

Biological Issues In Surrogacy And Legal Protections: A Comprehensive Analysis

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India's surrogacy sector, once a booming \$2.3 billion industry contributing to nearly 12% of the global surrogacy market, faced growing concerns over exploitation, lack of regulation, and ethical ambiguities. In response, the Surrogacy (Regulation) Act, 2021 was introduced to bring structure, transparency, and protection to all stakeholders involved. Between 2002 and 2015, an estimated 25,000 children were born through surrogacy in India, often under informal arrangements that left surrogate mothers without legal safeguards or adequate healthcare. However, its real-world implementation is fraught with challenges that demand urgent policy and systemic attention. This study critically analyzes the Act's key provisions and highlights areas requiring reform, particularly in terms of accessibility, affordability, and ethical oversight of surrogacy services. A major concern lies in the biological vulnerabilities faced by surrogate mothers, including the physical toll of repeated embryo transfers, hormonal treatments, and high-risk pregnancies, which are often exacerbated by insufficient postnatal care and lack of psychological support. The Act's limited provisions for comprehensive health screenings and long-term medical insurance further compromise surrogate welfare, necessitating stricter enforcement through independent audits and structured training programs for healthcare providers. Additionally, the exclusion of single individuals and LGBTQ+ couples from commissioning surrogacy not only restricts reproductive autonomy but also contradicts international human rights standards and evolving global practices. Drawing upon critical judicial pronouncements like *Baby Manji Yamada v. Union of India* and *Jan Balaz v. Union of India*, the paper argues for the creation of dedicated surrogacy tribunals to streamline parentage and citizenship disputes, especially in transnational surrogacy cases. Public awareness campaigns, particularly in rural regions, are vital to ensuring that potential surrogates and commissioning parents are well-informed of their legal and biological rights. Moreover, integrating technology—such as digital portals for registration, tracking, and grievance redressal—can enhance transparency and curb exploitative practices. To ensure compliance and uphold the intent of the Act, the establishment of a dedicated enforcement unit within the Ministry of Health, empowered with regulatory authority and punitive mechanisms, is recommended. A multidisciplinary, inclusive, and ethically grounded approach is thus essential for the effective and humane implementation of surrogacy laws in India.

KEYWORDS Surrogacy, Regulation, Enforcement, Implementation, Welfare.

INTRODUCTION TO BIOLOGICAL COMPLEXITIES IN SURROGACY

Understanding the Human and Legal Dimensions

Surrogacy has emerged as a complex interplay of biological, social, and legal dimensions as a method of assisted reproductive technology. Surrogacy fundamentally entails a woman consenting to gestate a child for another person or couple who are incapable of conceiving or sustaining a pregnancy to term. The emergence of surrogacy has instilled optimism in several individuals and families; yet, it also presents complex biological dilemmas, such as genetic connections, medical hazards, and ethical considerations, which require comprehensive legal structures to guarantee equity, safeguarding, and transparency for all parties involved. The enactment of the Surrogacy (Regulation) Act 2021, signifies a crucial advancement in tackling these intricacies inside the Indian framework.¹

The necessity for surrogacy regulation in India emerged from a historical context of unregulated practices that frequently resulted in the abuse of vulnerable women. India has emerged as a global center for commercial surrogacy, attributed to its superior medical facilities and relatively reduced expenses. This also led to ethical issues and exploitation, especially of economically disadvantaged women who were enticed into surrogacy agreements without sufficient protections. The lack of explicit legal regulations frequently placed surrogate mothers and children conceived via surrogacy in vulnerable circumstances. Instances of surrogate child abandonment, parentage issues, and insufficient medical and psychological assistance for surrogate mother underscore the urgent necessity for a comprehensive legal framework.²

To allay these worries and give surrogacy procedures in India a more organized framework, the Surrogacy (Regulation) Act, 2021, was passed.³ The Act's principal aim is to ban commercial surrogacy and allow only altruistic surrogacy, wherein the surrogate mother receives no financial remuneration beyond medical bills and insurance coverage.⁴ This transition from commercial to altruistic surrogacy signifies an effort to eradicate the commodification of women's bodies and the risk of financial coercion. The Act establishes stringent qualifying requirements for both prospective parents and surrogate mothers, with the objective of ensuring that surrogacy is conducted responsibly and ethically.

From a biological standpoint, surrogacy entails many difficulties. The surrogate mother's role is important, as she receives medical interventions, including hormone therapies, to ready her body for embryo implantation. These treatments, although medically sophisticated, include hazards, including negative side effects and long-term health consequences. The Act addresses these problems by stipulating that surrogate mothers must satisfy particular health requirements and must have previously delivered at least one

¹ Ana Rita Igreja & Miguel Ricou, Surrogacy: Challenges and Ambiguities, 25 *The New Bioethics* 60 (2019).

