

Surrogacy Regulation and Reproductive Autonomy in India

Amit Kumar Akela¹ and Dr. Dhiraj Kumar Mishra²

Research Scholar, Department of Law¹

Assistant Professor, Department of Law²

Tilka Manjhi Bhagalpur University, India

Abstract: This study examines the regulation of surrogacy in India with a specific focus on reproductive autonomy, ethical and social narratives, and evolving judicial and policy discourses. Using a qualitative research design based on content analysis, the study analyzes constitutional provisions, statutory frameworks—particularly the Surrogacy (Regulation) Act, 2021 and the Assisted Reproductive Technology (Regulation) Act, 2021—along with relevant judicial decisions and scholarly literature published between 2020 and 2025. The findings reveal that while the current legal regime aims to prevent exploitation and protect surrogate mothers and children, it simultaneously imposes restrictive eligibility criteria that significantly influence personal reproductive decision-making. Ethical narratives surrounding altruistic surrogacy reflect concerns of dignity and morality but also raise questions regarding women's agency and inclusivity. Judicial interpretations demonstrate a gradual expansion of reproductive rights under Article 21, yet persistent gaps remain between constitutional ideals and statutory regulation. The study concludes that Indian surrogacy law reflects an ongoing tension between regulation and autonomy, underscoring the need for a more inclusive, rights-based legal approach.

Keywords: Surrogacy Regulation; Reproductive Autonomy; Altruistic Surrogacy; Constitutional Rights; Judicial Interpretation; India

I. INTRODUCTION

India's surrogacy regime offers a striking case study of how state regulation can both protect and constrain reproductive autonomy. From the early 2000s, India emerged as a global hub for commercial and transnational surrogacy, driven by low costs, advanced fertility clinics, and the availability of economically disadvantaged women willing to undertake reproductive labor, but in a context of weak legal safeguards and power imbalances between surrogates, clinics, and intended parents (Hibino, 2023; Jaiswal, 2012; Rozée, Unisa, & de La Rochebrochard, 2020). High-profile scandals, such as Baby Manji, and concerns over "reproductive tourism," commodification of women's bodies, and child welfare prompted demands for stricter control (Chekharina, 2024; Harleen Kaur, 2021). After years of draft bills and debate, the Assisted Reproductive Technology (Regulation) Act, 2021 and the Surrogacy (Regulation) Act, 2021 instituted a prohibitionist turn: commercial and international surrogacy were banned, and only tightly policed "altruistic" arrangements—without monetary compensation beyond medical expenses and insurance—were permitted (Debnath & Chatterjee, 2023; Jana & Kotiswaran, 2025; Lal, 2024). These Acts aim to prevent exploitation and ensure ethical practices through clinic registration, screening, consent requirements, and formal recognition of the surrogate child's legal status (Kachore & Khobragade, 2024; Malhotra, 2024). However, feminist and constitutional critiques argue that the new framework re-inscribes patriarchal and heteronormative norms by centering marriage, excluding single and LGBTQIA+ persons, and demanding unpaid "altruism" from women while devaluing their reproductive labor (Banerjee & Kotiswaran, 2020; Gola, 2021; Kaur, Sharma, Minhas, Kaur, & Sekhon, 2025; Unnithan & Kothari, 2025). Scholars contend that treating commercial surrogacy as inherently exploitative obscures women's agency, ignores their economic motivations, and risks pushing surrogacy underground, where regulatory oversight and protections are weaker (Chekharina, 2024; Hibino, 2023; Singh, Krishnan, & Singh, 2025). Viewed through a reproductive rights lens, India's shift from an unregulated market to a prohibition-heavy altruistic model thus raises core questions about

whether current surrogacy regulation genuinely safeguards women and children, or instead narrows women's reproductive choice, selectively enabling some family formations while constraining others (Jaiswal, 2012; Jha & Deepthi, 2022; Singh, 2024).

