



## Legal framework of surrogacy in India

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### Abstract

The study aims to examine the surrogacy practice in India before and after the passing of the Surrogacy (Regulation) Act, 2021. The surrogacy practice has become a subject matter of debate since its legalization in 2002. As there were no specific legislative provision and express prohibition on commercial surrogacy before 2021, commercial surrogacy was a widespread practice; surrogate women and couples seeking surrogate children have been exploited by the middlemen, agents, and in vitro fertilization (IVF) clinics. India has become a popular destination for surrogacy children for foreigners and earned the title of 'baby-producing factory.' The commercialization of surrogacy has raised the issues of legal, ethical, and moral concerns; therefore, the Surrogacy (Regulation) Act, 2021, has been enacted to prohibit commercial surrogacy and introduce certain regulations. The Act allowed only altruistic surrogacy, prohibited foreigners from hiring surrogate mothers and fixed certain conditions for intended surrogate mothers, and intended surrogate couples. The study concludes that the Surrogacy (Regulation) Act, 2021, has addressed the moral and ethical issues, regulating the surrogacy practice in India. The study recommends that surrogacy results in enormous psychological and physical impact on the surrogate mother and loss of employment and earnings; therefore, a reasonable and fixed compensation must be paid to the surrogate mother.

**Keywords:** Altruistic, Surrogacy, Infertility, IVF centers, ART clinics, Gametes, Embryo, Compensation

### Introduction

Increase in infertility among the men and women around the world, advancement in medical science and technology, offering opportunity to the couples to choose for a surrogacy child. According to the Latin word '*surrogatus*' means using a substitute to act in the place of another. In practice, the surrogate woman bears a child on behalf of another woman, through implantation of fertilized egg into the surrogate mother's womb by (In Vitro Fertilization) IVF process. It is a process of carrying and delivering a child for another person (Law Commission of India, 2009).

According to the Middle East North Africa Financial Network (MENAFN), due to increase in infertility rate among the men and women and advancement of ART technology, the global surrogacy market in 2024 estimated to USD 25.74 Billion and is projected to touch by 2032 to USD 145.21 Billion (MENAFN, 2025).

Infertility causes intense mental agony and trauma to the infertile couple. In order to overcome this agony

and fulfill the wish of parentage, a person or a couple may have a child through surrogacy. It is a method used for begetting a child with a woman (surrogate mother) who becomes pregnant and gives birth on behalf of another person or couple (intended parent/s). The reasons for resorting for a surrogate child include medical conditions that makes pregnancy unsafe or deprives pregnancy, infertility, single parents who cannot carry a pregnancy. The surrogate mother uses the biological mother's egg or donor's egg to achieve pregnancy through artificial insemination. In gestational surrogacy an embryo is created through IVF by using intended parent's egg and sperm or sometimes donor's egg or sperm and it is inserted to the surrogate mother's womb.

Surrogacy is in two forms "gestational surrogacy" and "traditional surrogacy." The "gestational surrogacy" is most common in which a surrogate mother carries a child for the intended couple or woman through the process of implantation of embryo into surrogate mother's womb and the child born through this surrogacy is genetically not related to the surrogate mother. In "traditional surrogacy" a woman provides her own egg, which is fertilized through artificial insemination and transferred fetus to the surrogate

woman for pregnancy.

In India before passing of the Surrogacy (Regulation) Act, 2021 the commercial surrogacy and renting of woman's womb for surrogacy had been in boom. It was a lucrative business for Assisted Reproductive Technology (ART) centres with IVF facilities. The woman's body was treated like a baby making machine, which involves moral, legal, and emotional issues. The increase in demand for a surrogate child led to the exploitation of women from the vulnerable section of society to rent their wombs for commercial surrogacy (Iyer, 2012).

When the surrogacy is legalized in India in 2002, woman from poor economic conditions, overwhelmingly prepared to become surrogate mother for couples from United States, United Kingdom, and other developed countries. The surge in demand led to the involvement of agents who exploited both the surrogate mother and the couple seeking a surrogate child. In many cases the surrogate mother is not provided with the surrogacy contract or agreed amount (Nalbandian, 2021).

