



INTERNATIONAL LAW  
JOURNAL

---

**WHITE BLACK  
LEGAL LAW  
JOURNAL**  
**ISSN: 2581-  
8503**

*Peer - Reviewed & Refereed Journal*

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

[WWW.WHITEBLACKLEGAL.CO.IN](http://WWW.WHITEBLACKLEGAL.CO.IN)

## DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, translated, or distributed in any form or by any means—whether electronic, mechanical, photocopying, recording, scanning, or otherwise—without the prior written permission of the Editor-in-Chief of *White Black Legal – The Law Journal*.

All copyrights in the articles published in this journal vest with *White Black Legal – The Law Journal*, unless otherwise expressly stated. Authors are solely responsible for the originality, authenticity, accuracy, and legality of the content submitted and published.

The views, opinions, interpretations, and conclusions expressed in the articles are exclusively those of the respective authors. They do not represent or reflect the views of the Editorial Board, Editors, Reviewers, Advisors, Publisher, or Management of *White Black Legal*.

While reasonable efforts are made to ensure academic quality and accuracy through editorial and peer-review processes, *White Black Legal* makes no representations or warranties, express or implied, regarding the completeness, accuracy, reliability, or suitability of the content published. The journal shall not be liable for any errors, omissions, inaccuracies, or consequences arising from the use, interpretation, or reliance upon the information contained in this publication.

The content published in this journal is intended solely for academic and informational purposes and shall not be construed as legal advice, professional advice, or legal opinion. *White Black Legal* expressly disclaims all liability for any loss, damage, claim, or legal consequence arising directly or indirectly from the use of any material published herein.

## ABOUT WHITE BLACK LEGAL

*White Black Legal – The Law Journal* is an open-access, peer-reviewed, and refereed legal journal established to provide a scholarly platform for the examination and discussion of contemporary legal issues. The journal is dedicated to encouraging rigorous legal research, critical analysis, and informed academic discourse across diverse fields of law.

The journal invites contributions from law students, researchers, academicians, legal practitioners, and policy scholars. By facilitating engagement between emerging scholars and experienced legal professionals, *White Black Legal* seeks to bridge theoretical legal research with practical, institutional, and societal perspectives.

In a rapidly evolving social, economic, and technological environment, the journal endeavours to examine the changing role of law and its impact on governance, justice systems, and society. *White Black Legal* remains committed to academic integrity, ethical research practices, and the dissemination of accessible legal scholarship to a global readership.

## AIM & SCOPE

The aim of *White Black Legal – The Law Journal* is to promote excellence in legal research and to provide a credible academic forum for the analysis, discussion, and advancement of contemporary legal issues. The journal encourages original, analytical, and well-researched contributions that add substantive value to legal scholarship.

The journal publishes scholarly works examining doctrinal, theoretical, empirical, and interdisciplinary perspectives of law. Submissions are welcomed from academicians, legal professionals, researchers, scholars, and students who demonstrate intellectual rigour, analytical clarity, and relevance to current legal and policy developments.

The scope of the journal includes, but is not limited to:

- Constitutional and Administrative Law
- Criminal Law and Criminal Justice
- Corporate, Commercial, and Business Laws
- Intellectual Property and Technology Law
- International Law and Human Rights
- Environmental and Sustainable Development Law
- Cyber Law, Artificial Intelligence, and Emerging Technologies
- Family Law, Labour Law, and Social Justice Studies

The journal accepts original research articles, case comments, legislative and policy analyses, book reviews, and interdisciplinary studies addressing legal issues at national and international levels. All submissions are subject to a rigorous double-blind peer-review process to ensure academic quality, originality, and relevance.

Through its publications, *White Black Legal – The Law Journal* seeks to foster critical legal thinking and contribute to the development of law as an instrument of justice, governance, and social progress, while expressly disclaiming responsibility for the application or misuse of published content.

