

# A Global Comparative Analysis Of Surrogacy Laws: Critical Evaluation Of India's Legal System And Roadmap For Reform

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## ABSTRACT

This abstract presents a concise synthesis of a study on surrogacy law with India as the focal case. It traces assisted reproduction from a period of loose clinical practice to a regime of formal oversight and assesses legal, social and constitutional consequences. The research compares the Indian framework with models in the United Kingdom, the United States, Australia and China to reveal common aims and important differences. Two policy goals recur across jurisdictions. One is protecting the welfare of children and carriers. The other is preventing exploitation while respecting reproductive choice. The paper highlights how India now relies on a tightly prescriptive statutory architecture that emphasizes registration and oversight and allows only altruistic gestational arrangements for narrowly defined intending parents. That design reduces some market risks yet also restricts access and risks pushing demand into informal channels. Comparative examples show that systems which combine clear registration, rigorous medical oversight and accessible legal routes to parentage tend to reduce uncertainty for all parties. The study also examines constitutional questions arising from categorical exclusions based on marital status, sexual orientation, age and nationality and finds tension between statutory limits and principles of privacy and equality. Finally the paper offers practical recommendations. Lawmakers should aim for a proportional balance between safeguarding vulnerable women and enabling fair access to assisted reproduction. Reforms should create enforceable protections for carriers, realistic eligibility criteria and transparent parentage processes so that exploitation is reduced and reproductive choice is respected..

**Keywords :** Surrogacy Regulation, Comparative Legal Framework, Reproductive rights, Constitutional challenges, Assisted reproduction..

## 1. INTRODUCTION:

Surrogacy sits at a fraught crossroads of medicine, law and social values. In India, it has evolved from informal cultural practices and early experiments in assisted reproduction into a tightly regulated field. ‘Recent statutes and rules aim to police clinics and prohibit commercial transactions, but they also narrow who can access surrogacy and impose strict eligibility criteria on both surrogate mothers and intended parents. Those measures raise urgent questions about legal coherence, social justice and the practical effects of regulation.’

This article tackles the central problem that regulations’ stated goals often diverge from its real-world outcomes. Laws intended to protect surrogate women and children can end up excluding single people, same-sex couples and older partners, and may push demand into unregulated markets when lawful access is constrained. At the same time, the medical, psychological and economic realities of surrogacy require safeguards that are more nuanced than outright bans or simplistic rules.

Against this background, the research offers a critical evaluation of India’s legal framework for surrogacy. Using comparative examples and key judicial decisions, it probes constitutional questions of equality and personal liberty, maps regulatory strengths and gaps, and explores the lived consequences for surrogate women and intended parents. The goal is to recommend reforms that reconcile protection with access and reduce incentives for exploitative practices.

### What is Surrogacy?

Surrogacy refers to an arrangement in which a woman agrees to carry a pregnancy on behalf of another person or couple and, after birth, hand over the child to them. The Indian Council of Medical Research describes it as a pregnancy carried by a woman who has no genetic connection to the child she delivers, undertaken with the intention that the child will be raised by the intended parents. Surrogacy is one of the processes encompassed within Assisted Reproductive Technology and is often discussed for its scientific and ethical implications.<sup>1</sup>

<sup>1</sup> Poorvi Gyanchandani, Surrogacy: A Comparative Analysis between India and US, 2022, International *Advances in Consumer Research*

Clinically, surrogacy takes two broad forms: traditional and gestational. In the traditional model, sometimes called the straight method, the surrogate conceives using her own egg and the sperm of the intended father. She agrees beforehand that the child will be raised by the father and his family. Gestational surrogacy operates differently. An embryo created from the gametes of the intended parents or donors is transferred into the surrogate's uterus, meaning she has no genetic link to the child. In this model, she serves purely as the gestational carrier, relinquishing the child to the intended parents after delivery.<sup>2</sup>