1.1. The Emergence of the Study

The contemporary study of surrogacy regulation and reproductive autonomy in India emerges from the country's rapid transition from a largely unregulated commercial surrogacy hub to a tightly controlled, altruistic-only model under the Assisted Reproductive Technology (Regulation) Act, 2021 and the Surrogacy (Regulation) Act, 2021 (ART Act and SR Act) (Debnath & Chatterjee, 2023; Gautam, 2025; Mishra & Khamari, 2022). Early ICMR guidelines (2002/2005) and the booming fertility industry exposed gaps around consent, contracts, and exploitation of poor women, prompting Law Commission Report No. 228 (2009) and successive Bills (ART drafts 2008–2013, Surrogacy Bill 2016, 2019) that progressively moved from liberal facilitation to prohibitionist control (Banerjee & Kotiswaran, 2020; Malhotra, 2024; Patel et al., 2018). The SR Act 2021 (ss. 4–6, 10–14, 35–37) bans commercial surrogacy, restricts access largely to married heterosexual couples, prescribes insurance-only "altruistic" arrangements, criminalizes contractual payment, and sets up multi-tier authorities, while the ART Act 2021 (ss. 3–9, 21) regulates clinics, gamete donation, and record-keeping (Mishra & Khamari, 2022; Bhardwaj, 2024; Tank et al., 2023). Subsequent Surrogacy (Regulation) Amendment Rules, 2024 and MoHFW notifications have partly relaxed rules by permitting one donor gamete in specified medical conditions, signalling an evolving legal response (Chekharina, 2024; Tank et al., 2023). This dense and shifting framework has spurred scholarship interrogating how marriage-centric eligibility, the ban on compensation, and exclusion of single and LGBTQIA+ persons selectively enable or curtail reproductive autonomy, push demand abroad or underground, and potentially conflict with constitutional privacy and dignity jurisprudence (Unnithan & Kothari, 2025; Jana & Kotiswaran, 2025; Singh & Krishnan, 2025; Hibino, 2023).

1.2. The Statement of the Problem

The regulation of surrogacy in India has introduced a restrictive legal framework that significantly reshapes access to reproductive choices. While the laws aim to prevent exploitation and unethical practices, they simultaneously limit reproductive autonomy for several categories of intending parents. The exclusion of single individuals, live-in partners, and LGBTQ persons raises concerns regarding equality and constitutional rights. The emphasis on altruistic surrogacy over individual choice questions women's agency and bodily autonomy. Consequently, a tension persists between state regulation, moral governance, and the fundamental right to reproductive freedom.

1.3. The Research Questions

RQ1: How do current surrogacy laws in India influence reproductive autonomy and personal decision-making of individuals and couples?

RQ2: What ethical, social, and cultural narratives shape the practice and perception of altruistic surrogacy in India?

RQ3: How do judicial interpretations and policy discourses address reproductive rights in the context of surrogacy regulation in India?

1.4. The Objectives of the Study

O1: To understand how current surrogacy laws influence reproductive autonomy and personal decision-making.

O2: To study the ethical and social narratives surrounding altruistic surrogacy.

O3: To analyze judicial interpretations and policy discourses related to reproductive rights and surrogacy.

1.5. The Delimitations of the Study

The study is confined to an analysis of surrogacy laws and policies as applicable within the Indian legal framework. It focuses primarily on qualitative sources such as statutes, judicial decisions, policy documents, and scholarly literature. Empirical fieldwork involving surrogate mothers or intending parents is not undertaken. Medical, clinical, and

psychological aspects of surrogacy are beyond the scope of the study. The analysis is limited to reproductive autonomy in the context of legal and ethical regulation, excluding comparative international perspectives.