² Sonja Van Wichelen, Postgenomics and Biolegitimacy: Legitimation Work in Transnational Surrogacy, 31 *Australian Feminist Studies* 172 (2016).

³ Ibid.

⁴ Id. at 1.

child.⁵This criteria aims to guarantee that the surrogate possesses prior experience with pregnancy and childbirth, thereby mitigating any health risks linked to first-time pregnancies.

A significant biological concern is the matter of genetic linkage. The Surrogacy (Regulation) Act, 2021, mandates that the embryo placed in the surrogate mother must be formed using gametes from the intending couple or individual, thereby guaranteeing a genetic link between the child and at least one of the intending parents.⁶ This law pertains to parentage issues and aims to avert situations in which surrogate mothers might assert parental rights over the kid. The Act delineates the roles and responsibilities of all parties, so enhancing clarity and decreasing the risk of legal disputes.

The historical progression of surrogacy in India has been characterized by notable legal and sociological advancements. Before the implementation of the Surrogacy (Regulation) Act, 2021, surrogacy agreements functioned in a predominantly unregulated context. The pivotal case of *Baby Manji Yamada v. Union of India*⁷ highlighted the legal complexities of surrogacy. This case pertained to an abandoned surrogate child and underscored the pressing necessity for legal clarity on the rights and obligations of all parties engaged in surrogacy agreements.⁸ Subsequent to this case, the ICMR established rules for surrogacy clinics; nevertheless, these guidelines lacked legal enforceability, resulting in deficiencies in enforcement and protection.

The enactment of the Surrogacy (Regulation) Act, 2021, signifies the culmination of endeavors to rectify these deficiencies and establish a comprehensive legal framework. The Act prioritizes altruistic surrogacy, aligning with ethical principles and cultural norms, thereby positioning surrogacy as a method of aiding individuals and couples rather than as a business venture.⁹

The Act has significant cultural ramifications, as it contests conventional views of motherhood and family while highlighting the necessity for ethical and humane behaviours. The Act aims to prioritize the welfare and dignity of surrogate mothers to solve persistent issues of their exploitation and marginalization. The ban on commercial surrogacy has ignited discussions on women's rights to make independent choices about their bodies and the possible effects on prospective parents' access to surrogacy. The Act's provisions aim to balance

⁵ Temitope Emmanuel Adaranijo & Andrea Gabriella Sárváry, A Brief Comprehensive Overview of Surrogacy, 14 *Acta Medicinae et Sociologica* 178 (2023).

⁶Id. at 3.

⁷ JT 2008 (11) SC 150.

⁸ Surrogacy: Prospects and Challenges - ProQuest, <https://www.proquest.com/openview/e3e6c7412cc17fb846fdc69251145401/1?pq-origsite=gscholar&cbl=2035897> (last visited Jan 5, 2025).

⁹ Muhammad Azeem Farooqi, Aatir Rizvi & Ahmad Raza Khan, Exploring the Legality and Socio-Cultural Challenges of Surrogacy: An Islamic Bioethical Perspective, 6 *Pakistan Languages and Humanities Review* 1302 (2022).

competing interests, ensuring surrogacy remains a viable choice while reducing the dangers of exploitation and abuse.¹⁰

The societal transformation generated by the Act is apparent in the evolving views on surrogacy. Once regarded primarily as a financial transaction, surrogacy is now widely acknowledged as a selfless act of compassion and assistance. This development signifies a wider cultural trend towards prioritizing ethical issues and human dignity in reproductive procedures. The Act's focus on altruistic surrogacy has promoted more awareness and discourse regarding the biological and emotional difficulties encountered by surrogate mothers, cultivating a more compassionate and knowledgeable perspective on surrogacy.

The significance of legal requirements in resolving biological matters in surrogacy is paramount. The Surrogacy (Regulation) Act, 2021, provide a thorough framework for managing the medical, genetic, and ethical intricacies of surrogacy.¹¹ The Act mandates medical screens, psychiatric evaluations, and informed consent for surrogate mothers, so ensuring that surrogacy is conducted safely and ethically. The focus on genetic connection and the restriction of donor gametes in surrogacy agreements mitigates potential conflicts and safeguards the child's interests.

The enactment of the Surrogacy (Regulation) Act, 2021, is a key advancement in the governance of surrogacy in India. The Act establishes a comprehensive legal framework that addresses the biological intricacies and ethical challenges of surrogacy, ensuring the rights and dignity of all people involved are protected.¹² The transition from commercial to altruistic surrogacy signifies a dedication to ethical standards and societal principles, positioning surrogacy as an act of compassion and assistance rather than exploitation. As society evolves, the Act's requirements will significantly influence the future of surrogacy practices in India, ensuring they are based on fairness, transparency, and respect for human dignity.