India was called "world capital of surrogacy and generated two billion dollars annually in India before passing of the Surrogacy (Regulation) Act, 2021 (Parliamentary Report, 2016). India had become a destination for "fertility tourism" and "baby-producing factories" until the passing of the Surrogacy (Regulation) Act, 2021. There was no limit for a woman to become a surrogate mother in number of times. The Surrogacy (Regulation) Act, 2021 allows altruistic surrogacy and prohibited the commercialization of the surrogacy method (Section 2 (g)). The Act allows surrogacy through Assisted Reproductive Technology (ART) for couples suffering from infertility issues.

In the United Kingdom the Surrogacy Arrangements Act 1985 prohibits any kind of commercial negotiation in surrogacy, therefore, it allows only altruistic surrogacy. In the United States, there is no federal law to prohibit commercial surrogacy, but many states, such as Michigan (Surrogate Parenting Act of 1988), Nebraska (Nebraska Revised Statute § 25-21,200), and Louisiana (Louisiana Revised Statutes §§ 9:2718-2720) prohibit commercial surrogacy. In Canada, the Assisted Human Reproduction Act (AHRA) 2004 prohibits the

commercial surrogacy. In Australia, different state laws prohibit commercial surrogacy, such as the New South Wales Surrogacy Act, 2010; the Victoria Assisted Reproductive Treatment Act, 2008; and the Queensland Surrogacy Act, 2010.

### Significance of the problem

The practice of surrogacy in India, until regulated by the appropriate legislation, raised many legal, ethical, and moral issues. The commercialization of surrogacy led to exploitation of poor woman and couple seeking surrogacy child by the unscrupulous middlemen, agents, and IVF fertility centers. Hence, the surrogacy issue has been gained significance in the context of prevalence of unethical practices, exploitation of surrogate mothers, and couples seeking surrogate child through surrogacy process.

### The Research Methodology

The study adopts the descriptive-analytical research methodology and analyzes international instruments on the protection of the rights of children, legislative texts, and policy documents in India relating to surrogacy. The research also focused on relevant judicial decisions and contemporary scholarly work.

### Discussion

The children born through the natural pregnancy or surrogacy process need to be protected from any kind of exploitation. Children need protection of parents, society, and the state as they are vulnerable to human trafficking and exploitation, therefore, various international instruments recognized the rights of children.

According to the Universal Declaration of Human Rights (UNDHR), 1948, the family is the natural unit of society, and it must be protected by society and the state (Article 16.3). The similar right is recognized under the International Covenant on Civil and Political Rights (ICCPR), 1966 (Article 23).

The motherhood and childhood required special care and assistance, children born in or out of wedlock shall entitled for same social protection (Article 25.2 of UNDHR). Every child shall be registered after birth, have the right to acquire a nationality, and be entitled to protection under the family, society, and the state

(Article 24 of ICCPR, 1966).

The International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 provides that state must recognize protection and assistance to the family, which is the natural and fundamental group unit of society, more particularly state must take special measures for the care and education of dependent children without any discrimination (Article 10).

The Convention on the Rights of the Child (CRC), 1989 provides that states shall respect the responsibilities, rights, and duties of parents (Article 5), has the right to life, states shall ensure survival and development of the child ((Article 6), the child shall be registered immediately after birth and shall have a name, nationality and right to know and be cared by the parents (Article 7). Further, the states shall ensure that a child shall not be separated from parents against their will except under the provisions of law (Article 9). The states shall recognize the responsibilities of the parents towards the child for upbringing and the best development of the child (Article 18) and the children deprived of a family environment entitled to special protection from the state (Article 20).

### UNICEF on surrogacy

The United Nations Children's Fund (UNICEF), the specialized agency of the United Nations Organization (UNO), has identified certain issues regarding children born through surrogacy. The note published by UNICEF recognized that children born through surrogacy have the same rights as all children under the United Nations Convention on the Rights of the Child (UNCRC), irrespective of the individual state's position on surrogacy, and have a duty to protect the human rights of the children born through surrogacy. (UNCRC). The children born through domestic and International Surrogacy Arrangement (ISAs) are at risk of being sold or subject to exploitation, and only in very few states does have a legal framework for the protection of surrogacy children. There is also a need for protection of the rights of surrogate mothers from any kind of exploitation.

