforcing policies, and the threat of unregulated surrogacy procedures are still problematic. In general, this paper describes how the current legal environment can adequately address ethical issues and guarantee reproductive rights and ensure that they are strictly regulated. It also reveals the necessity of the reforms that could be applied in future and make the legal provisions more consistent with the changing values in the society, medical developments and the facts of the assisted reproductive technologies.

Keywords: Surrogacy Law, Altruistic Surrogacy, Assisted Reproduction Technology, Reproductive Rights, Legal Regulation in India.

I. INTRODUCTION

Surrogacy has become one of the major legal and ethical concerns in India in the last 10 years. The fast advancement of assisted reproduction technology and the growing infertility among couples have led to the rise in dependency on surrogacy as an alternative constituent of parenthood. At the beginning of the twenty-first century, India attracted the focus of the world community as a viable option when it comes to commercial surrogacy because medical care is relatively inexpensive there, there are qualified specialists in the field of fertility, and little regulatory regulation is imposed on the technologies of reproductive medicine (Arya and Devi, 2023). Consequently, many prospective parents across the world went to India in search of surrogacy services which were either limited or very expensive in their respective countries (Verma, 2023). This processes resulted in the development of a thriving reproductive tourism sector with the involvement of the private fertility clinics and medical intermediaries (Dave & Kadu, 2022).

Although the commercial surrogacy was growing at a very high rate, it also brought up legal, ethical and social issues which were quite serious. Researchers and politicians started to note that a large number of surrogate mothers were women who belonged to the less fortunate parts of society and most of the time got into the arrangement because of economic need and not personal choice (Singh, 2023). Opponents claimed that the commercialization of reproduction brought in the aspects of dignity, autonomy of the body and the potential of women of such vulnerable situations to be exploited (Narayan et al., 2022). Moreover, there were no overarching laws, which established legal ambiguities along the parental rights, citizenship of the child born due to the cross-border surrogacy, and the

liability of fertility clinics and agencies that carried out the procedure (FreeLaw, 2021).

The second issue of concern was that there were no standard medical and legal protections of surrogate mothers. In a number of cases, surrogate women allegedly had poor healthcare services, lacked a proper understanding of the law, and could not negotiate their contracts with would-be parents or clinics (WhiteBlackLegal, 2021). This scenario revealed how necessary a legal framework of any kind that could govern the surrogacy practice, safeguard the rights of the surrogate mothers, and enforce some ethical practices in assisted reproductive technologies (Arya and Devi, 2023). In addition, the issues of welfare of the children born as a result of surrogacy and their legal status emerged as one of the central questions in the policy discussion, especially when it was foreign intending parents and when it concerned international legal controversies (Verma, 2023).

To address these rising concerns, the government slowly came out with some policy solutions designed to limit the unregulated practice of surrogacy. The decision to suspend surrogacy-related visas of foreign citizens was one of the most important ones as it became the starting point of moving towards a situation where commercial surrogacy arrangements ceasing to be relevant in the country (Government of India, 2021). This policy measure was supposed to stop reproductive tourism and eliminate the exploitation of Indian women involved in surrogacy practices (Select Committee Report, 2019). These developments gave way to introduction of elaborate legislative framework of surrogacy in India in the course of time.

Recently, there has been a significant landmark in the reproductive law regime in India namely the enactment of Surrogacy (Regulation) Act, 2021. The law brought serious regulatory provisions to substitute the previous business approach with the altruistic surrogacy model (Government of India, 2021). According to this scheme, the surrogacy is only allowed when the intending parents are of a particular category that satisfy certain eligibility requirements such as infertility and age (Dave & Kadu, 2022). The law also provides regulatory bodies at state and federal levels to oversee fertility clinics, make sure that they

are delivered in accordance with the provisions of the statutes, as well as shut down unethical practices (Singh, 2023). These institutional solutions are meant to bring transparency and accountability in the surrogacy ecosystem.

The other element of relevance of the legal framework is that it focuses on protecting the rights and welfare of surrogate mothers. The act also stipulates informed consent, medical examination, and insurance to surrogate women, which guarantees their wellbeing and decency during the surrogacy period (Arya and Devi, 2023). Moreover, the law acknowledges the child born as a result of surrogacy as a legal child of the intending parents, and, thus, completely resolves the previous issues associated with the rights of legal parentage and inheritance (Verma, 2023). These clauses represent the efforts of the state to strike a balance between reproductive autonomy and ethical control and social justice aspects.