# **SURROGACY LAWS IN INDIA – ETHICAL AND LEGAL CHALLENGES**

AUTHORED BY - VRINDA BHARDWAJ

## **ABSTRACT**

Surrogacy practices in India have been transformed with the passing of the Surrogacy (Regulation) Act, 2021. The act aims at regulating assisted reproductive technologies by restricting commercial surrogacy and allowing only altruistic surrogacies. This paper will analyze the changes that the sector has undergone moving from an unregulated space to one that is strictly regulated by the state. The state in this instance tries to balance out assisted reproduction with certain ethical considerations. This comes at the cost of limited access due to stringent eligibility norms.

The research examines the problems of ethics associated with surrogacy, such as bodily integrity, informed consent, and socio-economic disparity. While altruistic surrogacy attempts to prevent economic exploitation, it can also create room for informal coercion in the absence of proper regulation. This research discusses whether the existing regulation framework is adequate in terms of protecting the interests of the surrogate mothers while respecting their dignity at the same time.

Finally, the paper looks into the constitutional and legal issues related to the 2021 Surrogacy (Regulation) Act, and identifies the weaknesses and possible improvements that need to be made regarding this legislation. It is important to note that the current system needs to be modernized to accommodate new family types and ensure equality. By placing India's surrogacy framework in a larger discussion of bioethics and human rights law, the paper seeks to provide valuable insight into the matter.

*Key words:* Surrogacy, Ethical Issues, Legal Challenges

## **INTRODUCTION**

In India, Surrogacy has transformed into a highly regulated area of law rather than a medical practice that has been largely unregulated, and a wider issue on reproductive rights, commercialization, and social justice. Traditionally, the country of India became one of the

international centers of commercial surrogacy in the early 2000s, and international targeted parents were attracted to the country because of rather cheap costs and the lack of legal limitations. This accelerated development, though, revealed some serious ethical issues such as exploiting economically disadvantaged women, the absence of informed consent, and the absence of standard medical and legal protections. These issues made policy makers reevaluate the model that regulates surrogacy in the nation.

With the introduction of the Surrogacy (Regulation) Act, 2021, surrogacy in India also changed significantly as commercial surrogacy is banned and altruistic surrogacy is allowed only under stringent conditions. The law is supposed to safeguard the rights of surrogate mothers, children born in surrogacy and the prospective couples and it will help to avoid unethical practices. It provides requirements to the intending parents and surrogate mothers, medical and ethical clearances, and provides national and state regulatory bodies.<sup>1</sup> This change is a shift towards a market-based approach and a rights-based regulation framework.

These legal developments notwithstanding, the ethical issues pertaining to surrogacy are still complicated and disputed. The fact that there is a tension between the protection of surrogate mothers and their autonomy is one of them. Although the prohibition of commercial surrogacy aims to help curb the exploitation, critics believe that the ban will deprive women of their freedom to choose what they want to do with their lives, including their bodies. There are also concerns about the meaning of the word altruism, particularly when socio-economically there might still be informal payments, or coercion going on in the background.

The other noteworthy issue is the exclusionary essence of the existing legal system. The Surrogacy (Regulation) Act, 2021 limits the access to surrogacy only to heterosexual married couples and excludes single people, those living with partners, and the LGBTQ+ community. This poses some critical issues of equality, reproductive rights, and non-discrimination in a diverse and changing society. There are also additional laws that also overlap the law including ART Act, complicating the implementation of the law. In this regard, the research on surrogacy laws in India becomes vital to comprehend the interaction of law, ethics, and social realities. It gives an idea of how law systems struggle to cover highly personal and sensitive topics and make their way through the economic inequalities and cultural practices.

---

<sup>1</sup> Himanshu Ratre, Surrogacy Regulation Act 2021: A Comprehensive Overview, ILRJS (2023)

## **PROBLEM STATEMENT**

Surrogacy in India is a complicated challenge of law, ethics, and social justice, especially following the adoption of the Surrogacy (Regulation) Act, 2021 that prohibits commercial surrogacy and allows only altruistic ones with strict conditions. Although the legislation is designed to stop the exploitation of surrogate mothers, and to help control the practice of assisted reproduction, there are still serious issues of autonomy, possible hidden exploitation, denial of some groups of people the right to surrogacy services, and the feasibility of enforcement. To this end, the main issue of this paper is to critically evaluate the question of whether the existing legal system is sufficiently balanced to protect the surrogate mother and also the reproductive rights and needs of the intending parents and provide ethical and equitable access to surrogacy in India. The major research question is: To what extent does the Surrogacy laws in India efficiently identify the ethical and legal issues though guaranteeing justice, inclusivity, and safeguard for every stakeholder?