In the surrogacy arrangement the rights of children are at risk in respect of preserving their identity, non-

availability of pre-surrogacy safeguards, establishment and transfer of legal parentage, and sale of children born through commercial surrogacy arrangements. UNICEF made the following recommendations for the protection of surrogacy children around the world:

- The surrogacy data must be maintained through the Civil Registration and Vital Statistics (CRVS) system to preserve the identity information of children born through surrogacy so that children can have access to their origin.
- The CRVS must maintain surrogacy children's data for the purpose of statistics report.
- The prohibition of sale and trafficking of children under various international instruments must be extended to the children born through surrogacy, and the same must be recognized under the national legislations.
- The role of the intermediaries in surrogacy arrangements must be regulated and monitored by the states.
- There must be a legal framework at the national level to recognize the rights of surrogate children and facilitate determining legal parentage and parental responsibility.
- The states allowing International Surrogacy Agreements (ISAs) must prohibit foreign intending parents hailing from states that prohibit ISA arrangement to enable the children born through surrogacy to enjoy their rights from the birth.
- The children born with disabilities through surrogacy must be protected from any kind of discrimination.
- The children born through surrogacy must be granted nationality from birth to establish their identity.

### Surrogacy law in India

The Constitution is the cornerstone to protect the rights of the individuals, including children. The Constitution of India prohibits the state from discriminating the citizens on the grounds of religion, race, caste, sex, or place of birth. The state can make special provisions for the advancement of women and children (Article 15). The Directive Principles of the State Policy (Articles 36-51) provides that the state shall direct its policies towards securing that

tender age of children is not abused, children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity, and that children must be protected from exploitation and against moral and material abandonment (Article 39).

### Law commission of India

After legalization of surrogacy through National Policy document surrogacy practice was in boom in India (National Guidelines for Accreditation, Supervision & Regulation of ART Clinics in India, 2005). The Law Commission of India (LCI) *suo motu* took the issue of surrogacy in India and conducted a comprehensive study on functioning of IVF centers in India, growth of surrogacy practice, rights of the parties in surrogacy and the rights of the surrogate child. The Law Commission of India in its Report No. 228 (August 2009) made the following recommendations on surrogacy practice in India:

1. The surrogacy agreement must be governed by the contract between the parties; reasonable expenses must be allowed but should not be for commercial purposes.
2. In the case of death of the intended couple or woman or divorce between the intended parents, there must be a provision for financial support to the surrogate child.
3. The surrogate mother must be provided with life insurance.
4. In surrogacy, one of the parents must be a donor to create biological relations and prevent abuse of the surrogate child. In the case of failure to contribute sperm (father) or egg (mother), adoption of a child is the best option for such couples.
5. The surrogate law must recognize the intended parents as the legitimate and biological parents of the child.
6. Sex selection should not be allowed in surrogacy.
7. Right to privacy of the donor and surrogate mother must be protected.

### The parliamentary committee report on the surrogacy

The 102<sup>nd</sup> Report of the Parliamentary Standing Committee in its Report, 2017, suggested the banning

of commercial surrogacy but allowed reasonable and regulated compensation. The committee also recommended for establishment of regulatory mechanism at national and state level to monitor the surrogacy contracts and welfare standards.

### Prohibition of commercial surrogacy

Until the passing of the Surrogacy (Regulation) Act, 2021 (w.e.f. 25 January 2022) there was no formal law to regulate surrogacy in India. The National Guidelines for Accreditation, Supervision & Regulation of ART Clinics in India, 2005 provided guidelines to regulate ART clinics. Before passing of the 2021 Act, the commercialization of surrogacy is in practice and even foreigners are allowed to opt a surrogacy child in India. This situation has led to questions of morality, ethics, and legality; therefore, the Surrogacy (Regulation) Act 2021 has been passed.

The Surrogacy Act, 2021 prohibited the commercialization of surrogacy services and procedures in any form, except payment of medical and insurance expenses for the surrogate mother. According to the Act commercial surrogacy includes the use of the following means in obtaining surrogacy (Section 2(g)):

- Selling or buying human embryos.
- Marketing of sale or purchase of human embryo or gametes.
- Selling or buying or marketing the services of surrogate motherhood by way of giving some amount, reward, benefit, or fees, consideration, or any kind of monetary incentives.