Judicial interpretation has also played a crucial role in shaping the evolving surrogacy landscape in India. Courts have been involved in clarifying eligibility conditions, addressing transitional cases, and interpreting the provisions of the law in light of constitutional principles (Narayan et al., 2022). Such judicial engagement demonstrates the dynamic interaction between legislation and the judiciary in developing a coherent framework for regulating assisted reproductive technologies. It also highlights the broader constitutional questions surrounding reproductive rights, equality, and personal liberty.

Despite these reforms, the surrogacy framework in India continues to face criticism and challenges. One of the major concerns raised by scholars is the restrictive nature of the eligibility criteria, which limits access to surrogacy primarily to married heterosexual couples while excluding unmarried individuals, single men, and LGBTQ+ persons (Singh, 2023). Critics argue that such exclusions may conflict with evolving social realities and the constitutional commitment to equality and non-discrimination (WhiteBlackLegal, 2021). Additionally, the requirement that a surrogate must be a close relative of the intending couple has generated debates regarding its practicality and the potential for familial pressure or coercion (Verma, 2023).

Another challenge relates to the effective implementation and enforcement of the law. Although the legislation establishes regulatory authorities and imposes penalties for violations, reports of illegal surrogacy operations and unregistered fertility clinics continue to emerge (FreeLaw, 2021). This indicates that enforcement mechanisms need to be strengthened to ensure that the objectives of the law are achieved in practice. Furthermore, the global nature of assisted reproductive technologies raises concerns about cross-border surrogacy arrangements that may bypass domestic regulations (Narayan et al., 2022).

In conclusion, the issue of surrogacy in India reflects a complex intersection of law, ethics, medicine, and social change. The country's transition from a global hub of commercial surrogacy to a regulated altruistic framework demonstrates a significant shift in policy aimed at protecting women and ensuring ethical reproductive practices. While the Surrogacy (Regulation) Act, 2021 represents an important step toward addressing earlier legal gaps, ongoing debates and implementation challenges suggest that the regulatory framework will continue to evolve. Continuous legal scrutiny, policy reforms, and judicial interpretation will therefore play a vital role in shaping the future of surrogacy governance in India.

II. HISTORICAL AND LEGISLATIVE BACKGROUND

India's journey from permissive commercial surrogacy to a regulated altruistic regime reflects the country's attempt to address complex ethical, legal, and social concerns surrounding assisted reproductive technologies. In the early 2000s, India emerged as one of the most prominent global destinations for commercial surrogacy. The growth of fertility clinics, relatively lower medical costs, and the absence of comprehensive legal regulation contributed to the rapid expansion of the surrogacy industry in the country (Arya & Devi, 2023). During this period, many intending parents from abroad sought surrogacy arrangements in India because the process was more affordable and accessible compared to several Western countries where commercial surrogacy was restricted or heavily regulated (Verma, 2023). Consequently, the country witnessed the rise of reproductive tourism, which significantly increased

the number of international surrogacy arrangements (Dave & Kadu, 2022).

Although the industry provided opportunities for infertile couples and economic benefits for medical institutions, it also raised serious ethical and legal concerns. Scholars and policymakers began to question whether the commercialization of surrogacy was leading to the exploitation of economically vulnerable women who agreed to act as surrogate mothers primarily due to financial necessity (Singh, 2023). Critics argued that the absence of a strong regulatory framework allowed intermediaries and fertility clinics to operate with limited accountability, often resulting in unequal bargaining power between surrogate mothers and intended parents (Narayan et al., 2022). Moreover, concerns were raised about inadequate healthcare support, lack of proper legal contracts, and insufficient awareness among surrogate mothers regarding their rights and obligations (WhiteBlackLegal, 2021).

Another important issue that emerged during this period was related to the legal status of children born through cross-border surrogacy arrangements. In several cases, disputes arose concerning citizenship, parentage, and custody of children born to foreign intending parents through Indian surrogate mothers (FreeLaw, 2021). These controversies highlighted the legal gaps in the existing system and emphasized the need for a comprehensive legislative framework that could regulate surrogacy practices while protecting the interests of all parties involved. The growing public debate on these issues gradually pushed the government to reconsider its earlier permissive approach toward commercial surrogacy.