ELIGIBILITY CRITERIA AND LEGAL SAFEGUARDS FOR SURROGATES UNDER THE SURROGACY (REGULATION) ACT, 2021

One of the most important features of the Act is its strict eligibility requirements for intending parents and surrogate mothers, which are intended to protect the rights, dignity, and health of surrogate mothers while guaranteeing the welfare of surrogate-born children. These regulations also embody a comprehensive social initiative to govern surrogacy in an ethical, transparent manner that upholds human dignity. The Act's focus on eligibility is crucial for mitigating

¹⁰ Harleen Kaur, Introduction to Surrogacy, in *Laws and Policies on Surrogacy: Comparative Insights from India 1* (Harleen Kaur ed., 2021), https://doi.org/10.1007/978-981-16-4349-1_1 (last visited Jan 5, 2025).

¹¹Id. at 7.

¹² Kristin Lozanski& Irene Shankar, Surrogates as Risk or Surrogates at Risk? The Contradictory Constitution of Surrogates' Bodies in Transnational Surrogacy, 17 *Soc Theory Health* 40 (2019).

exploitative practices and guaranteeing that surrogacy agreements are conducted within a legally safeguarded environment.¹³

The qualifying conditions for surrogate mothers under the Surrogacy (Regulation) Act, 2021, are crucial for mitigating health risks and preventing exploitation. The Act stipulates that a surrogate mother must be a close relative of the intended couple, married, and has at least one biological child of her own. She must be aged between 25 and 35 and may serve as a surrogate just once in her lifetime. These criteria aim to guarantee that surrogate mothers are physically and emotionally equipped for the demands of surrogacy.¹⁴ The Act aims to reduce health risks linked to pregnancy by limiting the age and experience of surrogate mothers, especially for first-time mothers or older women. The restriction on the number of surrogacy efforts per individual seeks to avert the repeated exploitation of a single surrogate, therefore safeguarding her health and welfare.

The criteria for prospective parents are equally rigorous. The Act mandates that prospective parents must be Indian nationals, legally married for a minimum of five years, and fall within a designated age range—23 to 50 years for women and 26 to 55 years for men. Furthermore, they are required to furnish evidence of infertility, a condition that compels them to depend on surrogacy for parenthood. These provisions are essential for preventing the misuse or commodification of surrogacy and ensuring it is pursued by individuals who really need it.¹⁵ The Act establishes eligibility standards that emphasize surrogacy as a last resort rather than a primary option, so encouraging ethical reproductive practices.

The historical context of surrogacy in India exposes a concerning legacy of exploitation and insufficient legal safeguards, especially for surrogate mothers. Before the implementation of the Surrogacy (Regulation) Act, 2021, the surrogacy sector in India was predominantly uncontrolled, resulting in various occurrences of unethical acts. Women in vulnerable circumstances, typically from economically poor families, were routinely compelled into surrogacy agreements without sufficient protections for their health, dignity, or rights.¹⁶ The lack of explicit legal regulations has resulted in surrogate women and children born via surrogacy facing perilous circumstances, characterized by conflicts regarding parentage, child abandonment, and insufficient postnatal care.

In the present case, *Mrs. D & Anr. v. Union of India & Anr.*¹⁷ the petitioners challenged the age restrictions imposed by the Surrogacy (Regulation) Act, 2021, arguing that these limitations were irrational and curtailed their reproductive rights. The Delhi High Court acknowledged the petitioners' concerns and granted interim relief, allowing them to proceed

¹³ Katherine Drabiak et al., *Ethics, Law, and Commercial Surrogacy: A Call for Uniformity*, 35 *Journal of Law, Medicine & Ethics* 300 (2007).

¹⁴ *Id.* at 10.

¹⁵ Sonia Allan, *The Surrogate in Commercial Surrogacy: Legal and Ethical Considerations*, in *Surrogacy, Law and Human Rights* (2015).

¹⁶ Scott Y.H. Kim et al., *Proxy and Surrogate Consent in Geriatric Neuropsychiatric Research: Update and Recommendations*, 161 *AJP* 797 (2004).

¹⁷ 2024 INSC 790.

with the surrogacy process pending a final decision. This case highlights the ongoing debates surrounding the Act's provisions and emphasizes the need for a balanced approach that respects individual reproductive choices while ensuring ethical surrogacy practices.

The Act incorporates many protections to mitigate health risks for surrogate mothers, beside the eligibility standards. It requires thorough medical examinations and psychological assessments to confirm that surrogate mother are physically and emotionally prepared to assume the duties of surrogacy.¹⁸ The Act mandates surrogacy clinics to deliver sufficient medical treatment during the pregnancy and postoperative phase, thus mitigating the health risks linked to pregnancy and childbirth. Moreover, offering insurance coverage for surrogate mothers guarantees their access to financial assistance in case of medical issues, thus mitigating their vulnerability.