Before prohibition of commercialization by the Surrogacy Act, 2021, India was considered as “global destination” for procuring surrogacy child. The reason for choosing India for surrogacy child is the low cost and affordability. For example, in the United States, the surrogacy cost is between \$75,000 to \$125,000, whereas India three to four times less, due to which India is considered for “baby factory” (Nalbandian, 2025).

According to the Surrogacy Act, “surrogacy” means a method by which one woman bears and gives birth to a child for an intending couple and hands over such a child to the intending couple after the birth. The



surrogate mother agrees to bear a child through surrogacy by implantation of embryo in her womb and fulfills the conditions laid down in Section 4 (b)(iii) of the Act. The surrogacy child will not have any genetic relation to the surrogate mother; the surrogate mother must relinquish all parental rights over the surrogate child (Section 4 (ii)(a)). It is not necessary that surrogate mother be a close relative of intended couple.

The Act allows 'altruistic surrogacy', in this method, except medical and insurance expenses, no other expenses, charges, fee or monetary incentives be paid to the surrogate mother or her dependents or representatives (Section 2 (b)).

According to the Act, 'intended couple' means a couple who have a medical condition necessitating gestational surrogacy and who intend to become parents through surrogacy (Section 2 (r)). The Act permits a married Indian man and woman to opt for a surrogate child (Section 2 (h)); the result is surrogacy in India is not allowed for foreign couples. 'Intended woman' means an Indian woman who is a widow or divorcee between the ages of 35 and 45 years and who intends to avail herself of the surrogacy (Section 2 (s)). The Indian origin citizens living in abroad, Non-Resident Indians (NRIs), persons holding Overseas Citizenship of India (OCI Card holders) are entitled for surrogacy arrangements in India with a certificate of recommendation issued by the National Board on Surrogacy. A child born out of surrogacy shall be deemed to be a biological child of the intending woman or couple and entitled to similar rights available to the natural-born child (Section 8).

The Surrogacy (Regulation) Act, 2021 provides a provision for insurance coverage under Section 2 (q) for insurance coverage to the surrogate mother and dependents, instead of payment of a fixed amount. The insurance coverage includes, medical expenses, expenses during the process of pregnancy, health coverage relating to surrogacy, specified loss, damage or death of a surrogate mother. The Act has no provision for payment of fixed monetary compensation to the surrogate mother in case of death or medical risk but relies on insurance coverage. The insurance coverage is for the period of thirty-six months covering postpartum delivery issues (Section 4 (iii)(a) (II)).

In India, following persons are not allowed to avail the benefits of surrogacy:

- The unmarried single woman is not allowed to take the benefit of surrogacy.
- Foreigner
- A woman cannot be a surrogate mother by providing her own gametes (Section 4 (III)(b)(I)).
- Male below the age of 26 years and above the age of 55 years.
- Female below the age of 23 years and above the age of 50 years.
- Surrogacy cannot be availed without having a corticate of medical condition, as certified by the District Medical Board (Rule 14 of the Surrogacy Rules, 2022).
- The order of parentage and custody of the surrogate child to the intended couple/woman must be obtained from the Judicial First-Class Magistrate court.

#### Who can opt for surrogacy child (Section 4)

The intended couple must obtain the eligibility certificate from the District Medical Board on fulfillment of the following conditions:

- The intending couple must be married, and the female must be between the ages of 23 and 50 years, and in the case of the male must be between 26 and 55 years.
- The intending couple have no surviving child biologically or adoption or through earlier surrogacy. The exception to this rule is in case the intended couple or woman have a child and such child is suffering with mental or physical disorder or suffering with a life-threatening disease and it has no cure, it is allowed to opt for a surrogate child with the approval of District Medical Board.
- The intended couple must have both gametes (sperms & eggs) or at least one gamete. In case of medical condition of one of intended couple, donor gamete is allowed.
- In the case of single woman (widow or divorcee) allowed to use self-eggs and sperms from the donor.
- The intended couple or woman shall obtain a certificate of recommendation from the District Medical Board, and the certificate of

eligibility issued shall be valid for one year.

In addition to the conditions provided under the Surrogacy (Regulation) Act, 2021, the Surrogacy (Regulation) Rules 2022 provide additional medical conditions required for opting surrogacy child (Rule 14):

- A woman has an abnormal or no uterus or surgically removed the uterus.
- Woman who has repeatedly failed to conceive even after using the in vitro fertilization (IVF) attempts or sperm injection attempts.
- Woman has a multiple pregnancy loss due to medical reasons
- Woman suffering with medical condition due to which impossible to carry pregnancy or pregnancy may lead threat to her life.