A significant turning point occurred in 2015 when the Government of India decided to suspend surrogacy-related visas for foreign nationals seeking surrogacy services in the country. This policy shift was aimed at reducing reproductive tourism and preventing the exploitation of disadvantaged women participating in commercial surrogacy arrangements (Government of India, 2021). The suspension of visas marked the beginning of a transition toward stricter regulation of surrogacy practices and signaled the government's intent to prioritize ethical considerations and the welfare of surrogate mothers. It also reflected broader

concerns among lawmakers about the unregulated growth of the surrogacy industry and the need to establish clear legal guidelines (Select Committee Report, 2019).

Following these developments, the government initiated legislative efforts to regulate surrogacy through comprehensive statutory provisions. After several debates, revisions, and recommendations by parliamentary committees, the Surrogacy (Regulation) Act, 2021 was enacted as a landmark piece of legislation governing surrogacy in India. The Act came into force on 25 January 2022 and introduced a major shift in the legal framework by prohibiting commercial surrogacy and allowing only altruistic surrogacy arrangements (Government of India, 2021). This legislative change aimed to eliminate profit-driven surrogacy practices and ensure that surrogacy would be undertaken primarily for compassionate reasons rather than financial gain (Arya & Devi, 2023).

The Surrogacy (Regulation) Act, 2021 also replaced earlier permissive guidelines and introduced strict eligibility criteria for intending parents and surrogate mothers. By doing so, the law sought to establish a regulated system that balances reproductive rights with ethical safeguards and social welfare considerations (Verma, 2023). The legislation created regulatory bodies at the national and state levels to oversee the implementation of surrogacy regulations, ensure compliance by fertility clinics, and prevent illegal practices related to assisted reproductive technologies (Dave & Kadu, 2022). These institutional mechanisms were designed to improve transparency and accountability in the surrogacy process while protecting the health and rights of surrogate mothers.

Overall, the historical and legislative evolution of surrogacy in India demonstrates a significant policy transformation. The shift from a commercial surrogacy hub to a regulated altruistic framework reflects the government's efforts to address exploitation, strengthen legal protections, and align reproductive practices with ethical and social considerations. The enactment of the Surrogacy (Regulation) Act, 2021 therefore represents an important milestone in the development of reproductive law in India, marking a new phase in the

governance of assisted reproductive technologies and surrogacy arrangements.

III. KEY PROVISIONS OF THE SURROGACY (REGULATION) ACT, 2021

The Surrogacy (Regulation) Act, 2021 represents a comprehensive legal framework governing surrogacy practices in India. The Act aims to eliminate commercial exploitation, establish clear eligibility criteria, and ensure ethical standards in assisted reproductive technologies. By replacing the earlier permissive regime with a regulated structure, the legislation provides detailed provisions regarding the nature of surrogacy arrangements, the qualifications of intending parents and surrogate mothers, the regulatory mechanisms for oversight, and the legal recognition of children born through surrogacy (Government of India, 2021; Arya & Devi, 2023). The following subsections explain the key provisions of the Act in a systematic manner.

3.1. Altruistic Surrogacy Only

One of the most significant provisions of the Surrogacy (Regulation) Act, 2021 is the prohibition of commercial surrogacy and the exclusive recognition of altruistic surrogacy arrangements. Surrogacy generally falls into two primary categories: commercial surrogacy and altruistic surrogacy. Commercial surrogacy involves financial compensation to the surrogate mother beyond medical expenses, thereby introducing a profit motive into the arrangement. In contrast, altruistic surrogacy does not permit any monetary reward to the surrogate mother except reimbursement of medical expenses, insurance coverage, and other necessary costs directly related to the pregnancy (Government of India, 2021; Verma, 2023).

Before the enactment of the legislation, India had become a major destination for international couples seeking infertility treatment because commercial surrogacy services were widely available and comparatively affordable. This situation led to the rise of reproductive tourism, where intending parents from wealthier nations traveled to India to access surrogacy arrangements at lower costs. However, the commercial nature of the practice raised concerns about the exploitation of economically disadvantaged

women, who often received relatively low compensation compared to surrogate mothers in developed countries (Dave & Kadu, 2022; Singh, 2023).

Under Section 3 of the Surrogacy (Regulation) Act, 2021, commercial surrogacy is strictly prohibited across the country. The Act defines commercial surrogacy as any surrogacy arrangement involving monetary compensation or financial benefit beyond medical expenses and insurance coverage. By restricting surrogacy to altruistic arrangements only, the legislation seeks to ensure that the practice is based on compassion and support rather than financial gain, thereby reducing the risk of exploitation and unethical practices in the surrogacy industry (Government of India, 2021; Narayan et al., 2022).