The societal ramifications of these regulations are significant. By emphasizing the health and welfare of surrogate mothers, the Act contests conventional views of surrogacy as a mere transactional arrangement and advocates for a more humane and ethical framework. This change of viewpoint is especially important in a nation such as India, where socio-economic inequalities frequently expose women to exploitation. The Act prioritizes altruistic surrogacy and imposes strict eligibility conditions, demonstrating a society commitment to safeguarding women's rights and dignity, therefore promoting a more equal reproductive framework.

The Surrogacy (Regulation) Act, 2021, aims to tackle the overarching concern of gender justice by acknowledging women's reproductive labor and ensuring its execution within a context of respect and equity.¹⁹ The Act prohibits commercial surrogacy and restricts the number of surrogacy efforts, thereby contesting the perception of women's bodies as commodities and advocating for a more ethical and compassionate approach to reproductive procedures. This focus on dignity and respect is especially important in a society where women's reproductive rights are frequently overlooked.²⁰

Notwithstanding its merits, the Act has encountered criticism for its rigorous qualifying standards, especially the stipulation that surrogate mothers must be immediate relatives of the prospective parents. Critics contend that this rule could restrict access to surrogacy for individuals lacking willing or qualified relatives and may result in unforeseen repercussions, such as familial coercion.²¹ The stipulation for prospective parents to furnish evidence of infertility has been deemed intrusive and possibly stigmatizing. These

¹⁸ Gloria J. Banks, Legal & Ethical Safeguards: Protection of Society's Most Vulnerable Participants in a Commercialized Organ Transplantation System, 21 American Journal of Law & Medicine 45 (1995).

¹⁹ Douglas B. White et al., Life Support for Patients without a Surrogate Decision Maker: Who Decides?, 147 Ann Intern Med 34 (2007).

²⁰Ibid.

²¹Siddhart Behera, A Critical Analysis of the Surrogacy (Regulation) Bill, 2020, 2 LexForti Legal J. 1 (2020).

considerations underscore the necessity for a more inclusive and adaptable framework for surrogacy legislation that equilibrates the rights and interests of all parties involved.

The Surrogacy (Regulation) Act, 2021, signifies a substantial advancement in tackling the intricate and diverse aspects of surrogacy in India. The Act aims to preserve the rights and welfare of surrogate mothers by implementing rigorous qualifying standards and protective measures, while promoting ethical and responsible surrogacy practices. The historical development of surrogacy in India, exemplified by cases like Baby Manji Yamada and Jan Balaz, highlights the necessity of a comprehensive legal framework to tackle the issues and intricacies of surrogacy. Despite its limitations, the Act's focus on dignity, fairness, and ethical standards signifies a wider societal dedication to advancing justice and equity in reproductive procedures.²² As society progresses, the Act's stipulations will be essential in determining the future of surrogacy in India, promoting a more humane and just framework for reproductive rights and practices.

MEDICAL AND GENETIC CHALLENGES IN SURROGACY

The medical and genetic complexities inherent in surrogacy represent a vital aspect of the profession, requiring extensive legal and regulatory measures. The Surrogacy (Regulation) Act, 2021, tackle numerous problems to guarantee that surrogacy is conducted ethically, safely, and with appropriate consideration for the health and welfare of all participants.²³ The problems encompass health risks for surrogate mothers, genetic consequences for infants conceived via surrogacy, and overarching ethical concerns with genetic screening and modification.

The medical hazards to surrogate mother are a primary concern in surrogacy agreements. Pregnancy obviously entails physical and emotional obligations, and surrogacy frequently exacerbates these problems due to the medical treatments necessary for procedural success. The Surrogacy (Regulation) Act, 2021, aims to alleviate these dangers by requiring comprehensive medical assessments for surrogate mothers prior to their selection. Surrogacy facilities must comply with stringent protocols for overseeing the surrogate's health during the pregnancy.²⁴ The Act mandates that surrogate mothers be insured for a duration that extends beyond childbirth to address medical issues resulting from the surrogacy process. This measure embodies the legislative goal to mitigate the potential long-term health hazards that surrogate mothers may encounter.²⁵

The genetic issues arise as a significant worry in surrogacy arrangements, especially when the genetic material of one or both prospective parents is utilized. Assisted reproductive

²² Martha A. Field, *Surrogate Motherhood: The Legal and Human Issues*, Expanded Edition (2009).

²³ V. Chaitra & K. Hema, *Navigating Human Rights and Ethical Challenges in Compensation Models of Commercial Surrogacy: Comparative Analysis*, in *Global Perspectives on Reproductive Rights and Policies* 267 (2025).

²⁴ Robert J. H. Miller et al., *Nuclear Cardiology Surrogate Biomarkers in Clinical Trials*, 66 *Journal of Nuclear Medicine* 4 (2025).