Surrogacy can also be distinguished by the financial terms involved. In altruistic arrangements, the surrogate receives no payment beyond reimbursement of medical and pregnancy related expenses. In commercial arrangements, she receives additional compensation for carrying the child. Many jurisdictions restrict or ban commercial surrogacy out of concern that it may reduce women to reproductive labour and create situations in which economic vulnerability drives participation rather than free choice.<sup>3</sup>

### Statement of Problem

Over the past decade India has moved from a loosely regulated practice of surrogacy to a tightly controlled legal framework. While recent statutes aim to prevent exploitation and protect children and surrogate mothers, they also impose strict eligibility rules and ban commercial compensation. These constraints create practical and ethical tensions because the law restricts access for many who seek surrogacy yet does not fully eliminate demand or the conditions that produce risky informal arrangements.

The core problem is that the current regulatory design, though well intentioned, may produce unintended harms. Narrow definitions of infertility, rigid requirements about marital status, age and prior parenthood, and the prohibition on compensated arrangements together limit lawful pathways for intended parents and remove an income option for women who might willingly choose to carry a child. At the same time enforcement gaps and social pressures can push transactions into unregulated channels where medical oversight, legal clarity and postnatal safeguards are weaker. The result is a paradox: a protective regime that can leave the most vulnerable exposed.

This situation raises urgent legal and policy questions. Does the statute strike an appropriate balance between preventing exploitation and upholding reproductive autonomy and equality? Do exclusionary eligibility rules comply with constitutional protections for personal liberty and non-discrimination? Can a system that forbids payment while restricting access realistically secure the welfare of surrogate mothers and children, or will it simply shift activity underground? Answering these questions is essential to avoid producing new forms of harm while pursuing legitimate protections.

### Research Objectives

**To** Develop practical reform recommendations that balance protection and access, including regulatory, procedural and enforcement measures designed to safeguard surrogates, intended parents and children while minimising unintended underground practices.

**To** Compare India's approach with those of selected jurisdictions to identify policy choices that promote safety, reduce exploitation and avoid driving demand into informal or cross border markets.

**To** Examine the constitutionality of the current rules by testing whether exclusions based on marital status, sexual orientation, age and narrow infertility definitions are consistent with the rights to equality and personal liberty under Articles 14 and 21.

**To** Assess the real world impact of the legal regime on surrogate women, including medical risks, psychological consequences, economic implications and the adequacy of legal and welfare protections.

Identify and analyse the evolution, key provisions and practical gaps in India's surrogacy regulatory framework, with emphasis on the Surrogacy Regulation Act 2021 and the Assisted Reproductive Technology Regulation Act 2021.

### Research Methodology

This study adopts a doctrinal method, 'drawing on statutes, case law, government rules and scholarly writing to examine India's surrogacy framework. It closely analyses the Surrogacy Regulation Act 2021, the ART Regulation Act 2021 and key judgments such as *Baby Manji Yamada v Union of India* and *Jan Balaz v Anand Municipality*, along with selected comparative material. The legislative scheme is interpreted in light of constitutional guarantees of equality and personal liberty, while secondary sources help highlight practical and social concerns arising from surrogacy arrangements.' All references follow the Bluebook (21st ed.) for uniform citation.

### Surrogacy in an Indian Perspective

Stories from Hindu and Jain traditions show that forms of third-party reproduction have long been part of the cultural imagination, and that secrecy around the practice is not new. In the Mahabharata a rishi named Bhardwaj saw a divine nymph emerge from the water. Overcome by desire, he deposited his seed into a sacred vessel called a darona. From that vessel, Dronacharya was said to be born. Jain tradition contains a similar account: the 24th tirthankara Mahavira is described as having been transferred from one woman to another by divine intervention. According to that narrative, Devananda conceived the embryo and the gods moved it into Trishala's womb.<sup>4</sup>

Modern assisted reproductive technologies arrived in India in the late twentieth century. The birth of Kanupriya,