3.2. Eligibility of Intended Parents

The Act also establishes specific eligibility criteria for individuals or couples who wish to avail surrogacy services. According to the law, surrogacy is primarily available to heterosexual couples who are legally married and can provide medical evidence of infertility. The legislation also prescribes age limits for intending parents, requiring the female partner to be between 23 and 50 years of age and the male partner to be between 26 and 55 years (Government of India, 2021; Arya & Devi, 2023). These requirements are intended to ensure that surrogacy is used as a medical solution for genuine infertility rather than as a matter of convenience.

In addition to married couples, the law permits widowed or divorced women aged between 35 and 45 years to access surrogacy under specified conditions. However, foreign nationals without Indian ties are excluded from availing surrogacy services in India, although certain categories of Non-Resident Indians (NRIs) and Overseas Citizens of India (OCIs) may be eligible subject to residency requirements (Verma, 2023). Another important condition under the Act is that the intending couple must have been married for at least five years and must not have any living biological, adopted, or surrogate child, except in cases where the existing child suffers from life-threatening disorders or disabilities (Singh, 2023).

The legislation also outlines several procedural requirements for commissioning parents. These include providing medical and radiological reports confirming infertility, obtaining genetic screening where necessary, and securing an insurance policy that covers the surrogate mother's medical needs for a period of 36 months from embryo transfer. Furthermore, the intending parents must obtain a Certificate of Essentiality from a competent authority, which is issued after verification by a government medical board. This certificate must subsequently be submitted before a first-class judicial magistrate to obtain legal authorization for the surrogacy process (Government of India, 2021; WhiteBlackLegal, 2021).

3.3. Surrogate Mother Criteria

The Surrogacy (Regulation) Act, 2021 also prescribes detailed criteria that must be fulfilled by a woman who wishes to act as a surrogate mother. According to the Act, the surrogate must be a close relative of the intending couple, which is intended to ensure trust and minimize the possibility of commercial arrangements disguised as altruistic surrogacy (Government of India, 2021; Verma, 2023). The surrogate mother must also be married and fall within the age group of 25 to 35 years, ensuring that she is physically and emotionally capable of undertaking the pregnancy.

Another key requirement is that the surrogate must have at least one biological child of her own. This provision is based on the assumption that a woman who has previously experienced childbirth is better equipped to understand the medical and emotional aspects of pregnancy and surrogacy (Arya & Devi, 2023). Additionally, the Act mandates that the surrogate mother must be certified as medically and psychologically fit by appropriate authorities before participating in the surrogacy process (Narayan et al., 2022).

Importantly, the law also restricts a woman from acting as a surrogate more than once in her lifetime. This limitation is intended to prevent repeated exploitation of women and to ensure that surrogacy remains an exceptional arrangement rather than a recurring activity (Singh, 2023). These conditions collectively aim to safeguard the health, dignity, and autonomy of surrogate mothers while maintaining ethical standards in surrogacy practices.

3.4. Regulatory Structure and Documentation

To ensure effective implementation of the law, the Surrogacy (Regulation) Act, 2021 establishes a structured regulatory mechanism consisting of National and State Surrogacy Boards. These bodies are responsible for supervising surrogacy practices, maintaining records, and ensuring that fertility clinics comply with statutory provisions (Government of India, 2021; Dave & Kadu, 2022). The boards also play a key role in issuing eligibility certificates and monitoring the overall functioning of surrogacy-related institutions.

One of the important documents required under the Act is the Certificate of Essentiality. This certificate serves as proof that surrogacy is medically necessary and that the intending parents meet all legal requirements. It requires verification of marital status, infertility diagnosis, and insurance coverage for the surrogate mother. The regulatory authorities also ensure that all medical procedures are conducted in registered clinics and that appropriate legal documentation is maintained throughout the process (WhiteBlackLegal, 2021; Singh, 2023).

3.5. Parental Recognition

Another crucial provision of the Surrogacy (Regulation) Act, 2021 relates to the legal recognition of children born through surrogacy. Under Section 8 of the Act, a child born through a lawful surrogacy arrangement is considered the biological child of the intending parents and is entitled to all rights and privileges available to a natural child under Indian law (Government of India, 2021; Verma, 2023). This provision addresses earlier legal ambiguities concerning parentage, inheritance rights, and guardianship of children born through surrogacy arrangements.