## **RESEARCH OBJECTIVES**

- To critically analyze the legal system and its effectiveness in regulating surrogacy practices in India.
- To examine the ethical challenges in regards to surrogacy, including challenges of exploitation, independence, and informed consents of surrogate mothers.
- To assess the inclusivity and societal effect of existing surrogacy laws on different groups, especially marginalized and non-traditional families.

## **LITERATURE REVIEW**

Manjulata Meena (2021)<sup>2</sup> points out that in recent years, surrogacy has become a crucial means of parenthood for infertile couples; however, the issue is controversial in India both legally and morally. The enactment of the Surrogacy (Regulation) Act, 2021 seeks to prohibit commercial surrogacy and legalize altruistic surrogacy. This paper will explore the implications of the new act in respect of women's rights through the analysis of the autonomy of surrogate women, economic impacts of prohibition on commercial surrogacy, and the complex legal challenges surrounding surrogacy contracts. In addition, the research will examine India's historical background of regulation of surrogacy practices, judicial decisions on significant cases, and its

---

<sup>2</sup> Manjulata Meena, Surrogacy and Women's Rights, IJLMH (2021)

comparison with laws and policy-making of other countries such as the US and UK to adopt similar policies and improve surrogacy legislation.

Surbhi Kumari (2022)<sup>3</sup>, The practice of surrogacy in India was first introduced without any legislation, leading to India being considered one of the foremost destinations for commercial surrogacy in the world. The uncontrolled proliferation of such services has generated various issues pertaining to law and ethics such as commercial exploitation of poor women, commodification of reproductive labour, and unclear issues related to parental obligations. To address such issues, the Indian government enacted the Surrogacy Act of 2021, thereby bringing about a drastic change in the regulations governing surrogacy through the prohibition of commercial surrogacy and legalization of altruistic surrogacy under certain conditions.

Verma (2023)<sup>4</sup> the social and legal implications of the regulations of surrogacy have been studied in India, particularly in relation to the ethical and inclusive issues caused by the Surrogacy (Regulation) Act, 2021. According to the findings of the study, even though the act introduces a well-regulated legal framework, as well as protection for surrogate women and children, there is an exclusion of some categories of people from the right to access the surrogacy service.

The study by Parashar and Nirwani (2025)<sup>5</sup> analyzes the ethical and constitutional conflicts that arise as a result of the implementation of the Surrogacy (Regulation) Act, 2021, in India. Specifically, the authors emphasize that despite the adoption of the Act aimed at prohibiting the practice of commercial surrogacy and protecting surrogate mothers from abuse, the legislation poses new ethical dilemmas associated with autonomy, equality, and reproductive rights. As Parashar and Nirwani note, the strict requirements for prospective parents to be married couples, heterosexual, and non-LGBTQIA+ pose serious ethical problems in the context of the fundamental right to life and personal freedom enshrined in Article 21.

## **LEGAL SYSTEM OF SURROGACY LAWS IN INDIA**

Surrogacy regulation in India has witnessed a substantial change over the last decade, changing from an entirely unregulated process to a regulated statutory system. The existing legal system is mainly characterized by the Surrogacy (Regulation) Act, 2021, together with the Assisted Reproductive Technology (Regulation) Act, 2021, among others. These statutes work together

---

<sup>3</sup> Surbhi Kumari, Evolution and Regulation Of Surrogacy In India, IJLLR (2022)

<sup>4</sup> Verma, S. Socio-legal implications of the Surrogacy (Regulation) Act, 2021 in India. IJLSP (2023)

<sup>5</sup> Parashar, V. S., & Nirwani, Surrogacy in India: Constitutional challenges, ethical concerns, and comparative legal perspectives. JIER (2025)

to control surrogacy processes, avoid exploitation of surrogate mothers, and ensure ethical treatment practices, while at the same time protecting the interests of the intended parents and offspring resulting from surrogacy.