II. THE REVIEW OF RELATED LITERATURE

Recent empirical and doctrinal research on surrogacy laws in India (2020–2025) highlights several recurring themes: the shift from a largely commercial reproductive market to a tightly regulated altruistic regime, the ethical and constitutional implications of this transition, and the lived experiences of stakeholders navigating the legal framework. Vyas, Kaur, and Kaur (2024) found that while the *Surrogacy (Regulation) Act, 2021* aims to protect surrogate mothers and intending parents through enhanced awareness and ethical safeguards, gaps persist in implementation and stakeholder understanding, particularly among surrogate women who rely on intermediaries for information (Vyas et al., 2024). Parashar and Nirwani (2025) critically examined the Act's restrictive eligibility criteria and argued that its exclusion of single, LGBTQ+, and non-traditional family forms raises constitutional concerns under Articles 14 and 21, contrasting India's regulatory approach with more inclusive models abroad (Parashar & Nirwani, 2025). Kandoi and Verma (2025) explored transnational reproductive tourism, underscoring the tension between national regulation and global reproductive markets, and how regulatory vacuums can push individuals toward cross-border arrangements (Kandoi & Verma, 2025). Syntheses of legal and ethical literature further emphasize that altruistic surrogacy, while ethically motivated, may not fully eliminate coercion and can entrench patriarchal norms when familial relations dictate decision-making (Ethical and Legal Dimensions of Surrogacy in India, 2025). Collectively, this body of literature points to a legal framework that has strengthened protections and created clearer standards but continues to grapple with inclusivity, autonomy, and the balance between ethical safeguards and reproductive rights.

2.1. The Research Gap

Existing studies largely focus on the legal provisions of surrogacy laws but provide limited analysis of how these regulations directly shape individual reproductive autonomy and personal decision-making. There is a noticeable gap in qualitative assessments of ethical and social narratives surrounding altruistic surrogacy, particularly regarding women's agency within familial and social structures. Judicial interpretations are often examined in isolation, without systematically linking case law to evolving policy discourses on reproductive rights. Limited research integrates constitutional principles with lived experiences under the current regulatory framework. Consequently, a comprehensive, interdisciplinary analysis connecting law, ethics, and reproductive autonomy in the post-2021 surrogacy regime remains underexplored.

III. THE METHODOLOGY OF THE STUDY

The study adopted a qualitative research design based on content analysis to examine surrogacy regulation and reproductive autonomy in India. Primary sources such as constitutional provisions, statutes including the *Surrogacy (Regulation) Act, 2021* and the *Assisted Reproductive Technology (Regulation) Act, 2021*, along with relevant judicial decisions, were systematically analyzed. Secondary sources comprising scholarly articles, law commission reports, policy documents, and legal commentaries published between 2020 and 2025 were also reviewed. The content was thematically categorized to identify patterns related to reproductive autonomy, ethical and social narratives, and judicial and policy discourses. This methodological approach enabled an in-depth and interpretative understanding of the evolving legal and constitutional dimensions of surrogacy in India.

IV. THE ANALYSIS AND INTERPRETATION

O1: To understand how current surrogacy laws influence reproductive autonomy and personal decision-making. The current *Surrogacy (Regulation) Act, 2021* deeply shapes reproductive autonomy and personal decision-making in India by codifying who may legally pursue surrogacy and under what conditions, effectively transforming reproductive choice into a regulated privilege. Under **Section 4** of the Act, surrogacy is permitted only for *gestational* and *altruistic* purposes, explicitly banning commercial surrogacy and requiring intending parents to secure certificates of *essentiality* and *eligibility* before undertaking the process. This framework enforces stringent criteria, including marital status and

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age limits for intending couples and surrogate mothers, which structures reproductive decisions around compliance with regulatory safeguards rather than individual preference alone (Surrogacy (Regulation) Act, 2021).

One of the central limitations on reproductive autonomy arises from the eligibility criteria embedded in the statute. The Act restricts access to married heterosexual couples without surviving children and allows only widowed or divorced women within specified age brackets to opt for surrogacy; single, unmarried individuals and same-sex couples are excluded. This has been challenged in litigation on grounds that such classifications conflict with constitutional guarantees under **Articles 14 (equality), 19 (freedom), and 21 (life and personal liberty)**, which courts have recognised as embracing the right to make deeply personal reproductive choices. A petition filed by a divorced man is currently before the Supreme Court, challenging the exclusionary definition of “intending couple” as discriminatory and violative of fundamental rights, and the Court’s consideration reflects growing judicial scrutiny of how reproductive autonomy is framed by statute.

