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Commercial Surrogacy In India: Constitutional Rights, Legal Complexities, And Emerging Challenges

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ABSTRACT

The notion of morality resists precise definition, or its meaning shifting with evolving societal norms and constitutional interpretations. What is deemed moral at one point in history may not hold the same legitimacy in another. In this context, the present paper critically examines the Surrogacy (Regulation) Act, 2021, through the lens of constitutional rights. Advocates of a prohibition on commercial surrogacy often equate the practice with the sale of children, invoking moral and ethical concerns. However, this raises a fundamental constitutional question: can the act of carrying a pregnancy for intended parents be legitimately classified as “baby selling,” or does it fall within the ambit of providing lawful gestational services for remuneration, thereby engaging the surrogate's rights to livelihood under Article 19(1)(g) and reproductive autonomy under Article 21 of the Constitution of India? The time has come to accord full legal recognition to commercial surrogacy and to view it on an equal footing with other legitimate forms of employment. The Surrogacy (Regulation) Bill, through several of its provisions, imposes restrictions that infringe upon the fundamental rights of those engaged in the surrogacy process. Notably, these limitations affect rights guaranteed under Articles 14, 19, and 21 of the Constitution of India. In contrast, many jurisdictions across the world have adopted regulatory frameworks that permit and oversee commercial surrogacy, with certain international conventions lending support to such an approach.

Keywords

Commercial surrogacy, surrogate mother, constitution, legal right, reproductive autonomy etc.

India is presently witnessing a growing demand for the formal acknowledgment of the economic dimension of surrogacy arrangements. This evolving discourse calls for a reinterpretation of constitutionally protected rights, consistent with the present socio-economic realities. In recent years, the judiciary has increasingly recognised the need to safeguard individual rights in response to changing societal contexts. Within this shifting legal landscape, there is a pressing need to move away from the out-dated perception of commercial surrogacy as a form of child commodification and towards its recognition as a legitimate and dignified form of work. This paper seeks to defend the legality and legitimacy of commercial surrogacy through an analysis grounded in the contemporary interpretation of core constitutional rights.

OVERVIEW

Surrogacy, a process in which a woman carries and delivers a child on behalf of another individual or couple, has become a central theme in India's legal and ethical discourse. Closely tied to the guarantees of fundamental rights under the Indian Constitution, the practice raises pressing concerns related to equality, privacy, reproductive autonomy, and the right to life and personal liberty under Article 21. A major legislative milestone was the enactment of the Surrogacy (Regulation) Act, 2021, which seeks to safeguard the interests of intended parents as well as surrogate mothers while addressing the challenges posed by commercial surrogacy. Nevertheless, the Act has faced criticism for its restrictive provisions, such as limiting surrogacy to altruistic arrangements and imposing stringent eligibility criteria on both intended parents and surrogates.

The Indian judiciary has played a defining role in shaping the surrogacy landscape. In the landmark case of *Baby Manji Yamada v. Union of India* (2008),

the Supreme Court dealt with issues of parenthood and citizenship while affirming the validity of surrogacy arrangements. Similarly, the case of *Jan Balaz v. Anand Municipality* (2010) brought to the forefront the complexities of cross-border surrogacy, underlining the urgent need for comprehensive legislation. The passage of both the Surrogacy (Regulation) Act and the Assisted Reproductive Technology (Regulation) Act, 2021, reflects the government's attempt to create a unified legal framework governing reproductive technologies. Collectively, these statutes aim to regulate surrogacy practices, prevent exploitation, and protect the rights of all stakeholders.

Yet, despite such progress, significant constitutional and ethical dilemmas remain. Critics argue that the prohibition of commercial surrogacy undermines a woman's bodily autonomy and her right to livelihood under Article 19(1)(g). Furthermore, under Article 14, the exclusion of LGBTQ+ individuals and single parents from accessing surrogacy has been challenged as discriminatory. These debates underscore the need for a more balanced approach that harmonizes constitutional rights, ethical considerations, and prevailing social values.

By examining the legal, constitutional, and social dimensions of surrogacy, this study seeks to unravel the intricate relationship between surrogacy and the Indian Constitution. Through an analysis of relevant statutes, judicial pronouncements, and constitutional provisions, it aims to provide a deeper understanding of the evolving regulatory framework and its implications for reproductive rights in India.