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<sup>2</sup> *Ibid*

<sup>3</sup> *Ibid*

also known as Durga, in Kolkata on October 3, 1978 brought public attention to in vitro fertilization and opened a pathway for surrogacy as an option for people unable to conceive naturally. For many years the field remained only loosely regulated. In 2002 the Indian Council of Medical Research issued guidelines that acknowledged and attempted to govern these practices, but the absence of enforceable rules allowed some low cost clinics to operate with minimal oversight. That gap disproportionately affected poor women, who often became the primary providers of surrogate services. As a result India attracted many foreign intended parents seeking surrogacy.<sup>5</sup>

High profile legal controversies highlighted the need for clearer law. Cases such as the Baby Manji Yamada matter and the Jan Balaz situation exposed regulatory and ethical gaps and prompted the government to act. In 2015 surrogacy for foreign nationals was banned. Subsequent legislation sought to tighten controls and to protect all parties involved.<sup>6</sup>

The Surrogacy Regulation Bill introduced in 2016 and later revisions sought to define who may use surrogacy and under what conditions. One contentious requirement has been the insistence that couples demonstrate infertility before pursuing surrogacy. The statute defines infertility as the inability to conceive after five years of unprotected sexual intercourse or a medical condition that prevents pregnancy. That narrow definition leaves out many real situations, for example conditions that allow conception but result in repeated pregnancy loss.

The version of the law brought to Parliament on July 15, 2019 described surrogacy as a process in which a woman carries a child for intended parents and set detailed eligibility rules. It limited access to married Indian couples who had been married for at least five years, required age ranges for the intending mother and father, and in many cases disqualified couples who already had children. Single women who were widowed or divorced between the ages of 35 and 45 were allowed to seek surrogacy, while single men were excluded. The law permits altruistic surrogacy, where the surrogate receives no financial compensation beyond medical and other reasonable expenses, and it forbids commercial surrogacy. After parliamentary approval the Surrogacy Regulation Act received presidential assent on December 25, 2021, marking a major shift toward tighter oversight and more clearly defined protections and limits.<sup>7</sup>

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Indian Journal of Law and Legal Research, V.5 Issue VI, 4154-4157.

<sup>5</sup> *Ibid*

<sup>6</sup> *Ibid*

<sup>7</sup> Nimal Farhan Aripurath, Surrogacy Laws: A Global Comparative Analysis and India's Regulatory Landscape, Indian Journal of Law and Legal Research, V.5 Issue VI, 4154-4157.

<sup>8</sup> Anjali Sharma, Surrogacy laws in India: A critical study and comparison with China, International Journal of Law, Policy and Social Review, V. 7., Issue. 3, 59-60, (2025)

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## **The Surrogacy Regulation Act 2021 and the Assisted Reproductive Technology Regulation Act 2021**

These Acts together create a new legal framework for assisted reproduction in India and place clear limits on commercial surrogacy. In 2022 the Ministry of Health and Family Welfare issued rules under the Assisted Reproductive Technology law to operationalize the provisions for clinics and banks.<sup>8</sup>

The Assisted Reproductive Technology law requires registration and supervision of every ART clinic and sperm or egg bank through a national registry. It sets standards for how gametes may be donated and supplied, and it makes explicit that a gamete donor will not have parental rights over any child born through assisted reproduction.<sup>9</sup>

## **The Surrogacy Regulation Act 2022**

This Act came into force in January 2022 and established a comprehensive oversight structure. This Act allows only altruistic surrogacy and prohibits any arrangement that amounts to commercial surrogacy.<sup>10</sup> Intended parents must obtain a certificate from the designated central authority before proceeding. The law requires gestational surrogacy only, thereby severing any biological parentage between the surrogate and the child she carries.<sup>11</sup>

Surrogacy is permitted only for infertile heterosexual Indian couples who have been married for at least five years. A woman acting as surrogate must be between 25 and 35 years of age and must already have one biological child. The statute also provides for national and state boards to regulate and monitor the practice. Foreign nationals, single parents and same sex couples are not eligible to use surrogacy services in India under this law.<sup>12</sup>

## **Constitutional Scrutiny of The Surrogacy (Regulation) Act, 2021**

Constitutional review of the Surrogacy Regulation Act 2021 centres on how the law balances competing interests. The state has a clear obligation to shield surrogate mothers from exploitation and to protect the welfare of children born through the process. At the same time, adults have a legitimate interest in making autonomous reproductive choices, and intended parents seek legal certainty and access to assisted reproduction.<sup>13</sup>