The Surrogacy Act prohibits the surrogacy clinics to conduct any activity relating to surrogacy without registration with the competent authority. The clinics and doctors are prohibited to promote commercial surrogacy in any form and not allowed to induce a woman to act as surrogate mother or advertise commercial surrogacy (Section 3). The conditions to become a surrogate mother are as follows (Section 4):

- There must be voluntary written consent from the woman who is willing to act as a surrogate mother.
- She must have a child of her own and between the age of 25 to 35 years may be a surrogate mother or donor of her egg or oocyte.
- The intending couple or intending surrogate mother is required to approach the competent authority for the approval of surrogacy.
- A woman is not allowed to act as a surrogate mother more than once in her lifetime.
- No woman shall act as surrogate mother by providing her own gametes.
- The surrogate mother shall not be allowed to undergo more than three attempts for surrogacy.
- In each attempt only one embryo be transferred to the uterus of a surrogate mother and in special circumstances, transfer of three embryos is allowed (Rule 8 of Surrogacy Rules, 2022).
- The intended couple should bear the medical

expenses or loss of wages to the surrogate mother.

- The surrogate mother is required to undergo psychological and medical fitness tests by registered medical practitioner.
- The woman must be willing to act as a surrogate mother without receiving any consideration, except medical and insurance benefits.
- The surrogate mother agrees in writing to hand over the surrogate child to the intended couple or woman after the birth of the surrogate child (Section 4).
- The surrogate mother entitled for insurance coverage during pregnancy and post-delivery period, up to 36 months on the expenses of the intended couple (Section 4).
- Gender (sex) selection in surrogacy is not permitted.
- The surrogacy clinic must be registered with the competent authority, and it shall be valid for 3 years (Section 12). Any change in address or name shall be communicated to the competent authority (Section 44). The surrogacy clinics are required to maintain all records for a period of 25 years (Section 46).
- The eligibility certificate for the intending couple will be issued by the District Medical Board on fulfillment of the following requirements:

### Offences and penalties under the Act (Section 38)

The following kinds of activities are punishable under the Surrogacy (Regulation) Act, 2021:

1. Any commercialization of the surrogacy process or services
2. Engaging brokers or intermediaries to propagate surrogacy process or services
3. Advertisement of commercial surrogacy
4. Gender (sex) selection in the surrogacy procedure.
5. Abandonment, disowning or exploitation of the surrogate child.
6. Abandonment or exploitation of the surrogate mother
7. Selling, purchasing, importing human embryo or gametes for the purpose surrogacy
8. Medical professionals are liable to be punished for contravention any of the

provisions of the Act

9. The couple who approaches any clinic or Doctor for commercial surrogacy are also punishable with five years' imprisonment and fine.
10. The court shall presume, unless contrary is proved, surrogate mother was compelled by the intended couple or by her husband, to render surrogacy services, to donate gametes for the purpose other than those specified under Section 4 (ii) of the Act shall be liable for abetment of offences under Section 40 of the Act (Section 42).
11. Every offense under the Act is cognizable, non-bailable, and non-compoundable (Section 43)
12. The plea-bargaining procedure provided under the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 shall not be applicable for the offences under the Act (Section 45).
13. The Judicial First-Class Magistrate Court or Metropolitan Magistrate Court shall not take cognizance of an offense, unless a complaint is made in writing by the competent officer of the Central or State Government or a person from a social organization (Section 44).

### **The Assisted Reproductive Technology (Regulation) (ART) Act, 2021**

The growth of the Assisted Reproductive Technology (ART) centers in India shows the demand of use of ART clinic facilities for surrogate child by the couple suffering with medical infertility. The ART Act, 2021 regulates and supervises the assisted reproductive technology (ART) clinics and related banks to prevent the misuse of the Assisted Reproductive Technology (ART) services, and monitor the freezing of gametes, embryos, and matters connected therewith. The Act protects the intended woman and child born from the surrogacy method. The ART Act also regulates the clinics, banks, and storage of sperm, oocytes, and embryos.

The ART helps in obtaining a pregnancy by manipulating the sperm and/or oocyte outside the human body and transferring the embryo into the woman's uterus (Section 2).