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Understanding Surrogacy: A Constitutional Perspective

Surrogacy embodies a unique intersection of constitutional rights, social values, and reproductive autonomy. As the foundation of India's legal framework, the Constitution safeguards several fundamental rights that directly shape the discourse on surrogacy. At the core lies Article 21, which guarantees the right to life and personal liberty and has been interpreted to include reproductive autonomy. In *Justice K.S. Puttaswamy v. Union of India* (2017), the Supreme Court recognized privacy as a fundamental right, encompassing reproductive choices, thereby establishing a constitutional foundation for surrogacy.

Yet, the practice also raises serious questions of equality and non-discrimination. While Article 14 guarantees equality before the law and Article 15 prohibits discrimination based on religion, race, caste, sex, or place of birth, debates persist over whether the Surrogacy (Regulation) Act, 2021 aligns with these principles. The exclusion of LGBTQ+ individuals, single persons, and foreign couples from accessing surrogacy has been criticized as inconsistent with the Constitution's inclusive ethos. Further, the Act's blanket ban on commercial surrogacy has invited constitutional scrutiny under Article 19(1)(g), which ensures the freedom to practice any profession, trade, or business. Critics argue that a complete prohibition restricts a surrogate mother's autonomy over her body and livelihood, even though the legislation aims to prevent exploitation and the commodification of women's reproductive labour. Judicial pronouncements have significantly shaped constitutional interpretations of surrogacy. In *Baby Manji Yamada v. Union of India* (2008), the Supreme Court highlighted the absence of adequate regulation while stressing the need to safeguard the

rights of all parties. Similarly, *Jan Balaz v. Anand Municipality* (2010) brought attention to the constitutional and ethical complexities of cross-border surrogacy arrangements.

Ultimately, surrogacy lies at the delicate juncture of state regulation, societal values, and individual freedoms. The Indian Constitution provides a guiding framework to balance these competing interests, ensuring that surrogacy practices uphold the principles of equality, liberty, and human dignity. A constitutional perspective, therefore, becomes essential to address the multifaceted ethical, legal, and social challenges of surrogacy in contemporary India.

TRACING THE HISTORICAL TRAJECTORY OF SURROGACY IN INDIA

The trajectory of surrogacy in India has been shaped by medical innovations, social transformations, and evolving legislative frameworks surrounding reproductive health. Traditionally, the concept of surrogacy found its roots in cultural and mythological narratives. However, it was only during the latter half of the twentieth century that formal legal and regulatory considerations began to emerge. The introduction of Assisted Reproductive Technologies (ART) in the 1990s marked a critical turning point, bringing surrogacy into the mainstream of medical practice.

In the absence of specific legislation, early surrogacy arrangements were governed under the Indian Contract Act of 1872. As long as the essential elements of contract law offer, acceptance, and consideration were satisfied, agreements between intended parents and surrogate mothers were treated as private contracts. The landmark case of *Baby Manji Yamada v. Union of India* (2008) exposed

the legal vacuum in this area. Involving a Japanese couple and an Indian surrogate, the case underscored the urgent need for clear legal provisions to determine the rights and responsibilities of commissioning parents, surrogate mothers, and children born through surrogacy.

A significant step toward regulation came with the Indian Council of Medical Research (ICMR) releasing the National Guidelines for Accreditation, Supervision, and Regulation of ART Clinics in 2005. Although these guidelines lacked binding legal force, they provided an important framework by emphasizing informed consent, the protection of surrogate mothers, and the welfare of the child. Yet, the absence of enforceable rules left economically vulnerable women open to exploitation, prompting greater calls for statutory regulation.

The government's first comprehensive legislative attempt was the Surrogacy Regulation Bill, 2016. While it sought to regulate surrogacy, it faced criticism for its rigid provisions, particularly the prohibition of commercial surrogacy and restrictive eligibility conditions for intended parents. These shortcomings led to the introduction of a more refined framework the Surrogacy (Regulation) Act, 2021. The Act replaced the earlier Bill and permitted only altruistic surrogacy, restricting the practice to close relatives of intended parents and prohibiting any monetary compensation beyond medical expenses. Its primary objective was to prevent exploitation while ensuring the welfare of the child. Judicial pronouncements further contributed to shaping this legal landscape. In *Jan Balaz v. Union of India* (2010), the Gujarat High Court addressed questions of citizenship for children born through surrogacy, once again highlighting the necessity for standardized legal norms to resolve issues in cross-

border arrangements.