Indian law has not yet fully reconciled these overlapping concerns. The Supreme Court in *Devika Biswas v. Union of India* affirmed that reproductive choice forms part of

<sup>9</sup> The Assisted Reproductive Technology Regulation Act 2021

<sup>10</sup> The Surrogacy Regulation Act 2022

<sup>11</sup> Varsha D Vyas at. All, *A Legal Analysis of Surrogacy: A Comparative Study Under International and Indian Law*, V 5 Issue 8 National Journal of Legal Review, (2025).

<sup>12</sup> *Ibid*.

<sup>13</sup> Bhumika Indulia, Surrogacy (Regulation) Act, 2021, SCC, (10 December 2025, 3:00 PM), [hPps://www.sconline.com/blog/post/2021/12/27/surrogacy-regulation-act-2021/](https://www.sconline.com/blog/post/2021/12/27/surrogacy-regulation-act-2021/).

the right to life under Article 21. That right covers the entire continuum of choosing to conceive, carry a pregnancy and raise a child. Limiting surrogacy to heterosexual married couples of specific ages therefore raises constitutional questions. Excluding single people, older couples and LGBTQ+ families may be difficult to justify under Articles 21 and 14, which protect personal liberty and equality before the law.<sup>14</sup>

Critics argue that several provisions of the 2021 Act work at cross-purposes. While intending to prevent abuse, they may leave gaps that push people into unregulated arrangements and inadvertently support underground markets. Age thresholds, marital status requirements and categorical exclusions of same sex couples have been highlighted as barriers that do not reflect the rapid social changes under way in India. As the country moves away from strictly patriarchal frameworks toward more inclusive understandings of family and gender, doubts remain about whether the current statute adequately supports that progression.<sup>15</sup>

## Global Perspectives on Surrogacy

### Surrogacy In the United Kingdom

The United Kingdom regulates surrogacy through the Surrogacy Arrangements Act 1985 and the Human Fertilisation and Embryology Act 2008. Commercial surrogacy is illegal, and surrogacy agreements carry no automatic legal force. After the child is born, intended parents may seek a Parental Order from a court to obtain legal parenthood, provided the statutory conditions are met and the surrogate has given her consent. The regime is built around the child welfare principle and protection of the surrogate, but critics argue the law is complicated and has not kept pace with contemporary family arrangements.<sup>16</sup>

### Surrogacy In the United States

The United States does not operate under a single national statute on surrogacy. Each state sets its own rules, resulting in a patchwork of approaches. Some jurisdictions, including California and Illinois, recognize and enforce surrogacy agreements and allow both compensated and unpaid arrangements. Others, such as Michigan, treat paid surrogacy as a criminal offense.<sup>17</sup>

California is frequently viewed as a permissive model. Its courts emphasize the validity of contracts and often issue pre-birth parentage orders, as illustrated in the *Johnson v. Calvert* decision. The wide variation in state laws, however, creates uneven protections and contributes to movement across state lines by intended parents and surrogates seeking more predictable legal regimes.<sup>18</sup>

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> *Supra Note 13.*

<sup>17</sup> *Ibid.*

<sup>18</sup> Kriti Bhatia, Shubh Pareek & Saloni Bahl, *Comparative Study on Surrogacy Laws around the World*, 7 WWW.PENACCLAIMS.COM 1–10 (2019)

<sup>19</sup> Anjali Sharma, *Surrogacy laws in India: A critical study and comparison with China*, *International Journal of Advances in Consumer Research*

### Surrogacy In Australia

Australia permits only non-commercial surrogacy and treats paid surrogacy as a criminal offence under laws administered by individual states and territories. Surrogacy arrangements do not create automatic legal parentage and are not legally enforceable; intended parents must apply to the relevant court for an order transferring parentage after the child is born. The regulatory approach places emphasis on ethical protections, informed consent and mandatory counselling, but it has been criticised for lengthy procedures and restricted access.