### **Surrogacy (Regulation) Act, 2021**

It is the key law that governs the issue of surrogacy in India. Under this law, surrogacy is defined as Section 2(zd), which states that surrogacy refers to the act of giving birth to a child by a woman on behalf of intending parents with an agreement that the child will be delivered to the intending couple after the child's birth.

Commercial surrogacy, according to Section 3(1)(b), is explicitly forbidden under the law. This means that it is unlawful to pay the surrogate mother any financial gain or compensation beyond medical expenses and insurance coverage under Section 38 of the Act. Punitive action may involve jail time of up to ten years and a fine of up to ten lakhs. Altruistic surrogacy, however, is the only type permitted under the Act under Section 4(iii)(b).

Vijaya Kumari v. UOI<sup>6</sup> case, Supreme Court took up the question of applicability of age restrictions as provided for under the Surrogacy Act for the couples who started the surrogacy proceedings before the implementation of the law. In its verdict, Supreme Court said that statutory age requirements could not be made applicable retrospectively where the couple had started the surrogacy procedure by creating and freezing embryos before the Act came into effect.

In Arun Muthuvel v. UOI<sup>7</sup>, decided in 2024), The court had to address problems that were encountered following the enactment of the Surrogacy (Regulation) Act, 2021 and Surrogacy (Regulation) Amendment Rules, 2024. In this case, the petitioners felt that the previous rules, which banned or limited the use of donor gametes, amounted to a violation of reproductive rights under Article 21. The court ruled in favor of the legislative and executive regulations, noting that while reproductive rights are part of personal freedoms, they must be regulated where assisted reproductive technology is involved. Significantly, this case confirmed that surrogate pregnancy is not a fundamental right but a privilege subject to statutory provisions meant to curb abuses.

---

<sup>6</sup> 2025 INSC 1209

<sup>7</sup> (W.P.(C) No. 756/2022

### **Eligibility Criteria for Surrogates**

The main features of the Act pertain to the stringent eligibility requirements that are laid down for the intending couples. Clause 4(ii) states that surrogacy is permissible only for couples in India who have been married for at least five years and are declared infertile. In this case, the woman should be within the age group of 23-50 years, and the husband between 26-55 years. When it comes to the surrogate mother, Clause 4(iii)(b)(III) mentions that the surrogate mother needs to be from the same family, that is, she needs to be a relative, must be married, should have at least one biological child of her own, and must be within the age group of 25-35 years. However, what needs to be highlighted is that a woman can serve as a surrogate only once in her life.<sup>8</sup>

### **Protection of Surrogate Mother & Child Rights**

There are certain safeguards provided by the Act for the surrogate mother. According to Section 3(5), the surrogacy clinics must provide informed consent to the surrogate mother through counseling on the possible medical risks and legal issues that may arise during the process. It must also be mentioned that there are certain safeguards available for the child conceived through surrogacy. According to Section 4(2)(c) of the Act, the child conceived through surrogacy is considered the biological children of the proposing parents from the day of birth.

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

Both the Surrogacy Bill and the ART act go hand-in-hand to regulate the process of surrogacy as well as fertility clinics. The ART act sets up criteria for fertility clinics, regulates gamete donation, and mandates ethical practices while assisting with fertility treatment procedures. ART requires registration for all clinics involved in assisted fertility treatments and ART banks, sets up a national registry, and penalizes offenders. Both acts work together to set up a regulatory framework for reproductive technology in India.<sup>9</sup>

### **Penalties and Offences**

Strict punishment has been prescribed in the Act for any offense under it. Section 38 provides that any person who enters into any commercial surrogacy arrangement, solicits surrogacy services for profit, exploits a surrogate mother, or abandons a child conceived through

---

<sup>8</sup> Singh, U. V., & Mishra, S. (2025). A new framework of surrogacy regulation in India under the Surrogacy (Regulation) Act, 2021. *International Journal of Legal Studies*, 5(1), 192–196.