In essence, the evolution of surrogacy in India reflects a gradual movement from an unregulated, contract-based practice to a legislatively controlled system. The present regulatory framework, built through the combined influence of case law, policy guidelines, and statutory enactments, represents an attempt to strike a balance between ethical concerns, social values, and the rights of stakeholders in surrogacy arrangements.

RELEVANT CONSTITUTIONAL PROVISIONS ON SURROGACY

The Indian Constitution provides a strong foundation for regulating surrogacy, ensuring the protection of social justice, family welfare, and individual autonomy. Several constitutional provisions serve as guiding principles in addressing the ethical, legal, and social challenges that surrogacy presents in India. Among these, Articles 14, 19, and 21 hold particular relevance, along with the Directive Principles of State Policy (DPSPs).

Right to Equality – Article 14

Article 14 guarantees equality before the law and equal protection of the law to all citizens, including surrogate mothers, intended parents, and children born through surrogacy. This provision prohibits discrimination on grounds such as gender, nationality, or socioeconomic status. It requires that legal frameworks governing surrogacy, such as the Surrogacy (Regulation) Act, 2021, be evaluated to ensure they do not disproportionately affect vulnerable groups, particularly women from economically weaker backgrounds. Article 14 also implies that reproductive health services should be accessible without unfair restrictions based on marital status, income, or other classifications.

Right to Freedom – Article 19

Article 19 secures the right to reside freely and to practice any profession, trade, or occupation. Surrogacy raises complex questions under this provision, particularly in balancing a woman's right to reproductive autonomy with the state's duty to regulate reproductive technologies. While becoming a surrogate mother may be considered an exercise of individual freedom, the state also has an obligation to prevent exploitation and coercion, especially in the context of commercial surrogacy. Thus, restrictions under Article 19 must carefully weigh personal liberty against broader concerns of ethics and social welfare

Right to Life and Personal Liberty – Article 21

Article 21, as expansively interpreted by the Supreme Court, protects individual autonomy, dignity, and the right to procreate. Surrogacy falls squarely within the ambit of reproductive autonomy and the right to make choices regarding childbirth and family planning. The recognition of privacy as a fundamental right in Justice K.S. Puttaswamy v. Union of India (2017) further solidified the constitutional basis for reproductive decision-making, including surrogacy. This provision ensures that surrogacy practices must remain voluntary, ethical, and free from exploitation, thereby safeguarding the rights of surrogate mothers, intended parents, and children.

Directive Principles of State Policy – Articles 38, 39, and 41

The Directive Principles of State Policy (DPSPs) provide essential guidance to the state in ensuring social and economic welfare. Article 38 directs the state to promote the well-being of its people, while Articles 39 and 41 emphasize securing adequate standards of living and protecting economic

interests. These provisions are highly relevant to surrogacy, as they highlight the need to safeguard the welfare of surrogate mothers, who are often economically vulnerable. The state bears responsibility to ensure that surrogacy practices do not compromise women's financial security or general well-being. Providing social security, healthcare, and financial support for surrogate mothers aligns with the objectives of these constitutional directives.

CONCLUSION

Together, these constitutional provisions aim to uphold fundamental rights such as equality, liberty, and the right to life, while also advancing social justice through the DPSPs. They form the bedrock of India's surrogacy regulations, which seek to balance women's rights, reproductive autonomy, and the welfare of children born through surrogacy. The ongoing challenge lies in harmonizing these constitutional safeguards with the ethical and legal complexities that continue to surround surrogacy in India.

KEY LEGISLATION GOVERNING SURROGACY IN INDIA

With the growing ethical, social, and legal concerns surrounding Assisted Reproductive Technologies (ART), India has progressively developed a structured legal framework to regulate surrogacy. The primary instruments include the Surrogacy (Regulation) Act, 2021, the Assisted Reproductive Technology (Regulation) Act, 2020, and earlier guidelines issued by the Indian Council of Medical Research (ICMR). Collectively, these measures aim to regulate surrogacy practices while safeguarding the rights of surrogate mothers, intended parents, and children born through surrogacy.