### Surrogacy In China

Surrogacy in China developed during the twentieth century, with gestational surrogacy becoming established in the 1980s. Traditional stories described the idea of borrowing a woman to bear offspring, but clinical assisted reproduction began to take shape after the first test tube babies were born in Beijing's Third Hospital of Peking University in 1988. The country's first reported surrogate birth occurred in 1996, and demand for surrogacy grew rapidly as couples sought solutions for infertility.<sup>19</sup>

The introduction of population control measures accelerated the use of surrogacy in some areas. Preference for male children, especially in poorer regions, together with limits on the number of children people could have, pushed some families to look for alternative ways to have additional children. Because official policy has not promoted surrogacy, the practice has increasingly moved out of regulated channels and into informal markets.<sup>20</sup>

China's legal framework imposes penalties for unlawful use of assisted reproductive technology. Medical institutions found to be developing prohibited services face fines of 30,000 RMB, while non-medical actors using such technologies may be fined 10,000 RMB. In practice enforcement has often been weak, which has allowed surrogacy agencies to earn substantial profits and has helped underground networks to flourish. The city of Shenzhen has been cited as an example where an informal surrogacy market has persisted despite legal restrictions.<sup>21</sup>

### Advantages and disadvantages of serving as a surrogate mother

Becoming a surrogate can be deeply meaningful for many women. Carrying a child for people who cannot conceive offers emotional reward and the chance to change a family's life. At the same time, the choice carries medical, legal and psychological complexities that deserve careful consideration.

### Advantages

Law, Policy and Social Review, V. 7., Issue. 3, 59-60, (2025)

<sup>20</sup> Anjali Sharma, *Surrogacy laws in India: A critical study and comparison with China*, *International Journal of Law, Policy and Social Review*, V. 7., Issue. 3, 59-60, (2025)

<sup>21</sup> Anjali Sharma, *Surrogacy laws in India: A critical study and comparison with China*, *International Journal of*

**Emotional Needs:** Most of the surrogates describe the experience as profoundly satisfying. Helping intended parents complete their family often brings a strong sense of purpose and pride.<sup>22</sup>

**Opportunity to experience pregnancy again:** ‘For women who enjoy pregnancy, surrogacy can provide another opportunity to carry a child without taking on lifelong child-rearing responsibilities.’<sup>23</sup>

**Financial support:** Surrogates usually receive financial compensation or reimbursement for medical and related expenses. This support can help them by covering debts, household needs or long-term goals for the surrogate and her family.<sup>24</sup>

**Legal safeguards:** it Provides Reputable arrangements include contracts that clarify responsibilities, medical care, and the rights of all parties. These agreements are intended to protect the surrogate and to confirm that she will not retain parental obligations after delivery.<sup>25</sup>

### Disadvantages

**Physical and medical risks:** Pregnancy involves inherent medical risks. Surrogates undergo extensive screening and may face complications during pregnancy or delivery. They must also follow medication protocols and frequent medical monitoring.<sup>26</sup>

**Emotional strain:** Carrying a child for someone else can be emotionally demanding. Surrogates may experience stress, anxiety, or complex feelings during and after the pregnancy, even when the outcome is positive.<sup>27</sup>

**Time and commitment:** The process requires significant time. Screening, legal work, medical cycles, prenatal care and follow up can stretch across many months. During this period travel and other life plans may be limited.<sup>28</sup>

**Potential for inadequate protections:** Not all arrangements are equally well regulated. If contracts or medical oversight are weak, surrogates can face exploitation, unclear financial arrangements, or insufficient postnatal support.<sup>29</sup>

### Comparative analysis of surrogacy laws and practice

This analysis compares regulatory design, practical effects, and rights-based concerns across India, the United Kingdom, the United States, Australia and China, drawing on the material in your uploaded document. It highlights where regimes converge, where they diverge, how those choices affect surrogate women and intended parents, and what the principal policy trade-offs are.