<sup>9</sup> Agarwal, P. Regulating surrogacy in India: Balancing ethics, autonomy, and legal control. *IJLJ* (2024)

surrogacy will be liable for imprisonment and substantial fines.

## ETHICAL CHALLENGES

**Human Body Commodification:** An important ethical dilemma concerning surrogacy relates to the commodification of the human body. The use of commercial surrogacy in India previously prompted questions about whether the woman's fertility capabilities were being viewed as a commodity. Despite the fact that the Surrogacy (Regulation) Act, 2021 does not allow commercial surrogacy, there still remains an important question related to ethics regarding whether banning the payment for any other cost but health care undermines a woman's freedom.<sup>10</sup>

**Autonomy versus State Paternalism:** One central ethical issue relates to the tension between autonomy and paternalism. In legislation, the assumption is that women, especially those from economically disadvantaged communities, are susceptible to exploitation and thus must be legally protected. The question remains whether legislation helps women by protecting them or restricts them from exercising their reproductive autonomy.

**Socioeconomic Disparities and Exploitation Risks:** Even though the commercialization of surrogacy is illegal, socioeconomic disparities present ethical risks. In practice, the economic situation might lead a woman to decide to be a surrogate mother, even in cases where the surrogacy arrangement is not commercial.

**The Issue of Informed Consent in Medical Ethics:** In ethics, informed consent is very important in surrogacy; here, the surrogate must understand all the medical, psychological, and legal implications. There could be instances where there are insufficient levels of education, improper counseling, and involvement of middlemen that could result in a poor quality of informed consent.<sup>11</sup>

**Impact on Emotions and Psychology:** In addition to that, there is also an issue with the psychological aspects of surrogacy. The surrogate may form an emotional attachment to the baby, which causes a lot of stress when she separates from the baby post-delivery. Likewise, the intended parents also suffer from anxieties concerning trust, bonding, and acceptance of the baby.

**Discrimination and Exclusion:** A further ethical question concerns the issue of discrimination and exclusion. The recent Surrogacy (Regulation) Act, 2021 restricts only heterosexual married

---

<sup>10</sup> Nair, S., & Thomas, J. Reproductive rights and exclusion under the Surrogacy (Regulation) Act, 2021. JCSS (2025)

<sup>11</sup> Kaur, H. Commercial to altruistic surrogacy transition in India: Legal and ethical implications JHLE (2024)

couples' right to avail themselves of the procedure.

## LEGAL CHALLENGES IN SURROGACY IN INDIA

**Legal Issues Associated with Constitutional Validity:** Another important issue associated with the legality of surrogacy in India is that of constitutional validity, especially in connection with the Articles 14 and 21 of the Indian Constitution. The Act, passed in 2021, allows only a limited number of people – namely, couples who intend to have a child by the surrogacy route. Therefore, this issue is linked to the Right to Equality in Article 14 of the Indian Constitution.<sup>12</sup>

**Right to Reproductive Autonomy:** It can be seen from court judgments in India that the right to reproductive autonomy has been given importance in ensuring the right to personal liberty. Nevertheless, the conditions stipulated for eligibility under the Surrogacy Act, 2021 limit reproductive autonomy for a certain group of people. There exists a contradiction between the two in terms of legality.

**Exclusionary Eligibility Criteria:** Another problematic aspect of the legislation in question is that it includes some form of eligibility criteria that may be considered discriminatory. The eligibility criteria provided under the Surrogacy Act, 2021 limit surrogacy to married couples only who fit into a particular age and infertility criterion. As per the law, there must exist a nexus between the classification and the legislative intent of the law to ensure it is reasonable.

**Inadequacies in Enforcement and Regulations:** In addition to this, another important issue that arises is inefficiency in enforcement. Although there are stringent measures under the Act, the existence of illegal surrogate clinics and fertility clinics without registration persists in certain parts of the country. The inadequacy in monitoring and coordination in regulation between the central and state governments results in loopholes in the process of enforcement.