Surrogacy (Regulation) Act, 2021

The Surrogacy (Regulation) Act, 2021 serves as the cornerstone of surrogacy law in India. It prohibits commercial surrogacy and permits only altruistic arrangements, where surrogate mothers may receive reimbursement strictly for medical expenses. The Act restricts eligibility by allowing only close relatives of the intending couple to act as surrogates. Further conditions require that intended parents must be Indian citizens, legally married for at least five years, and childless. Surrogate mothers, on the other hand, must be between 25 and 35 years of age, have at least one biological child, and provide informed consent. The Act also establishes the National Surrogacy Board to oversee compliance and ensures that children born through surrogacy are entitled to full legal rights, including custody and inheritance.

Assisted Reproductive Technology (Regulation) Act, 2020

Complementing the Surrogacy Act, the Assisted Reproductive Technology (Regulation) Act, 2020 provides a statutory framework for the regulation of ART clinics and gamete banks. It mandates registration and monitoring of these institutions to ensure ethical practices, quality standards, and patient safety. Informed consent from all stakeholders egg and sperm donors, surrogate mothers, and intended parents is a central requirement, ensuring awareness of medical, social, and legal implications. The Act also envisions the creation of a National ART and Surrogacy Board to regulate clinical practices, promote child welfare, and establish uniform standards across the country, particularly in relation to the donation and use of genetic material.

ICMR Guidelines on ART and Surrogacy

Before the enactment of statutory laws, the Indian Council of Medical Research (ICMR) played a pivotal role in shaping the ethical framework for surrogacy. The National Guidelines for Accreditation, Supervision, and Regulation of ART Clinics issued in 2005, though not legally binding, laid down critical standards. These guidelines emphasized informed consent, transparency in agreements, confidentiality regarding the identities of the child and surrogate, and safeguards against exploitation. They also required ART clinics to be managed by qualified professionals, maintain proper medical records, and ensure the health and welfare of surrogate mothers and children.

CONCLUSION

The evolution of surrogacy law in India reflects a gradual shift from non-binding guidelines to comprehensive statutory regulation. The combined effect of the Surrogacy (Regulation) Act, 2021 and the ART (Regulation) Act, 2020 has created a more structured and uniform system, ensuring ethical practices while protecting the dignity and rights of all stakeholders. Rooted in constitutional values of equality, autonomy, and justice, these laws aim to prevent exploitation and secure the welfare of children born through surrogacy.

SURROGACY AND THE RIGHTS OF INVOLVED PARTIES

Surrogacy involves multiple stakeholders, each with distinct rights that need to be safeguarded to ensure ethical, medical, and legal compliance. The primary parties in a surrogacy arrangement are the surrogate mother, the intended parents, and the child born through the process, while clinics and ART banks also play a significant role. The Surrogacy (Regulation) Act, 2021, along with related legislations, seeks to uphold these rights, prevent exploitation, and secure the well-being of all concerned.

Rights of the Surrogate Mother

As the central participant in the process, the surrogate mother is vested with several important rights under the Surrogacy (Regulation) Act, 2021. One of her most critical rights is informed consent, which ensures that she understands the medical, emotional, and legal consequences of entering into surrogacy before she agrees to it. She is also entitled to continuous medical care and psychological support both during pregnancy and in the postnatal phase. Since commercial surrogacy is prohibited in India, she cannot receive monetary compensation beyond reasonable expenses; however, she is entitled to reimbursement of medical costs, insurance coverage, and related expenditures. Importantly, she is also granted postpartum protection ensuring adequate time to recover physically and emotionally before handing over the child thereby safeguarding her dignity and autonomy throughout the process.

Rights of the Intended Parents

The intended parents, who seek to have a child through surrogacy, also enjoy legal protection under the 2021 Act. They are recognized as the legal parents of the child and are vested with full custody rights from birth. To ensure fairness and prevent misuse of the system, eligibility conditions have been prescribed: the couple must be Indian citizens (or Indian citizens living abroad), childless, and married for at least five years. Within this framework, intended parents are free to make medical decisions regarding the surrogacy process, including the choice of surrogate and use of assisted reproductive technologies such as IVF. Furthermore, the law shields them from the risks associated with

unregulated or commercial surrogacy, thereby ensuring a fair, transparent, and legally sound process that also protects the interests of the surrogate and the child.