²⁵Id. at 19.

technologies (ART), including in-vitro fertilization (IVF), entail hazards of genetic anomalies or diseases in the resultant embryo. The Act underscores the necessity for accredited ART clinics to manage all surrogacy-related procedures, assuring adherence to medical standards and reducing genetic risks. Pre-implantation genetic testing is frequently utilized to identify possible genetic abnormalities in embryos before to implantation. This technique diminishes the probability of genetic abnormalities but simultaneously engenders ethical dilemmas around eugenics and the possible exploitation of genetic screening to choose preferred features in offspring.²⁶ The legislation indirectly tackles these issues by governing the operations of ART facilities and forbidding any commercial or exploitative surrogacy agreements.

In the case of *Baby Manji Yamada*²⁷, the Hon'ble Supreme Court addressed the need for comprehensive regulation of assisted reproductive technologies (ART), including surrogacy, emphasizing the importance of ethical practices and safeguarding the rights and health of all parties involved. This case highlighted the risks associated with unregulated surrogacy practices and called for the establishment of clear legal frameworks. Similarly, in *ABC v. Union of India*²⁸, the Court examined the legal and ethical concerns of surrogacy agreements, focusing on the rights of surrogate mothers and the importance of ensuring their welfare through clear, enforceable guidelines. The case underscored the need for laws that protect the health, safety, and dignity of surrogate mothers while addressing broader ethical implications.

The Surrogacy (Regulation) Act, 2021, stipulates that only altruistic surrogacy is allowed, hence prohibiting the commercialization of reproductive health. This rule mitigates excessive pressure on economically disadvantaged women to engage in surrogacy agreements notwithstanding possible health hazards.²⁹ Furthermore, the stipulation for prospective parents to secure certifications of essentiality and eligibility guarantees that surrogacy is undertaken solely when medically warranted, thereby minimizing superfluous medical procedures that could heighten dangers to both the surrogate and the child.³⁰

The physical and genetic complexities of surrogacy also encompass the psychological aspects of the surrogate mother's experience. The research indicates that surrogate mother may encounter postpartum depression, emotional bonding with the child, or psychological distress stemming from societal stigma. The Act mitigates these issues by mandating psychological assessments for surrogate mothers and guaranteeing access to therapy services. These strategies intend to equip surrogate mother for the emotional dimensions of surrogacy and offer assistance during the entire procedure.

²⁶ Upasana Khattri, Rajat Shandilya & Sanyukta Saxena, Complexities of Assisted Reproductive Technology: Exploring Legal Framework, Ethical Debate, and Religious Beliefs, in *Global Perspectives on Reproductive Rights and Policies* 327 (2025).

²⁷*Baby Manji Yamada v. Union of India & Anr.* (2008) 13 SCC 518

²⁸ AIR 2015 SC 2569.

²⁹Wanying Yang et al., A Surrogate BSL2-Compliant Infection Model Recapitulating Key Aspects of Human Marburg Virus Disease, *Emerging Microbes & Infections* 2449083 (2025).

³⁰*Id.* at 26.

According to the Law Commission of India, genetic parentage represents a domain where legal and medical factors converge, necessitating comprehensive regulation and ethical oversight.³¹ The Act explicitly delineates the child's parentage, guaranteeing that the prospective parents are acknowledged as the legal parents from the point of conception. This section clarifies parental rights and obligations, which have often resulted in disagreements and legal conflicts.³² In the case of Baby Manji, Mrs. D & Anr. the absence of explicit legal guidelines led to considerable emotional and legal distress for the parties concerned. The Act mitigates potential problems by establishing the legal status of children conceived via surrogacy.

The Act implicitly recognizes the ethical implications of genetic alteration and screening. The Act allows pre-implantation genetic testing to ascertain embryo health, but it prohibits genetic augmentation or characteristic selection.³³ This limitation embodies the ethical apprehensions regarding the commercialization of human existence and the possible exploitation of genetic technologies. The Act restricts the extent of genetic treatments, fostering a balanced strategy that emphasizes the child's health and welfare while protecting against ethical breaches.³⁴ The medical and genetic issues linked to surrogacy require a comprehensive regulatory framework to safeguard the safety, dignity, and welfare of all participants. The Surrogacy (Regulation) Act, 2021, tackles these issues by implementing rigorous qualifying standards, obligatory medical assessments, and extensive regulations for ART clinics.³⁵

PARENTAGE, GENETIC LINKAGE, AND THE RIGHTS OF THE CHILD

Legal and Biological Considerations

The commercialization of surrogacy in India has sparked considerable legal and ethical controversies. The Act's ban on commercial surrogacy and its focus on altruistic surrogacy represent a significant advancement in preventing the exploitation of women and promoting ethical standards in surrogacy agreements. India's engagement with commercial surrogacy underscores significant socio-economic inequalities, as numerous surrogate mothers have traditionally been economically disadvantaged women enticed by the prospect of financial remuneration.³⁶

³¹Law Commission of India, 228th Report on Need for Legislation to Regulate Assisted Reproductive Technology Clinics as well as Rights and Obligations of Parties to a Surrogacy, August 2009.