The Assisted Reproductive Technology (ART) Act, 2021, defined the words Assisted Reproductive

Technology (ART), Assisted Reproductive Technology Bank, Assisted Reproductive Technology clinic, "child", "embryo", "gamete", "gamete donor", "infertility", "sperm", State Board, and "woman" (Section 2).

The ART Act, 2021 also prescribed the constitution of the National Assisted Reproductive Technology and Surrogacy Board (Section 4), powers and functions of the National Board (Section 5), application procedure to the State Board (Section 7), establishment of the National Registry of clinics and banks (Section 9), functions of the National Registry (Section 11) and procedure for the registration of the ART clinics (Section 15). The Act also laid down the following duties for the ART clinics in India (Section 21-26):

- Obtains the gametes from the banks.
- Provide counselling to the intended couple and woman about the surrogation procedure.
- Inform the side effects and costs of the surrogation procedure.
- Inform intended couple and surrogate woman the rights of the child born through ART.
- Keep the information confidential, the treatment and patient details shall not be disclosed except to the National Registry.
- Shall obtain written informed consent from the surrogate woman and intended couple.
- Shall not offer sex selection to the woman or intended couple.

The ART Act 2021 prohibits the sale, transfer, or use of gametes, embryos, and zygotes to any party within and outside India (Section 29). The donor shall relinquish all parental rights over the child, and the child born through ART shall be deemed to be a biological child of the intended couple and entitled to all the rights and privileges of a natural-born child (Section 31).

### **The surrogacy (Regulation) Rules, 2022**

The 2022 Rules supplemented the regulation of the surrogacy process provided under the Surrogacy (Regulation) Act, 2021. The rules deal with conditions under which abortion of a surrogate child is allowed, and the manner of registration of surrogacy clinics.

## The surrogacy (regulation) amendment rules 2025

The government of India issued draft rules on 25 November 2025 for seeking objections and suggestions from the public. The rules deal with registration of Surrogacy Clinics according to Form-3 at least sixty days before expiry of license, payment of non-refundable fee of Rs. 1,00,000, if the renewal is not submitted before 60 days the fee payable is Rs. 2,00,000, the display of renewal certificate at a conspicuous place in the clinic, and the renewal certificate is valid for three years.

### Case law on surrogacy

In *Apekshita Kala & Anr. v. District Medical Board & Another* (2025), the question before the Delhi High Court was whether it is necessary for the couple to appear physically at the time of seeking a certificate for processing of the application of Gestational surrogacy before the District Medical Board. The couple in this case are residing in Canada, unable to appear before the Board with a short notice and the Board rejected their application without any speaking orders. The couple challenged the decision of the Board on the grounds that the Board's action violated the principles of natural justice. The Board argued that surrogacy is a sensitive matter and there is a risk of commercial exploitation. The court rejected the Board's argument and clarified that according to the Surrogacy Act, 2021 and Section 5 (3) and Section 5 (4) of the Surrogacy Regulations, 2023 the State Board is allowed to conduct virtual proceedings, the similar rule must be applied to the District Board and it is not necessary at this stage to appear physically because the process is only for verification of the required documents for issuing of 'Certificate of Medical Indication'. Accordingly, the Delhi High Court directed the District Medical Board that the couple must be allowed to appear virtually, and the court emphasized the role of technology in enabling access to justice, and online hearings have become integral part of modern legal and administrative processes.

In *S. Prasanna and Another v. M. Jothika* (2025), a married couple unable to conceive due to medical issue of the wife approached the Judicial First-Class Magistrate court seeking approval for an altruistic surrogacy arrangement, the wife's sister, mother of

two children is consented to become surrogate mother without any commercial consideration. The court refused to entertain the petition on the ground that it has no jurisdiction to decide the issue. On appeal, the High Court of Tamil Nadu clarified that under section 4 (iii)(a)(II) of the Surrogacy (Regulation) Act, 2021 the Judicial First-Class Magistrate court is competent to issue appropriate order in respect of parentage and custody in surrogacy, therefore, directed the court to decide it within two weeks and the High Court also observed that the competent courts must consider the matters under the Surrogacy Act with "sensitivity, responsibility and compassion" as these matters involve the deepest aspirations of childless couples and expecting parenthood through a legal and medically supervised process.