By clearly defining the legal status of the child, the Act ensures that children born through surrogacy are protected from potential disputes regarding custody or identity. At the same time, it provides legal certainty to intending parents and reinforces the legitimacy of surrogacy arrangements conducted in accordance with the law (Arya & Devi, 2023; Narayan et al., 2022). Overall, these provisions collectively establish a comprehensive legal framework aimed at regulating

surrogacy in a manner that balances reproductive rights with ethical safeguards and social responsibility.

IV. RIGHTS AND PROTECTIONS

The Surrogacy (Regulation) Act, 2021 introduces several important safeguards to protect the rights, dignity, and welfare of surrogate mothers, intending parents, and children born through surrogacy in India. Recognizing the ethical complexities involved in assisted reproductive arrangements, the legislation emphasizes informed decision-making, protection against exploitation, and strict penalties for violations. These provisions aim to ensure that surrogacy practices are conducted in a transparent and humane manner while prioritizing the health and autonomy of surrogate mothers (Government of India, 2021; Arya & Devi, 2023). The following subsections discuss the major rights and protections provided under the Act.

4.1. Consent and Autonomy of Surrogate

One of the most significant protections provided under the Act relates to the consent and autonomy of the surrogate mother. The legislation mandates that the surrogate must provide written and informed consent before participating in any surrogacy arrangement. This requirement ensures that the surrogate mother fully understands the medical procedures, legal implications, and potential risks associated with the surrogacy process (Verma, 2023). Informed consent is essential in protecting women from coercion or pressure by family members, intermediaries, or intending parents.

The Act further recognizes the surrogate mother's autonomy by allowing her to withdraw from the surrogacy arrangement at any stage before embryo implantation. This provision is crucial because it ensures that the surrogate is not bound by contractual obligations that may compromise her personal choice or well-being. By permitting withdrawal prior to the implantation procedure, the law acknowledges that surrogacy involves significant emotional, physical, and psychological considerations that should remain under the control of the surrogate herself (Singh, 2023).

Additionally, the legislation requires medical and psychological screening of the surrogate mother to

ensure that she is capable of undertaking the pregnancy safely and willingly. This process helps confirm that the surrogate is entering into the arrangement voluntarily and with adequate understanding of the responsibilities involved (Narayan et al., 2022). Such safeguards demonstrate the law's commitment to upholding the dignity and autonomy of women participating in surrogacy arrangements.

4.2. Protection Against Exploitation

Another major objective of the Surrogacy (Regulation) Act, 2021 is to prevent exploitation of surrogate mothers and ensure that their health and welfare remain a priority throughout the surrogacy process. Historically, concerns about exploitation were among the primary reasons for introducing strict regulation of surrogacy in India. The Act therefore includes several provisions designed to protect surrogate mothers from unfair treatment or harmful practices (Arya & Devi, 2023).

The law clearly outlaws forced abortion in all cases, which guarantees that health and rights of the surrogate mother are appropriately considered when making medical decisions concerning the pregnancy. It prohibits also the decision to leave the child born of the surrogacy of the intending parents, which means that the welfare and legal status of the child are preserved (Government of India, 2021). This provision can be explained by previous cases when children born as a result of surrogacy were deprived of the proper parental responsibility because of the conflict or unexpected events.

Moreover, the Act disallows any medical procedure or therapy that could be harmful to the health of the surrogate mother, or that of a medical procedure that is done without the consent of the surrogate mother. The medical practitioners and fertility clinics must adhere to ethical principles and give the surrogate mother adequate medical attention during pregnancy and after childbirth (Dave & Kadu, 2022). These safeguards indicate the overall aim of the legislation to abolish those practices, which could exploit or put at risk women involved in surrogacy arrangements.

4.3. Penal Sanctions

To assist in its proper application, the law, which is the Surrogacy (Regulation) Act, 2021, sets tough penalties in the case of law breach. The Act acknowledges the reality that absence of effective punitive measures would allow unethical surrogacy arrangements like commercial surrogacy, exploitation of women, and unregulated advertizing by fertility clinics to persist despite being made illegal (Verma, 2023). The law therefore comes up with severe penalties on those who or institutions convicted of breaching the provisions of the law.