**Interplay of Surrogacy Act and ART Act:** The existence of both the Surrogacy Act, 2021 and ART Act, 2021 leads to overlapping jurisdictions within the laws regulating the same process. While the former controls all processes relating to surrogacy, the latter is responsible for regulating fertility clinics as well as other procedures such as in-vitro fertilization.<sup>13</sup>

---

<sup>12</sup> Reddy, V., & Iyer, M. Reproductive technology regulation in India: A critical review of surrogacy governance. *IJBML* (2025)

<sup>13</sup> Chatterjee, S. Ethical dilemmas in altruistic surrogacy: A socio-legal study from India. *JLS* (2023)

## CONCLUSION

Surrogacy in India is an intricate nexus of medical practice, law and morality. With the introduction of the Surrogacy (Regulation) Act, 2021, there is a major move towards formalizing and regulating the practice of surrogacy in the country. The main aim of enactment of the law was to eliminate the exploitation of surrogate mothers, commercial surrogacy as well as to provide ethical medical practice. Nevertheless, regardless of such good intentions, the regulatory environment has created a number of ethical and legal issues. The questions of autonomy, equality, reproductive rights, social justice remain a contested topic in Indian socio-legal discussion, and surrogacy remains a controversial topic.

It has been found that the legal framework offers good control in terms of regulation, but it is also very restrictive. The marginalization of single people, people living in, and LGBTQ+ individuals is a cause of concern about constitutional equality and reproductive justice. Moreover, the complete ban on commercial surrogacy might not completely eliminate exploitation but can even lead to the practice to the informal and unregulated area. Ethical issues like informed consent, emotional effects of surrogate mothers and socio-economic vulnerability also make the law even more challenging. Thus, there is a disconnect between what is intended by the legislation and what happens on the ground.

It is recommended that India implement a more moderate and inclusive policy on surrogacy. To begin with, the eligibility requirements according to the Surrogacy (Regulation) Act, 2021 can be reevaluated to encompass a broader group of people to promote equality and non-discrimination. Second, rather than prohibiting commercial surrogacy, a controlled compensation system with stringent protections may be considered in order to mitigate the risk of exploitation in the underground. Third, there should be increased focus on enhancing monitoring measures, counselling, and informed consent in order to safeguard surrogate mothers. Lastly, there needs to be harmonization between the Surrogacy Act and the Assisted Reproductive Technology Act that minimizes legal ambiguity and enhances the efficiency of execution.

## REFERENCES

1. Himanshu Ratre, Surrogacy Regulation Act 2021: A Comprehensive Overview, ILRJS (2023)
2. Manjulata Meena, Surrogacy and Women's Rights, IJLMH (2021)
3. Surbhi Kumari, Evolution and Regulation Of Surrogacy In India, IJLLR (2022)

4. Verma, S. Socio-legal implications of the Surrogacy (Regulation) Act, 2021 in India. *IJLSP* (2023)
5. Parashar, V. S., & Nirwani, Surrogacy in India: Constitutional challenges, ethical concerns, and comparative legal perspectives. *JIER* (2025)
6. Singh, U. V., & Mishra, S. (2025). A new framework of surrogacy regulation in India under the Surrogacy (Regulation) Act, 2021. *International Journal of Legal Studies*, 5(1), 192–196.
7. Agarwal, P. (2024). Regulating surrogacy in India: Balancing ethics, autonomy, and legal control. *Indian Journal of Law and Justice*, 15(2), 88–103.
8. Nair, S., & Thomas, J. (2025) Reproductive rights and exclusion under the Surrogacy (Regulation) Act, 2021. *Journal of Constitutional and Social Studies*, 9(1), 54–71
9. Kaur, H. (2024) Commercial to altruistic surrogacy transition in India: Legal and ethical implications. *Journal of Health Law and Ethics*, 12(1), 33–49.
10. Reddy, V., & Iyer, M. (2025) Reproductive technology regulation in India: A critical review of surrogacy governance. *Indian Journal of Bioethics and Medical Law*, 9(2), 101–118.
11. Chatterjee, S. (2023) Ethical dilemmas in altruistic surrogacy: A socio-legal study from India. *Journal of Social and Legal Studies*, 7(3), 66–82.

WHITE BLACK  
LEGAL