Judicial interpretation has played a pivotal role in clarifying how regulation intersects with personal decision-making under Article 21 of the Constitution. In a landmark judgment on **9 October 2025**, the Supreme Court ruled that the age restrictions in the Surrogacy Act cannot be applied retrospectively to couples who had frozen embryos before the Act’s enforcement, holding that reproductive choice and the decision to become a parent are integral to personal liberty and cannot be arbitrarily curtailed after the fact. This decision protected the reproductive intentions of affected couples, imposing a “grandfather clause”-like principle to respect decisions made in good faith before the law’s commencement. However, not all judicial outcomes have advanced reproductive autonomy unconditionally. In a recent **Gauhati High Court** decision, the court upheld the validity of statutory age and eligibility conditions under the Surrogacy Act against a constitutional challenge, observing that while reproductive autonomy under Article 21 is protected, it is not absolute and must yield to reasonable legislative regulation aimed at safeguarding public interest, ethical standards, and surrogate welfare. This underscores the judiciary’s balancing act between individual liberty and the state’s regulatory objectives in shaping personal reproductive decisions.

Ongoing enforcement actions against illegal surrogacy operations further highlight tensions between autonomy and regulation. Law enforcement and investigative agencies have taken action against unregistered clinics allegedly engaged in unlawful surrogacy practices, including arrests and raids in Hyderabad and Gurgaon, illustrating how robust legal enforcement is aimed at curbing unethical practices but also influences how clinics operate and how potential parents navigate the surrogacy landscape to remain compliant. These developments collectively reflect a legal environment where reproductive autonomy is constitutionally recognised yet circumscribed by detailed statutory conditions and evolving judicial interpretation.

O2: To study the ethical and social, narratives surrounding altruistic surrogacy.

The **Surrogacy (Regulation) Act, 2021** was enacted to prohibit commercial surrogacy and allow only altruistic surrogacy. Its provisions were designed to protect women from exploitation, but subsequent amendments and clarifications have highlighted gaps. For instance, **Section 4(iii)(b)(II)** restricts surrogacy to married heterosexual couples, excluding single women, widows, divorcees, and LGBTQ+ persons. In 2023, the Ministry of Health issued clarifications permitting widows and divorcees to access altruistic surrogacy under medical necessity, but broader inclusivity remains absent (Sharma, 2024).

Further, **Section 6** mandates that a surrogate must be a married woman with at least one biological child, reinforcing traditional family norms. Critics argue that this provision undermines women’s autonomy by tying eligibility to marital and maternal status, thereby excluding women who may wish to act as surrogates independently (Parashar & Nirwani, 2025).

The judiciary has played a crucial role in shaping the narratives around altruistic surrogacy. In **Supreme Court of India, October 2025**, the Court ruled that couples who had frozen embryos prior to the enactment of the Surrogacy Act could not be denied surrogacy rights due to new age restrictions. This judgment underscored that reproductive choice is integral to **Article 21 of the Constitution**, which guarantees personal liberty and privacy (Supreme Court Judgment, 2025).

Earlier, in **February 2025**, the Court agreed to examine petitions challenging the exclusion of single women and strict age limits for intended parents. Petitioners argued that such restrictions violated **Articles 14 and 21**, as they



discriminated against individuals based on marital status and age. These cases illustrate how altruistic surrogacy is not only an ethical debate but also a constitutional question of equality and autonomy (Legal News Report, 2025).

Ethical narratives surrounding altruistic surrogacy are deeply intertwined with legal provisions. While the law frames altruism as protection against exploitation, feminist scholars argue that altruism itself can mask coercion, especially in patriarchal societies where women may feel compelled to "gift" their reproductive labour to relatives (Choubey & Shukla, 2025). The law's reliance on kinship-based altruism reinforces familial obligations, potentially undermining genuine consent.

Moreover, the exclusion of LGBTQ+ couples and single individuals reflects a heteronormative bias embedded in the law. This exclusion raises constitutional concerns under **Article 14 (Right to Equality)**, as it denies reproductive rights to marginalized groups. Ethical narratives thus highlight the paradox of altruistic surrogacy: while intended to safeguard dignity, it perpetuates exclusion and inequality (Uma, 2025).