Offences that include commercial surrogacy, use of surrogate mother of such purposes, running of illegal surrogacy clinics, or advertisement of surrogacy services through illegal advertisements are subject to imprisonment of up to ten years and fines that may go up to [?]10 lakh. These strict effects are aimed at discouraging unlawful behavior, and through which the laws set by the Act should be adhered to (Government of India, 2021).

The regulatory role of the penal provisions is also important as they make the fertility clinics, intermediaries, and the medical practitioners responsible of their actions. The Act will attempt to make the surrogacy arrangement transparent and responsible by introducing legal repercussions upon misconduct. Moreover, such sanctions strengthen the goal of the government to safeguard surrogate mothers and to avoid the commercialization of reproduction (Singh, 2023; WhiteBlackLegal, 2021).

On the whole, the rights and protections that the Surrogacy (Regulation) Act, 2021 offers are a major move towards ensuring that the interests of all the parties involved in surrogacy are addressed. Focusing on informed consent, elimination of exploitation, and providing severe punishment in case of breaches, the legislation aims at developing an ethical and controlled surrogacy system in India.

V. JUDICIAL INTERPRETATION AND RECENT DEVELOPMENTS

The judicial interpretation has had a significant role in determining the application of the Surrogacy (Regulation) Act, 2021 in India. Although the Act has

provided a detailed statutory framework under which the practice of surrogacy is regulated, the courts have played a crucial role in demystifying ambiguities, issues of transition as well as seeing to it that the provisions of the law are applied fairly and reasonably. The court has additionally attempted to offset the provisions of the law, like the prevention of exploitation and ethical concerns, and the rights and expectations of those individuals who had undergone surrogacy processes prior to the implementation of the law (Arya, Devi, 2023; Verma, 2023).

Among the latest matters which have attracted considerable attention in this regard is the implication of age eligibility requirements under the Surrogacy (Regulation) Act, 2021 on the Supreme Court of India. The Act gives certain age restrictions of intending parents who wish to obtain surrogacy services. By the provisions in the statutes, the female partner in a couple should be within the age range that is laid down in the Act but the male partner should also be in certain age group. These conditions were implemented so that the responsibility of having strong parenthood and protecting the well-being of a child born in surrogacy was guaranteed (Government of India, 2021).

Nevertheless, there were more practical challenges on whether couples who had already embarked on surrogacy process prior to the enactment of the Act would be enforced. In other cases, the would-be parents had gone through medical practices like making and storing embryos according to the previous legal system, when commercial surrogacy or less restrictive protocols were practiced. With the new law in place, certain of these couples were not eligible according to the new age limits, having already spent significant time, effort, and money on the surrogacy procedure (Narayan et al., 2022).

The case was appealed to the Supreme Court of India, which was requested to give a meaning to the age eligibility provisions regarding their application to such cases in a retrospective manner. The Court has taken into consideration the specifics of the situation of couples who had already started the surrogacy process before the adoption of the Act. It provided that the age limits contained in statute, were not to be applied in a way that would unfairly disadvantage those who had already started the proceedings in good

faith under the previous regulatory framework (Singh, 2023). Consequently, the Court permitted this kind of couples to go ahead with surrogacy arrangements even though they do not qualify in terms of age as later introduced by the legislation.

This method of judicial reasoning shows a significant rule of interpretation of the law, which is the interpretation of the rule that laws should have a prospective effect unless there is a definite intention to the contrary. Through this argumentation, the Court made sure that the introduction of the Surrogacy (Regulation) Act, 2021 would not interfere with the existing medical and legal cases that were initiated prior to the enactment of the law. Another key aspect of the ruling is the judicial branch of government protecting fair play and avoiding unnecessary suffering as a result of abrupt changes in regulation (Verma, 2023).

The other significant point of the Court intervention is that reproductive rights and legitimate expectations of intending parents who make use of assisted reproductive technologies are identified. This decision highlights the importance of the interpretation of the law of surrogacy in such a way that it would allow balancing the objectives of regulation with individual rights and medical facts. It also shows the sensitivity of the Court to the emotional, financial, and medical issues that couples undergoing infertility treatment and surrogacy as the parenthood method experience (Arya and Devi, 2023).