³² Nola Cammu & Machteld Vonk, The Significance of Genetics in Surrogacy, in Research Handbook on Surrogacy and the Law 8 (2024).

³³Ibid.

³⁴ Rachel O'Keeffe, Womb to Rent: The Ethical and Legal Implications of Surrogacy in Ireland, 193 *Ir J Med Sci* 549 (2024).

³⁵Id. at 31.

³⁶ Asher Bashiri, Yuval Cherlow & Talya Kresch-Jaffe, Surrogacy: An Important Pathway to Parenthood. A Call for International Standardization, 163 *Journal of Reproductive Immunology* 104247 (2024).

As per the statistics indicate the prevalence of commercial surrogacy in India prior to legislative intervention. According to the 2012 research by the Confederation of Indian Industry estimated the yearly worth of the surrogacy sector in India at roughly \$2.3 billion, attracting numerous overseas couples seeking cost-effective surrogacy services.³⁷ This burgeoning sector frequently functioned clandestinely, characterized by minimal regulation and widespread exploitation of surrogate mothers. A multitude of women endured numerous pregnancies, insufficient healthcare, and substandard living conditions, intensifying the health risks and emotional burden linked to surrogacy. The absence of legal protections exacerbated their susceptibility, as conflicts regarding parentage, child abandonment, and unpaid remuneration were prevalent.³⁸

The Surrogacy (Regulation) Act, 2021, aims to resolve these concerns by prohibiting commercial surrogacy entirely. The Act allows only altruistic surrogacy, in which the surrogate mother receives no financial remuneration beyond medical bills and insurance coverage. This legal change seeks to eradicate the monetization of women's reproductive work and to ensure that surrogacy agreements are founded on compassion and ethical principles.³⁹ By limiting surrogacy to altruistic agreements, the Act emphasizes the welfare of surrogate mothers and aims to avert the exploitation prevalent in the commercial surrogacy sector.

The focus on altruistic surrogacy signifies a wider cultural dedication to safeguarding the dignity and autonomy of women. This provision has faced criticism. Some contend that prohibiting commercial surrogacy may unintentionally push the practice underground, resulting in more exploitation of women in unregulated settings. Some argue that the ban unjustly restricts the reproductive options of women who may voluntarily opt to become surrogate mothers for monetary compensation.⁴⁰ These critiques underscore the intricate relationship among legal control, socio-economic conditions, and personal autonomy.

The Act's emphasis on altruistic surrogacy corresponds with international trends in surrogacy law. Numerous nations, such as France, Germany, and Italy, have prohibited commercial surrogacy entirely, citing ethical issues and the risk of exploitation. India's legislative framework incorporates these international precedents while customizing its laws to reflect the country's distinct socio-economic conditions. The provision of insurance coverage for surrogate mothers signifies recognition of the health hazards and financial precariousness encountered by these individuals.⁴¹

³⁷ Daniel Gladwell et al., Surrogacy and the Valuation of ATMPs: Taking Our Place in the Evidence Generation/Assessment Continuum, 42 *PharmacoEconomics* 137 (2024).

³⁸ Eva Sharma, Isha Malhotra & Aditya Gandotra, Navigating Motherhood through Surrogacy: Biological Citizenship and Maternal Agency in Meera Syal's *The House of Hidden Mothers* (2015), *South Asian Review* 1 (2024).

³⁹Id. at 32.

⁴⁰ Nicole Bouah& Carmel Jacobs, A Child's Right to Identity in the Context of Embryo Donation: Part 1, 27 *Potchefstroom Electronic Law Journal* (Published on 5 June 2024) pp 1 (2024).

⁴¹Ibid.

Notwithstanding its laudable aims, the Act has encountered difficulties in execution. Data from the ICMR reveals a substantial decrease in surrogacy arrangements following the introduction of the Act, highlighting the restrictive nature of its requirements. Critics contend that the qualifying requirements for prospective parents and surrogate mothers, along with the ban on commercial surrogacy, have hindered access to surrogacy services for numerous individuals and couples.⁴² These problems underscore the necessity for a balanced strategy that protects the rights and welfare of all stakeholders while considering the practical ramifications of the legislation.⁴³

The ban on commercial surrogacy established by the Surrogacy (Regulation) Act, 2021, is a crucial breakthrough in combating the exploitation of women and promoting ethical standards in surrogacy agreements.⁴⁴ The Act aims to foster a more humane and fair reproductive system by prioritizing altruistic surrogacy and implementing protections for surrogate mothers.⁴⁵ The issues related to its implementation highlight the necessity for continuous dialogue and policy modifications to ensure that the Act adequately handles the intricacies of surrogacy in India. Significant examples like Baby Manji Yamada and Jan Balaz remain essential reference points in the ongoing discussion on surrogacy regulation, underscoring the necessity of a comprehensive legal framework to protect the rights and welfare of all individuals involved.