### Regulatory objectives and instruments

Across the jurisdictions surveyed, two clear policy objectives recur: (a) protect the welfare of children and surrogates; and (b) prevent exploitation or commercialisation of reproduction. How those objectives are translated into law differs sharply.

**India** has created a tightly prescriptive statutory regime that emphasizes control and protection. The Surrogacy (Regulation) Act 2021 and the Assisted Reproductive Technology Act 2021 require registration of clinics and banks, prohibit commercial surrogacy and permit only altruistic, gestational surrogacy for narrowly defined categories of intended parents. The ART Rules operationalise registration, gametesupply rules and donor-rights clarifications.

**United Kingdom** relies on older statutes that criminalise commercial arrangements and treat private surrogacy contracts as unenforceable; parental status is obtained post-birth through a court-issued parental order. The UK model prioritises child welfare and surrogate autonomy but is often criticised as procedurally slow and dated.

**United States** has no federal surrogacy statute: states vary from permissive and contract-friendly (California, Illinois) to restrictive or punitive (e.g., Michigan). This results in a patchwork of policy outcomes and internal “reproductive tourism.”

**Australia** permits only altruistic surrogacy under state/territory laws, with courts transferring parentage after birth; its system foregrounds counselling and consent but faces criticism for delays and limited access.

**China** has discouraged open promotion of surrogacy and applied administrative fines for unlawful ART activity; weak enforcement has allowed a parallel informal market to emerge. Historical population policies and a cultural preference for sons shaped demand patterns.

### Key differences that matter in practice

**Commercial vs altruistic models:** India, the UK, Australia and China prohibit commercial surrogacy (or treat paid surrogacy as unlawful), while some U.S. states permit compensated arrangements. Prohibition reduces evident market risks but often pushes demand into informal or cross-border channels when access is limited.

**Who may access surrogacy:** India’s law restricts surrogacy to heterosexual married Indian couples meeting strict age and marriage-duration criteria; single men, foreign nationals and same-sex couples are excluded. Other jurisdictions either have broader eligibility (many

<sup>22</sup> *Surrogacy Pros & Cons: What You Should Know*, THOMPSON DOVE LAW GROUP LLC., (December 6, 2025, 11.10 AM)), <https://tdlawgroup.com/home/surrogacy-and-assisted-reproduction/surrogacy-information/surrogacypros-cons/>.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> Law, Policy and Social Review, V. 7., Issue. 3, 59-60, (2025)

<sup>27</sup> Melinda Guy, *The Pros and Cons of Being a Surrogate Mother*, FAMILY TREE, (December 6, 2025), <https://familytreesurrogacy.com/blog/pros-cons-surrogate/>.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

U.S. states) or rely on court-based parentage processes (UK, Australia), which can be more flexible. These eligibility rules shape who is driven to seek services abroad or underground.

**Legal recognition and timing of parentage:** The UK and Australia vest parenthood post-birth via judicial orders; permissive U.S. states allow pre-birth orders or contractual recognition; India's framework seeks administrative certification in advance but restricts eligible parties. The timing and certainty of parentage affect practical risks for all parties.

**Regulatory capacity and enforcement:** Formal bans without robust enforcement (noted in China) create lucrative informal markets. India's registry and oversight architecture aims to prevent misuse but critics argue some provisions (e.g., narrow infertility definitions, categorical exclusions) create perverse incentives for unregulated activity.

### 3. Effects on surrogate women and intended parents

**Protections:** Jurisdictions that combine registration, mandatory counselling, rigorous medical screening and enforceable contracts (or court processes) provide clearer safeguards. India's statutory focus on surrogate welfare is evident in eligibility and oversight rules, but the ban on compensation (commercial surrogacy) also removes an economic channel that—if well regulated—could offer meaningful support to carriers.

**Vulnerabilities:** Narrow eligibility criteria or informal enforcement tends to shift transactions into less-regulated settings, increasing the chance of exploitation, weak medical oversight and uncertain postnatal support for surrogate mothers. The uploaded file documents these practical risks and the emotionally and medically demanding nature of surrogacy.