Furthermore, the decision has broader implications for the implementation of surrogacy laws in India. It clarifies that regulatory authorities must consider transitional situations carefully and avoid rigid application of statutory provisions where it may lead to unjust outcomes. The ruling also serves as guidance for fertility clinics, regulatory bodies, and lower courts in dealing with cases involving pre-existing surrogacy arrangements. By providing clarity on the interpretation of age eligibility provisions, the judiciary has contributed to reducing uncertainty in the surrogacy regulatory framework (Narayan et al., 2022).

In addition to this specific ruling, judicial interpretation continues to influence the evolving

landscape of surrogacy law in India. Courts have been actively involved in addressing issues related to eligibility criteria, rights of surrogate mothers, and procedural requirements under the Act. These decisions collectively help refine the application of the law and ensure that its objectives are implemented effectively while respecting constitutional principles such as equality, dignity, and personal liberty (Singh, 2023; WhiteBlackLegal, 2021).

Overall, the recent developments in judicial interpretation highlight the dynamic interaction between legislation and the judiciary in the field of reproductive law. The intervention of the Supreme Court of India in clarifying the applicability of age eligibility requirements demonstrates how judicial oversight can help address practical challenges arising from new legal frameworks. Such decisions not only protect the rights of individuals involved in surrogacy arrangements but also contribute to the gradual development of a more balanced and responsive legal system governing assisted reproductive technologies in India.

VI. CRITIQUES AND CHALLENGES

While the Surrogacy (Regulation) Act, 2021 represents a significant attempt to regulate surrogacy practices and prevent exploitation in India, the law has also generated considerable debate among scholars, legal experts, and policymakers. Although the legislation aims to protect surrogate mothers and ensure ethical standards, several provisions have been criticized for being overly restrictive or difficult to implement in practice. These critiques highlight concerns regarding inclusivity, ethical implications, and the effectiveness of enforcement mechanisms.

6.1. Restrictive Eligibility and Exclusion

One of the most frequently discussed criticisms of the Surrogacy (Regulation) Act, 2021 is its restrictive eligibility criteria for intending parents. The law limits access to surrogacy primarily to legally marry heterosexual couples who meet specified medical and age requirements. As a result, several categories of individuals—including unmarried persons, single men, and members of the LGBTQ+ community—are excluded from accessing surrogacy services under the current legal framework (Singh, 2023; Verma, 2023).

Critics argue that such restrictions fail to reflect the evolving nature of family structures in modern society. Over the past few decades, social attitudes toward family, parenthood, and relationships have changed significantly, with increasing recognition of diverse family forms. By limiting surrogacy to a narrow category of couples, the law may be perceived as inconsistent with constitutional principles of equality and non-discrimination (Narayan et al., 2022). Some scholars have also pointed out that the exclusion of LGBTQ+ couples and unmarried individuals overlooks the broader recognition of individual autonomy and reproductive rights in contemporary legal discourse (Arya & Devi, 2023).

Furthermore, legal experts have raised concerns that such restrictions may create unintended consequences. Individuals who are excluded under the law may seek surrogacy arrangements outside the formal legal framework or in other jurisdictions where the regulations are less restrictive. This could undermine the objectives of the legislation, which seeks to regulate surrogacy and ensure ethical practices (WhiteBlackLegal, 2021). Therefore, debates continue regarding whether the eligibility criteria should be reconsidered to make the law more inclusive while still maintaining safeguards against exploitation.

6.2. Ethical and Practical Concerns

Another major challenge associated with the Surrogacy (Regulation) Act, 2021 relates to the requirement that all surrogacy arrangements must be altruistic. While this provision was introduced to eliminate the commercialization of reproduction and prevent exploitation of economically vulnerable women, critics argue that the complete prohibition of financial compensation may create new ethical and practical issues (Dave & Kadu, 2022). In particular, some scholars suggest that banning commercial surrogacy might unintentionally disadvantage women who willingly choose surrogacy as a means of financial support or economic opportunity (Verma, 2023).

There is also concern that strict restrictions on compensation could push surrogacy arrangements into informal or unregulated spaces. If intending parents and surrogate mothers are unable to engage in legally recognized arrangements, they may resort to hidden or

unauthorized practices that operate outside the regulatory framework. Such situations could increase the risk of exploitation rather than reduce it, as they would lack proper legal oversight and medical safeguards (Narayan et al., 2022).