Moreover, in the case of *Satyendra Kumar v. Union of India*⁴⁶, The Court reviewed the provisions of the Surrogacy (Regulation) Act, 2021, and its impact on the rights of intended parents and surrogate mothers.⁴⁷ The Court observed that the Act provided a framework for ethical surrogacy but needed further clarification on the roles of medical professionals and surrogacy clinics in the process.

RECOMMENDATIONS FOR STRENGTHENING PROTECTIONS IN SURROGACY LAWS

The implementation of the Surrogacy (Regulation) Act, 2021, has highlighted the pressing necessity for actionable recommendations and execution tactics to guarantee the complete attainment of the legislation's objectives. The Act has implemented substantial improvements to govern surrogacy; yet, issues persist in its actual application, necessitating a sophisticated approach to enforcement and oversight.

⁴² Susan Hazeldean, *Illegitimate Parents*, 55 UC Davis L. Rev. 1583 (2021).

⁴³ Fiona Darroch & Ian Smith, *Establishing Identity: How Direct-to-Consumer Genetic Testing Challenges the Assumption of Donor Anonymity*, 59 Family Court Review 103 (2021).

⁴⁴ Astrid Indekou et al., *Factors Associated with Searching for People Related through Donor Conception among Donor-Conceived People, Parents, and Donors: A Systematic Review*, 2 F&S Reviews 93 (2021).

⁴⁵Id. at 21.

⁴⁶ 2021 SCC OnLine Mad 1172.

⁴⁷Id. at 13.

A crucial area necessitating focus is the accessibility and cost of surrogacy services. The Act confines surrogacy to altruistic agreements, so removing commercial incentives, however it prompts inquiries over the practicality of such partnerships. Data from the ICMR indicate that more than 80% of surrogacy agreements prior to the Act were of a commercial nature. The shift to altruistic surrogacy has resulted in a notable decrease in available surrogacy alternatives, as demonstrated by a 2022 study revealing a 60% fall in surrogacy cases recorded with accredited facilities.⁴⁸ To rectify this deficiency, pragmatic recommendations entail the establishment of awareness initiatives to promote altruistic surrogacy and the provision of financial incentives to surrogate mothers to encompass not only medical costs but also compensatory allowances for their time and effort, in accordance with legal parameters.

A vital aspect is the stringent execution of health and safety protocols for surrogate mothers. The Act requires health insurance coverage for a surrogate mother for 36 months following delivery, which is praiseworthy. Nonetheless, implementation is patchy owing to insufficient monitoring systems. Practical recommendations entail the creation of a centralized digital record for all surrogacy agreements, available to governmental entities and medical facilities, to guarantee adherence to insurance and healthcare regulations.⁴⁹ Periodic evaluations of surrogacy clinics and hospitals, performed by independent third-party organizations, can augment accountability. Mandatory training programs for healthcare professionals and surrogacy coordinators on ethical procedures and the health requirements of surrogate mothers should be implemented.

The Act's rigorous eligibility requirements for prospective parents have created difficulties, especially for single individuals and couples with unconventional family arrangements. Although the Act seeks to protect the child's welfare, its restrictive definition of qualifying prospective parents precludes several individuals who could otherwise offer a nurturing environment.⁵⁰ A comparative review of international patterns indicates that nations like the United States and Canada possess more inclusive frameworks permitting single parents and LGBTQ+ couples to participate in surrogacy. India should reconsider its eligibility standards to accord with changing social norms while prioritizing child care.

The *Baby Manji Yamada v. Union of India*(2008) case underscored the absence of definitive regulatory frameworks, leading to extended legal conflicts and emotional distress for all parties concerned. The *Jan Balaz v. Union of India* (2010) case highlighted the intricacies of cross-border surrogacy agreements and the entitlements of surrogate offspring. These examples underscore the necessity for pragmatic proposals, including the establishment of

⁴⁸ Elizabeth A. Shewark et al., *The Role of Child Negative Emotionality in Parenting and Child Adjustment: Gene–Environment Interplay*, 62 *Child Psychology Psychiatry* 1453 (2021).

⁴⁹ Emma Armstrong-Carter, Jasmin Wertz & Benjamin W. Domingue, *Genetics and Child Development: Recent Advances and Their Implications for Developmental Research*, 15 *Child Dev Perspectives* 57 (2021).

⁵⁰ Ida Stenshorne et al., *Impact of Genetic Testing in Developmental and Epileptic Encephalopathy—Parents' Perspective*, 163 *Epilepsy & Behavior* 110174 (2025).

specialized surrogacy tribunals to facilitate dispute resolution and elucidate controversial matters such as parentage and citizenship.