Rights of the Child Born Through Surrogacy

Children born through surrogacy are entitled to full legal recognition and protection under Indian law. They are acknowledged as the legitimate children of the intended parents, with their names recorded on the birth certificate. The child enjoys complete inheritance rights, equal to those of any biological child. If the intended parents are Indian nationals, the child automatically acquires Indian citizenship; in the case of Overseas Citizens of India (OCI), nationality rights are governed by applicable laws. Additionally, the legislation prioritizes the child's welfare, ensuring they are raised in a safe and nurturing environment free from harm or neglect. Rights of Surrogacy Clinics and ART Banks
The Assisted Reproductive Technology (Regulation) Act, 2020 lays down the rights and obligations of ART banks, fertility clinics, and related institutions. These entities are legally permitted to function only in accordance with the guidelines of the National ART and Surrogacy Board. Their responsibilities include maintaining transparency, ensuring ethical practices, and providing high-quality medical care to both surrogate mothers and intended parents. Compliance with regulatory standards is mandatory to ensure that the process is safe, reliable, and free from exploitation.

CONCLUSION

The Indian legal framework, primarily through the Surrogacy (Regulation) Act, 2021 and the ART Regulation Act, 2020, seeks to strike a balance between the rights of all parties involved in

surrogacy. By safeguarding the interests of surrogate mothers, intended parents, children, and medical institutions, the law ensures that surrogacy practices remain ethical, just, and regulated. Protecting these rights is essential not only to prevent exploitation but also to uphold the integrity and legitimacy of surrogacy arrangements in India.

NAVIGATING ETHICAL, SOCIAL, AND LEGAL CONCERNS IN SURROGACY

Surrogacy, particularly in India, continues to raise a wide range of ethical, social, and legal concerns that have become central to debates among policymakers, jurists, and society at large. While it offers a pathway to parenthood for many couples, the practice simultaneously poses complex questions regarding individual rights, cultural norms, and the adequacy of legal safeguards. These challenges can be broadly understood under three dimensions:

Ethical Challenges

One of the foremost ethical dilemmas relates to the risk of exploitation of women, especially in the context of commercial surrogacy, which is now prohibited in India. Critics argue that women from marginalized or economically disadvantaged backgrounds may be compelled to become surrogates primarily for financial survival, raising doubts about the voluntariness of their consent and the preservation of their autonomy. Surrogacy is also often seen as the commodification of women's bodies, reducing pregnancy to a contractual service and treating women as mere reproductive instruments. The surrogate mother's emotional and psychological well-being is another pressing concern, as the trauma of parting with the child after birth may have lasting psychological effects. Further, questions of child welfare arise, including the child's

right to know their biological origins, potential risks of discrimination, and the assurance of legal recognition at birth.

Social Challenges

At the societal level, surrogacy often generates stigma and negative perceptions of surrogate mothers, who may be viewed as women who "gave away" their child, leading to isolation and judgment within their communities. Traditional cultural values regarding motherhood and family structures intensify this stigma, particularly in conservative societies where biological ties are emphasized as the foundation of parenthood. Surrogacy can also create tension within families, as the involvement of a third party in reproduction may disrupt conventional family dynamics. Additionally, economic vulnerability exacerbates these issues many women, particularly in India, turn to surrogacy as a way to escape poverty, but in doing so, they face the risk of being exploited by middlemen, agencies, or even intended parents.

Legal Challenges

Despite the enactment of the Surrogacy (Regulation) Act, 2021, significant legal complexities remain. The Act has been criticized for being overly restrictive banning commercial surrogacy and imposing stringent conditions on who can access surrogacy raising concerns about its inclusivity and adaptability. Issues surrounding legal parenthood and custody remain contentious, especially in cases where surrogate mothers seek to assert parental rights, leading to lengthy and difficult disputes. International surrogacy further complicates matters, as foreign intended parents often struggle to secure citizenship or residency rights for children born in India through surrogacy. Indian courts, too, have delivered conflicting judgments on matters

involving surrogates, intended parents, and children, creating uncertainty and inconsistency in the law. Moreover, past misuse of legal loopholes in commercial arrangements has raised doubts about the fairness, transparency, and accountability of surrogacy agreements.