### 4. Constitutional and rights concerns (India as case-study)

The uploaded material underscores constitutional questions in India. Restricting access by marital status, sexual orientation, age, or nationality raises potential conflicts with the right to privacy, reproductive autonomy and equality under Articles 21 and 14, as developed by the courts. Critics argue the Act's exclusions and rigid definitions of infertility may be difficult to justify on constitutional grounds and could fuel unregulated alternatives.

### 5. Policy trade-offs and practical recommendations

The main trade-off is between preventing exploitation and ensuring reasonable, non-discriminatory access. Policies that eliminate commercial compensation reduce commodification risks but can reduce surrogate welfare and drive markets underground. Conversely, permissive

compensation without strong safeguards can exploit vulnerable women.

### Judicial Discourse on Surrogacy

The courts have repeatedly confronted the legal uncertainty created by surrogacy arrangements, and several landmark decisions illustrate recurring concerns about custody, parentage and the welfare of children. The following summary draws on the uploaded file.

*Baby Manji Yamada v. Union of India*<sup>30</sup> presented a stark example of how cross border surrogacy can leave an infant without settled status. A Japanese couple had engaged an Indian woman in Anand, Gujarat, to carry a child. After the commissioning parents separated and the intended mother refused custody, the child was effectively abandoned and lacked travel documents and nationality. The court stepped in to decide immediate custodial questions, awarding custody to the maternal grandmother, while exposing serious gaps in the law governing international surrogacy arrangements.<sup>31</sup>

*Jan Balaz v. Anand Municipality*<sup>32</sup> concerned twins born through paid surrogacy to a German national. The Gujarat High Court prioritized the best interests of the newborns above competing claims from biological parents, the surrogate and an egg donor. The judgment granted Indian citizenship to the twins and emphasized the need to treat emotional and legal connections with surrogates and donors with sensitivity. The decision highlights the special protections courts will extend to children born by assisted reproduction when parentage and nationality are contested.<sup>33</sup>

*Shama v. Union of India*<sup>34</sup> asked whether a surrogate can retain parental rights and whether surrogacy contracts are enforceable. The Delhi High Court concluded that, where a valid surrogacy agreement exists and the arrangement has been followed, intended parents assume full parental status on delivery and the surrogate must relinquish parental claims. The ruling affirms that properly framed agreements can transfer parental responsibility, subject to legal safeguards.

*National Commission for Women v. Union of India*<sup>35</sup> The National Commission for Women raised systemic concerns about the exploitation of economically vulnerable women serving as surrogates. The Commission called attention to financial and social pressures that can lead to abuse and urged statutory regulation to protect surrogate mothers. That intervention helped to fuel legislative efforts aimed at establishing ethical safeguards and clearer legal protections for all parties involved in assisted reproduction.<sup>36</sup>

### Critical Analysis

The analysis illustrates how India's surrogacy laws have evolved from a largely unregulated practice to a tightly

<sup>30</sup> SCC 518, 2008

<sup>31</sup> *Baby Manji Yamada v. Union of India*, 13 SCC 518, 2008

<sup>32</sup> SCC Online Guj 10446, 2009

<sup>33</sup> *Jan Balaz v. Anand Municipality*, SCC Online Guj 10446, 2009 7 DLT 24, 2010.

<sup>34</sup> *Shama v. Union of India*, 7 DLT 24, 2010

<sup>35</sup> 10 SCC 213, 2011.

<sup>36</sup> *National Commission for Women v. Union of India*, 10 SCC 213, 2011.

controlled legal framework. A clear theme running through the material is the tension between protection and autonomy: the state seeks to prevent exploitation and safeguard children, yet its regulatory design limits the reproductive freedoms of many who might turn to surrogacy.

The legislative architecture introduced through the Surrogacy Regulation Act 2021 and the Assisted Reproductive Technology Regulation Act 2021 demonstrates a decisive shift toward state-supervised reproduction. Registration requirements for ART clinics and gamete banks represent an effort to establish accountability in a sector previously marked by informal practices and significant economic disparities. However, the strict prohibition on commercial surrogacy and the confinement of permissible arrangements to altruistic models raise questions about whether the law addresses exploitation or simply pushes it out of sight.