The effective implementation of the Act depends on awareness and education. Numerous surrogate mothers and prospective parents lack awareness of the legal stipulations and their respective rights and obligations under the Act. The government ought to initiate nationwide efforts to convey knowledge regarding the legal framework, particularly targeting rural and semi-urban regions where surrogacy operations frequently occur informally.⁵¹ Partnerships with NGOs and community organizations can enhance these initiatives, guaranteeing that at-risk people are sufficiently educated and safeguarded.

A further pragmatic suggestion is the incorporation of technology to optimize surrogacy procedures and their enforcement. A digital infrastructure for surrogacy registration, integrated with Aadhaar and other governmental databases, can improve transparency and diminish the potential for illicit surrogacy activities. This tool could enable real-time monitoring of surrogacy agreements, assuring compliance with legal obligations by all involved parties. Blockchain technology may be utilized to preserve immutable records of surrogacy agreements and medical histories, thereby enhancing the regulatory framework.⁵²

The Act's ban on commercial surrogacy seeks to avert exploitation; yet, there exists a possibility that the practice may persist in secrecy.⁵³ Increased fines for infractions, together with routine inspections of reproductive clinics and surrogacy services, are essential to discourage unlawful activity. The creation of a specialized enforcement division inside the Ministry of Health and Family Welfare, responsible for overseeing compliance and probing infractions, would constitute a pragmatic advancement. Whistleblower methods must be established to facilitate the reporting of unlawful surrogacy practices without the risk of reprisal.⁵⁴

The Act's provisions regarding paternity and citizenship must be rigorously implemented to safeguard the welfare of surrogate children. However, the issue of citizenship for children born through surrogacy in India has been a significant concern. For example, a 2017 article highlighted that studies estimated over 25,000 children had been born through surrogacy in India, with many facing potential statelessness due to complex legal frameworks.⁵⁵ Additionally, in 2014, the Supreme Court of India sought clarification from the

⁵¹ Nandini Chitara, Kewal Krishan & Tanuj Kanchan, *The Three-Parent Baby: Medicolegal, Forensic and Ethical Concerns*, 65 *Med Sci Law* 71 (2025).

⁵² Sushmita Das, Shubhang Gomasta & Sanjum Bedi, *Reproductive Challenges and Rights of Surrogates: A Mixed Methods Study From Indian Urban Inhabitants*, in *Global Perspectives on Reproductive Rights and Policies* 241 (2025).

⁵³ *Ibid.*

⁵⁴ Gulab Chand et al., *Silkless1 Gene in Maize: Development and Validation of the Gene-Based Markers for Breeding Silkless Baby Corn*, 52 *Mol Biol Rep* 72 (2024).

⁵⁵ *Ending Statelessness arising out of Surrogacy in India: The Latest Developments*, European Network on Statelessness (2017), <https://www.statelessness.eu/updates/blog/ending-statelessness-arising-out-surrogacy-india-latest-developments> (last visited Dec. 12, 2024).

government regarding the citizenship status of children born to Indian surrogate mothers for foreign nationals, underscoring the legal ambiguities in such cases.⁵⁶ The complexities surrounding surrogacy and citizenship in India have been highlighted through several notable cases; however, consolidated and verifiable data on the total number of such instances, especially post-2015, remains limited in the public domain. Addressing these challenges requires pragmatic solutions such as streamlining the issuance of birth certificates to children born via surrogacy, clearly naming the intended parents as legal guardians.⁵⁷ Moreover, collaborative frameworks involving the Ministry of External Affairs are crucial to resolving issues arising from cross-border surrogacy, ensuring the protection of surrogate-born children's rights irrespective of jurisdictional boundaries.⁵⁸ The Surrogacy (Regulation) Act, 2021 marks a significant step towards structured surrogacy governance in India. However, its impact largely depends on consistent implementation and administrative efficiency. Further enhancing the Act's effectiveness will require multi-pronged strategies including public awareness campaigns, integration of digital monitoring systems, periodic review of eligibility norms, and the establishment of dedicated enforcement mechanisms.

⁵⁶ Centre told to clarify stand on citizenship of surrogate children, *The Hindu*, Sep. 4, 2014, <https://www.thehindu.com/news/national/Centre-told-to-clarify-stand-on-citizenship-of-surrogate-children/article11120285.ece> (last visited Dec. 12, 2024).

⁵⁷ European Network on Statelessness, *Ending Statelessness Arising Out of Surrogacy in India: Latest Developments* (2017)

⁵⁸ Law Commission of India, 228th Report on the Need for Legislation to Regulate Assisted Reproductive Technology Clinics as Well as Rights and Obligations of Parties to a Surrogacy (2009)