CONCLUSION

Surrogacy thus continues to pose significant ethical, social, and legal challenges that call for nuanced and comprehensive regulatory responses. While it provides countless individuals with the possibility of parenthood, it also demands careful balancing of interests to protect surrogate mothers from exploitation, to secure the rights and welfare of children, and to recognize the aspirations of intended parents. A sensitive, well-structured legal framework is essential to ensure that surrogacy practices uphold human dignity, equality, and justice for all stakeholders involved.

IDENTIFYING POLICY VACUUMS AND PROPOSED REFORMS

Although the Surrogacy (Regulation) Act, 2021 has established a legal framework for altruistic surrogacy in India, several loopholes continue to persist, limiting its effectiveness in ensuring protection, fairness, and proper regulation of surrogacy practices. The following areas highlight critical policy gaps and suggested reforms:

Cross-Border Surrogacy: The Act prohibits foreign nationals from commissioning surrogacy in India, which has significantly impacted the industry and led to the closure of clinics previously serving international clients. While the restriction aims to safeguard surrogate mothers, the absence of a

regulated framework for cross-border arrangements leaves many concerns unresolved. Introducing a structured mechanism with transparent eligibility standards and strict compliance with legal and medical requirements could protect surrogate mothers while also addressing the rights of foreign intended parents.

Repeated Surrogacy and Exploitation Risks:

Current legislation does not address the issue of women undertaking multiple surrogacy arrangements. The possibility of repeated pregnancies exposes women to physical, emotional, and financial exploitation. To prevent overuse of women's reproductive capacities, a statutory limit on the number of surrogacy agreements per woman should be introduced. Additionally, comprehensive health, psychological, and financial assessments should be mandated after each surrogacy to ensure their well-being.

Post-Surrogacy Care and Support: The Act inadequately addresses post-delivery care for surrogate mothers. Greater emphasis should be placed on safeguarding their mental, emotional, and physical health. Compulsory counselling, psychological support, and sufficient postnatal medical coverage must be integrated into the framework. Long-term healthcare provisions, including postpartum treatment and regular follow-up, should also be ensured.

Inheritance Rights of Surrogate Children: While the Act recognizes surrogate-born children as equal in status to naturally born children, more precise provisions are required regarding their inheritance

rights. Legal clarity is particularly important in cases involving unmarried intended parents or situations where the surrogate mother is the legal birth mother. Strengthening these provisions would prevent ambiguity and safeguard the child's entitlement to property and inheritance.

Regulation of Surrogacy Clinics: The Act provides only limited guidance on the licensing and monitoring of surrogacy facilities. A more robust regulatory mechanism should be established, including mandatory licensing, regular inspections, and transparent oversight systems. Such measures would ensure compliance with ethical standards, adherence to medical protocols, and accountability through routine audits.

Compensation for Surrogate Mothers: Since commercial surrogacy is prohibited and only altruistic surrogacy is permitted, the law leaves surrogate mothers financially vulnerable. The absence of clear provisions regarding fair reimbursement creates uncertainty about their economic security. A standardized compensation model should be introduced to adequately cover medical costs, emotional labour, and health risks, thereby ensuring fairness without commercializing the process.

Clarity on Parental Rights: The Act does not specify the procedure to be followed in cases where disputes arise over custody or when a surrogate mother refuses to relinquish the child. Explicit legal mechanisms must be put in place to address such conflicts promptly and fairly, with the paramount focus being the welfare of the child.

CONCLUSION

India has taken significant steps toward regulating surrogacy through the Surrogacy (Regulation) Act, 2021, but persistent policy gaps remain. Addressing issues such as cross-border surrogacy, repeated use of surrogates, post-surrogacy support, inheritance rights, clinic regulation, surrogate compensation, and parental rights clarity is crucial. Implementing these recommendations would strengthen the legal framework, ensure greater fairness, and create a more ethical and balanced surrogacy system that protects all stakeholders.