A recurring critique embedded within the materials is the narrow eligibility criteria imposed on intended parents. Restricting surrogacy to heterosexual married couples after five years of marriage excludes not just same-sex partners and single individuals, but also heterosexual couples who fall outside age bands or already have a child. This sharply reduces the pool of legally eligible intended parents while ignoring the Supreme Court's recognition that reproductive decision-making falls within the ambit of Article 21. When laws draw rigid personal categories around fundamental life choices, they risk violating the constitutional principle of equal access to liberty.

Another dimension of concern is the unintended consequence of overly restrictive norms. The text notes that prohibiting foreign nationals and commercial arrangements may succeed in curbing transnational surrogacy, but it also increases the likelihood of underground or covert arrangements as seen in other jurisdictions. When regulation becomes overly exclusionary, it may fail at its primary purpose: preventing exploitation and ensuring safe, transparent transactions. The same paradox is visible in China, where prohibitions created an illicit market rather than eliminating demand. India faces the possibility of repeating this cycle if its framework prioritises restriction over realistic social needs.

Comparative insights from the United Kingdom, the United States, Australia and China underscore India's unique challenges. While other jurisdictions differ in approach, many share a common struggle: balancing the surrogate's well-being with the rights of intended parents and the child. India's model stands out for its particularly narrow definition of family and parenthood. International practice shows a gradual widening of legal recognition of diverse families, whereas India's legislation moves more cautiously and, in some respects, regressively.

The document also points to the wide emotional, physical and psychological consequences of surrogacy for women. This underscores the need for a framework that ensures medical safety and psychological support. However, genuine safeguarding requires more than prohibitions. It requires creating systems that enable informed consent,

provide economic security, and allow surrogates to make free choices without coercion. Altruistic-only surrogacy presumes that payment inherently leads to exploitation, failing to consider that banning compensation may instead remove financial empowerment for women who willingly choose surrogacy as a livelihood option.

Taken together, the analysis reveals a regulatory ecosystem still searching for equilibrium. The goals of preventing abuse, safeguarding health, respecting autonomy and responding to diverse family structures remain in tension. The current statutory scheme marks important progress in oversight, yet it remains vulnerable to constitutional challenges and practical shortcomings. Until the law aligns more closely with contemporary social realities and constitutional values of autonomy and equality, its capacity to genuinely protect all participants in the surrogacy process will remain limited.

## 2. CONCLUSION

In light of the above discussion, I conclude this Article India's shift from an almost unregulated surrogacy environment to a highly controlled legal system has been driven largely by concerns about the safety of surrogate mothers, the protection of children, and the problems associated with commercial arrangements. The Surrogacy Regulation Act 2021 and the ART Act 2021 have certainly introduced order into a field long marked by uneven practices and considerable power imbalances. At the same time, these laws have opened up new difficulties. 'By restricting eligibility, allowing only altruistic surrogacy and excluding individuals based on marital status, age, nationality or sexual orientation, the framework has sharply narrowed who may turn to surrogacy. These limits sit in tension with constitutional guarantees of equality and reproductive choice, which the courts have recognised as part of the right to life under Article 21.'

A look at other countries shows that effective regulatory systems usually combine strong oversight with clear and accessible pathways to legal parentage. China's experience demonstrates how strict prohibitions tend to push the practice underground rather than eliminate it, while the United Kingdom and Australia illustrate how complicated or slow procedures can discourage people from following lawful routes. India faces the same possibility: a framework designed to prevent exploitation may unintentionally push intended parents and surrogate women towards arrangements that lack proper medical care, legal clarity and institutional safeguards.

The above analysis also highlights the demanding physical, emotional and economic aspects of surrogacy. Surrogates take on real medical and psychological risks, and intended parents face uncertainty when the law becomes too restrictive. Simply prohibiting certain practices or limiting access does not resolve these concerns. What is needed is a more balanced approach one that genuinely protects women, safeguards the child's interests and reflects the diverse and evolving forms of family life in contemporary India.

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