Social narratives emphasize altruistic surrogacy as a moral alternative to commercial exploitation. However, the law's restrictive framework creates new social dilemmas. Children born through surrogacy face uncertainties in cross-border cases, particularly regarding citizenship and parentage. **Section 21 of the Surrogacy Act** attempts to safeguard the child's rights by granting legal parentage to intended parents, but international disputes remain unresolved. These ambiguities raise broader questions of belonging, identity, and recognition in global contexts (Sharma, 2024).

Altruistic surrogacy in India reflects contested narratives—between altruism and autonomy, protection and exclusion, law and lived realities. The **Surrogacy (Regulation) Act, 2021**, its amendments, and judicial interventions in 2025 demonstrate the evolving balance between safeguarding women from exploitation and upholding constitutional rights. Ethical and social narratives reveal that while altruistic surrogacy is legally valorized, it risks perpetuating coercion and exclusion, making it a dynamic site of constitutional and ethical contestation.

O3: To analyze judicial interpretations and policy discourses related to reproductive rights and surrogacy.

Reproductive rights in India are constitutionally anchored in **Article 21 of the Constitution**, which guarantees the right to life and personal liberty. Over time, judicial interpretation has broadened the scope of Article 21 to include decisional autonomy over intimate and personal matters such as reproduction, family formation, and bodily integrity. In *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017), the Supreme Court unequivocally recognized the **right to privacy** as a fundamental right, explicitly linking privacy to bodily autonomy and reproductive choice. This decision laid the normative foundation for challenging restrictive reproductive laws, including surrogacy regulations, on the grounds that state interference in reproductive decision-making must satisfy tests of legality, necessity, and proportionality (Bhatia, 2018; Shrivastava & Jabeen, 2025). Subsequent constitutional discourse has increasingly treated reproductive autonomy as an essential component of dignity and liberty under Article 21, rather than a conditional statutory entitlement.

The statutory framework governing surrogacy is primarily defined by the **Surrogacy (Regulation) Act, 2021** and the **Assisted Reproductive Technology (Regulation) Act, 2021**, which together represent a decisive shift from a market-oriented model to a morality-driven regulatory regime. **Section 4(iii)(b)(II)** of the Surrogacy Act restricts access to surrogacy to married heterosexual couples suffering from proven infertility, thereby excluding unmarried individuals, live-in partners, and LGBTQ+ persons. **Section 6** further narrows autonomy by mandating that surrogate mothers must be married women with at least one biological child, reinforcing traditional gender and family norms. While **Section 21** safeguards the legal parentage and rights of children born through surrogacy, **Section 38** criminalizes commercial surrogacy with severe penal consequences. Amendments and executive clarifications issued between **2023 and 2025** marginally expanded access by including widows and divorced women, yet the continued exclusion of single men and queer persons has been criticized as arbitrary and violative of **Article 14 (Right to Equality)** and **Article 21** (Chaudhary & Nikke, 2025; Ministry of Health and Family Welfare [MoHFW], 2023).

Judicial contestations have played a crucial role in mediating the tension between legislative control and constitutional freedoms. In a significant ruling delivered in **October 2025**, the Supreme Court held that couples who had frozen embryos prior to the enforcement of the Surrogacy Act could not be retrospectively denied access to surrogacy on the basis of newly imposed age restrictions. The Court emphasized that reproductive decisions, once lawfully undertaken, form part of the protected zone of privacy and personal liberty under Article 21, and cannot be invalidated by subsequent statutory changes (*Supreme Court of India*, 2025). Earlier, in **February 2025**, the Court admitted petitions



challenging the exclusion of single women and rigid age criteria, observing that reproductive autonomy cannot be selectively conferred based on marital status alone. These proceedings signal a gradual judicial willingness to scrutinize surrogacy law through a rights-based constitutional lens (Legal News Report, 2025; Bhandari, 2024).