In *ART Bank v. State Police Chief of Kerala & Ors.* (2025), the Kerala High Court directed the State Government to constitute a Special Investigation Team (SIT) to probe the illegal surrogacy activities by the ART centre. The allegations against ART centre that it lured the illiterate, economically weak, uneducated vulnerable woman from rural areas to become surrogate mother on payment of certain incentives and monetary consideration. It is also noted that ART centre has indulged in online advertisements to attract the woman to become egg donors and surrogate mothers. The case is under investigation by the SIT team according to the directions of the court.

In *Arun Muthuvel v. Union of India* (2022), three intended couples processed their frozen embryos, ready to transfer to the surrogate mother's womb with the IVF process in the Assisted Reproductive Technology (ART) centre before 25<sup>th</sup> January 2025, i.e., coming into force of the Surrogacy Act, 2021. According to Section 4 (iii)(c)(I) of the Act for issue of the eligibility certificate by the District Medical Board the intended couple must be married, and female must be between the age of 23 to 50 years and male must be the age between 26 to 55 years. The question before the Supreme Court of India was that whether this Act has retrospective effect. The court held that Section 4 (iii)(c)(I) the Act does not have retrospective effect; there was no binding law on age before the commencement of the Act; therefore, the intended couple must be allowed to continue the surrogacy process.



The commercial surrogacy in India also caused a citizenship issue for the child born through surrogacy. In *Baby Manji Yamada v. Union of India & Another* (2008), before the birth of the surrogate child, the couple was divorced and the intended mother refused to accept the child; however, the divorced husband was willing to accept the child, but according to the Indian law, the mother must be present to obtain a passport for the child. On the directions of the Supreme Court of India child custody was provided to the grandfather on behalf of the father of the surrogate child.

In *Jan Balaz v. Anand Municipality, Gujarat*, Gujarat High Court, 11 November 2009, the German embassy in India refused to grant the passport to twins born through surrogacy in India due to the reason that German law at that particular point of time did not recognize surrogacy children and followed the nationality of the mother for granting citizenship to the children. The parents approached the Regional Passport Officer in India for the issue of a passport for the surrogate child, but the request was denied on the grounds that the parents of the child are German citizens. The parents challenged the decision of the passport officer before the Gujarat High Court, and the court held that children born through surrogacy in India should be considered as citizens of India, and therefore, entitled to the passport from the Government of India.

In *B. K. Parthasarathi v. Government of Andhra Pradesh* (2000) the Andhra Pradesh held that woman has a child reproduction autonomy, which is a part of individual's right to privacy guaranteed under Article 21 of the Constitution of India. The court followed the U.S. court decision in *Skinner v. Oklahoma* (1942).

The courts in India always acted as a guardian of children, in the case of surrogacy, protected the right to privacy of men and women, enforced legal rights of the surrogate child, surrogate mother and couple seeking surrogacy child.

## Conclusion

Prior to 2021 commercial surrogacy in India had resulted in the exploitation of the surrogate mothers due to illiteracy, ignorance, poor financial conditions, and backwardness of the surrogate women. The passing of the Surrogacy (Regulation) Act, 2021,

prohibited commercial surrogacy and allowed altruistic surrogacy upon the existence of certain medical conditions. The implications of total prohibition of receiving any monetary consideration other than medical and insurance expenses by the surrogate mother may deprive the opportunities of the woman who may be willing to become a surrogate mother due to financial necessity or to improve her financial status. Before the passing of the Surrogacy (Regulation) Act 2021, the surrogate mother was allowed to receive compensation in addition to medical costs.

Surrogacy leads to considerable psychological, physical, and emotional consequences for the surrogate mother; therefore, receiving a fixed monetary compensation, lost wages during the pregnancy of the surrogate mother, and post-delivery expenses may be allowed under the supervision of an appropriate mechanism, this will safeguard the unequal bargaining power of the surrogate women. In the case of the death of a surrogate mother during pregnancy or delivery, her kin may be allowed to receive compensation. The surrogate mother's right to remuneration also acknowledges her bodily autonomy, which is recognized under Article 21 of the Indian Constitution as a "right to privacy." Regular monitoring of the ART clinics' registration, standards, and operations is necessary to ensure that the law is properly enforced.

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