CONCLUSION

Surrogacy remains a subject of intense debate and evolving regulation in India, situated at the intersection of legal, ethical, social, and medical concerns. The enactment of the Surrogacy (Regulation) Act, 2021, along with the Assisted Reproductive Technology (Regulation) Act, 2020, marks significant progress toward creating a structured legal framework aimed at ensuring ethical practices, safeguarding the rights of intended parents, surrogate mothers, and children born through surrogacy, and promoting their overall well-being. While these legislations have succeeded in drawing critical attention to the challenges surrounding surrogacy, numerous complexities remain unresolved.

A key challenge lies in the absence of a comprehensive and adaptable legal framework capable of addressing the nuances of diverse surrogacy arrangements, especially those involving cross-border cases and non-traditional families.

Protecting surrogate mothers from exploitation continues to be a priority, requiring assurance of respect, fair compensation, and adequate medical and psychological support. Equally pressing is the need to clarify issues of parentage and custody, particularly in instances where surrogate mothers may contest the rights of intended parents. Additionally, the clash between modern reproductive technologies and traditional cultural values of family, motherhood, and parenthood generates further social tensions. The stigma and social pressures faced by surrogate mothers highlight the urgent need for a more inclusive and rights-based approach.

As surrogacy practices evolve, it becomes imperative to develop a legal and ethical framework that equitably balances the interests and welfare of intended parents, surrogates, and children. Such a framework must remain responsive to advances in reproductive technologies, shifting societal attitudes, and changing global dynamics. By doing so, India can foster a culture of transparency, fairness, and protection against exploitation. Only through this holistic approach can surrogacy function as a dignified, ethical, and humane pathway to parenthood.

Towards a Balanced Approach: Safeguarding Rights and Strengthening Regulations

A truly balanced approach to surrogacy in India demands regulatory mechanisms that protect the rights and well-being of all parties while addressing the complexities of modern reproductive practices. Central to this is the preservation of surrogate mothers' autonomy, ensuring they are not reduced to instruments of financial gain. Preventing the commodification of women's bodies is essential,

alongside establishing clear protocols for informed consent. Surrogates must be made fully aware of the emotional, medical, and legal implications of surrogacy and provided with comprehensive counselling both before and after childbirth to safeguard their mental health.

For intended parents, it is vital to guarantee transparent legal procedures that confirm parental rights before the child's birth, enabling them to provide immediate care and support from the very beginning. Clear eligibility norms and transparent surrogate selection processes are equally important to prevent misuse and exploitation.

Ultimately, a regulatory framework that balances these interests not only safeguards individuals but also reinforces surrogacy as an ethical and respectable reproductive option. By aligning legal standards with ethical principles and addressing broader social concerns, India can build a robust system where surrogacy is carried out with dignity, fairness, and compassion. This comprehensive approach ensures that the rights of surrogate mothers, intended parents, and children are equally protected, preserving surrogacy as a humane and responsible choice for those seeking reproductive assistance.

Suggestions

The future of surrogacy in India will inevitably be shaped by the nation's constitutional principles, particularly the values of equality, dignity, and autonomy. Fundamental rights enshrined in the Constitution such as the right to equality under Article 14, the right to life and personal liberty under Article 21, and the freedom of expression under Article 19 are directly relevant to the practice of surrogacy. Any regulatory framework must ensure

that the autonomy of surrogate mothers, the dignity of children born through surrogacy, and the rights of intended parents are upheld in harmony with these constitutional guarantees.

As surrogacy laws continue to evolve, it is essential that they remain consistent with constitutional ideals. The judiciary will play a pivotal role in ensuring this alignment through interpretation and enforcement, thereby strengthening the ethical and constitutional foundation of surrogacy law. At the same time, there is a pressing need for greater legal literacy and public awareness so that individuals entering into surrogacy arrangements are fully informed of their rights and obligations.

Looking ahead, India's surrogacy policy must remain attentive to its constitutional ethos while also engaging with global perspectives. By safeguarding the interests of intended parents, surrogate mothers, and children within a transparent and well-regulated framework, India has the potential to set a global example of surrogacy laws that are both ethically grounded and constitutionally sound, striking an equitable balance between individual rights and societal welfare.

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