Another issue that has attracted attention is the requirement that the surrogate mother must be a “close relative” of the intending couple. Critics argue that the law does not clearly define who qualifies as a close relative, leading to ambiguity and potential inconsistencies in interpretation (Singh, 2023). Moreover, some commentators have expressed concerns that this requirement might create pressure within families, where women may feel obligated to act as surrogates for relatives even if they are reluctant to do so. Such situations raise questions about whether the principle of voluntary consent can always be guaranteed within family-based arrangements (Arya & Devi, 2023).

6.3. Enforcement and Illegal Practices

Despite the strict regulatory framework introduced by the Surrogacy (Regulation) Act, 2021, challenges related to enforcement remain a significant concern. Reports of illegal surrogacy operations, fraudulent practices, and unregistered fertility clinics continue to emerge in different parts of the country. These incidents suggest that the implementation of the law is still evolving and that regulatory authorities face difficulties in monitoring all surrogacy-related activities effectively (FreeLaw, 2021; WhiteBlackLegal, 2021).

One of the primary enforcement challenges is the existence of a large network of private fertility clinics that operate with varying degrees of compliance. Ensuring that all clinics are properly registered and adhere to the provisions of the law requires strong administrative capacity and continuous monitoring by regulatory bodies (Dave & Kadu, 2022). Additionally, the possibility of cross-border surrogacy arrangements or underground networks further complicates enforcement efforts, as such activities may evade domestic legal oversight (Narayan et al., 2022).

The other concern is associated with the level of knowledge about the laws and the general knowledge of people participating in surrogacy agreements. The

surrogate mothers and the intending parents may not be fully aware of the legal requirements and protection afforded under the Act in other cases. This unawareness may facilitate the easier exploitation of people who want to have surrogacy services by intermediaries or agencies involved in fraud (Verma, 2023). Enhancing awareness measures, better coordination of regulations and ensuring that those who violate are dealt with are thus viewed as important in proper enforcement of the law.

In general, the arguments and issues related to the Surrogacy (Regulation) Act, 2021 emphasize the ambiguities of the assisted reproductive technologies regulation. Even though the law is a significant advancement in providing ethical regulation of surrogacy in India, the current controversies and problems of its implementation mean that the policy might require further discussions and possible reforms to be made to solve these problems.

CONCLUSION

The development of surrogacy regulation in India can be discussed as the embodiment of the substantial shift of the Indian attitude to the assisted reproductive technologies and the rights to have a child. India has over the years evolved into being a global hub of commercial surrogacy into a broad legal system that focuses on ethical practices and protection of interest of all the involved parties. The introduction of the Surrogacy (Regulation) Act, 2021 is a significant move to curb issues pertaining to exploitation, uncontrolled medical procedures, and legal ambiguity, which defined the surrogacy environment in the past. The law also tries to safeguard the surrogate mothers against financial loss through coercion by offering only altruistic surrogacy to ensure that the system is based on human compassion and moral care.

Some of the safeguards the legislation brings on board are aimed at safeguarding the rights of the surrogate, the intending parent, and the children born as a result of surrogacy. These are provisions regarding informed consent, medical screening, insurance coverage as well as legal status of the child being the biological child of the intending parents. By these steps, the legislation aims at establishing a moderate system of reproductive freedom and making sure that the

practice of surrogacy does not culminate in maltreatment or abuse. Also, judicial interpretation, especially Supreme Court of India decisions have been instrumental in establishing clarity and solving transitional problems, which have helped to build a more coherent legal regime on surrogacy.

In spite of these developments, the existing surrogacy system still has a number of challenges. The rigid eligibility and the exclusion of other segments of the population such as unmarried people and non-traditional families have brought about controversies on inclusivity and equality to access reproductive technologies. According to critics, these restrictions might not give full justice to the changing aspect of family set up and social values in the modern society. Simultaneously, the real-life issues exist concerning the successful application of the law, such as the continued existence of illegal surrogacy practices, the unregistered fertility clinics, and the lapses in law enforcement. These complications demonstrate the difficulty of reconciliation between legislative goals of translating them into successful on-ground operations. On the whole, the surrogacy law in India is a significant step into the direction of controlling the reproductive technologies, yet the law also indicates the necessity of constant review and revision. With the constant development of the social attitudes, medical progress, and the interpretation of the law, the regulatory framework might need additional improvement to make it as effective and inclusive as possible. The next generation of reforms and legal review could assist in closing the rift between the ideal and the real in the legislative context to reinforce the regulation of surrogacy and safeguard the rights and dignity of each participant.

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