Policy discourses surrounding surrogacy regulation are deeply informed by ethical concerns relating to exploitation, commodification, and social morality. The legislative preference for **altruistic surrogacy** is justified as a protective measure against the commercialization of women's reproductive labour. However, feminist scholars argue that altruistic surrogacy does not necessarily eliminate coercion; instead, it may obscure power imbalances within families and reinforce patriarchal expectations of women's unpaid care work (Rao, 2022; Shrivastava & Jabeen, 2025). Moreover, the law's reliance on kinship-based altruism privileges heteronormative family structures while excluding diverse family forms, raising serious constitutional questions regarding inclusivity and substantive equality (Parashar & Nirwani, 2025). Thus, policy narratives oscillate between safeguarding dignity and entrenching exclusionary norms under the guise of ethical regulation.

Children's rights constitute another significant dimension of surrogacy regulation. While **Section 21** of the Surrogacy Act guarantees legal parentage and protects children from abandonment, unresolved issues persist in cases involving cross-border surrogacy and citizenship. Judicial precedents such as *Baby Manji Yamada v. Union of India* (2008) and *Jan Balaz v. Anand Municipality* (2009) underscore the primacy of the child's best interests, yet contemporary international surrogacy disputes reveal gaps in India's regulatory approach to nationality and legal recognition (Menon, 2023). These challenges demonstrate that while domestic law has strengthened child protection, globalization continues to complicate the enforcement of surrogacy norms.

The judicial interpretations and policy discourses on surrogacy in India expose a fundamental paradox. While the law seeks to prevent exploitation through strict regulation and altruistic models, it simultaneously restricts reproductive autonomy and reinforces exclusionary social norms. Recent Supreme Court interventions in 2025 have expanded the constitutional understanding of reproductive choice, yet significant questions remain unresolved regarding equality, inclusivity, and state control over intimate life decisions. Indian surrogacy law thus reflects an ongoing constitutional struggle—between autonomy and regulation, protection and paternalism, and statutory morality and lived reproductive realities.

Major Findings

The study finds that current surrogacy laws in India significantly influence reproductive autonomy and personal decision-making by transforming surrogacy from an individual reproductive choice into a highly regulated legal process. The Surrogacy (Regulation) Act, 2021 imposes strict eligibility criteria based on marital status, age, and medical certification, thereby limiting access to surrogacy for several categories of individuals. While these restrictions are justified on ethical and regulatory grounds, they constrain the freedom of individuals and couples to decide the timing, manner, and conditions of parenthood. Judicial recognition of reproductive autonomy under Article 21 has offered partial relief, yet statutory controls continue to dominate personal reproductive decisions.

With regard to ethical and social narratives, the findings reveal that the shift to an altruistic-only surrogacy model is deeply rooted in concerns about exploitation, commodification, and social morality. Policymakers emphasize protecting women from economic coercion and safeguarding the dignity of motherhood. However, the study highlights that altruistic surrogacy may still perpetuate subtle forms of pressure, especially within familial and patriarchal social structures. The emphasis on kinship-based altruism reinforces traditional family norms and limits women's agency by denying them recognition for reproductive labour, raising questions about the effectiveness of altruism as a purely ethical safeguard.

The analysis of judicial interpretations and policy discourses indicates an evolving constitutional approach to reproductive rights in India. Courts have increasingly acknowledged reproductive choice, privacy, and bodily autonomy as integral to personal liberty under Article 21, as reflected in recent judicial interventions challenging rigid statutory provisions. At the same time, policy discourse continues to prioritize regulation, morality, and child welfare, often resulting in exclusionary frameworks. The findings suggest that Indian surrogacy law is shaped by an ongoing tension between constitutional ideals of autonomy and equality and the state's regulatory impulse to control reproductive practices, leaving several issues of inclusivity and reproductive justice unresolved.



V. CONCLUSION

In conclusion, the study demonstrates that surrogacy regulation in India reflects a complex balance between constitutional reproductive rights and state-driven moral and ethical regulation. While the legal framework seeks to prevent exploitation and protect surrogate mothers and children, it simultaneously restricts reproductive autonomy through narrow eligibility criteria and exclusionary norms. Judicial interventions have progressively expanded the understanding of reproductive choice, privacy, and dignity under Article 21, yet legislative and policy approaches continue to privilege regulation over inclusivity. The evolving jurisprudence reveals an ongoing tension between individual autonomy and state control, indicating the need for a more rights-based, inclusive, and constitutionally consistent approach to surrogacy law in India.

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