



# Surrogacy and Assisted Reproductive Technologies: Legal and Ethical Considerations

*Aditya Agrawal<sup>1</sup>, Gopika Maheshwari<sup>2</sup>*

<sup>1</sup>STUDENT-Bharati Vidyapeeth (Deemed to be University) New Law College, Pune

<sup>2</sup>STUDENT-Bharati Vidyapeeth (Deemed to be University) New Law College, Pune

<sup>1</sup>([agrawaladitya157@gmail.com](mailto:agrawaladitya157@gmail.com) 7739329859), <sup>2</sup>([gopikamaheshwari1@gmail.com](mailto:gopikamaheshwari1@gmail.com) 9111404041)

## Abstract

Assisted reproductive technologies (ART), surrogacy one of them, have revolutionized human reproduction and have been an aid to people and couples who are infertile and require progressive family arrangements. Transformation in Science has brought us to a new era where human life cannot be conceived beyond natural productive practices: law and ethics must find the remedy to the resulting difficulties. In this paper, we will conduct a comprehensive analysis of ART and surrogacy, focusing on their global application, development, and regulations in India. It examines the rights of the entitled parents, surrogates, and children born out of such arrangements while ensuring the moral and social consequences of commodifying reproduction. Focusing on legal cases, comparative national law, and ethical principles, this study advocates for a balanced legal and ethical framework that prioritizes autonomy, ensures child welfare, and promotes fair access to reproductive technologies.

## 1. Introduction

The advent of Assisted Reproductive Technologies (ART) is a revolution in reproductive medicine that redefines the dynamics of possibilities for individuals and couples experiencing infertility. Techniques such as in vitro fertilization (IVF), intrauterine insemination (IUI), embryo transfer, gamete donation, and surrogacy have given a chance to millions of people to be parents. However, advances in medicine raise serious questions regarding parenthood, who should be granted access to reproductive technologies, and what the law should do about the complex relationships that ensue from these therapies. ART disrupts traditional notions of family and produces new forms of parentage, such as biological, gestational, and social, that need examination in both legal and ethical terms. In India, ART is growing very rapidly, driven by demand, affordability, and medical expertise. Yet, the country's handling of surrogacy, particularly commercial surrogacy, has raised worldwide interest because of ethical concerns and unequal regulation. This paper examines the occurrence of legal and ethical issues of ART and surrogacy, specifically concerning Indian law, cross-cultural international practice, and emerging trends.

## 2. Understanding Assisted Reproductive Technologies and Surrogacy

Assisted Reproductive Technologies are all the medical treatments that lead to pregnancy through artificial or partially artificial means. ART generally involves the treatment of eggs and sperm in such a way as to enable fertilization. Significant ART procedures are:

- **In-vitro Fertilization (IVF):** Sperm-egg fertilization in the lab and implanting the embryo into the uterus.
- **Gamete Intrafallopian Transfer (GIFT) and Zygote Intrafallopian Transfer (ZIFT):** Transfer of gametes or zygotes into fallopian tubes.
- **Intracytoplasmic Sperm Injection (ICSI):** Injection of sperm directly into an egg.
- Freezing the sperm, egg, or embryo and keeping it for future use.

Surrogacy is a specialized form of ART where a third-party woman (the surrogate) carries a child in her womb on behalf of another individual or couple (the commissioning or intending parents). There are two general categories of surrogate motherhood:

- **Traditional Surrogacy:** The surrogate is fertilized by the intending father's sperm and donates an egg, and therefore, she is the genetic mother of the child.
- **Gestational Surrogacy:** The embryo is created using the gametes of the intending parents or donors and is implanted in the surrogate, who is genetically not related to the child.

<sup>1</sup>Law Commission of India, Report No. 228: Need for Legislation to Regulate Assisted Reproductive Technology Clinics as well as Rights and Obligations of Parties to a Surrogacy, (2009).

These are significant because they have different legal and ethical consequences regarding parentage, consent, custody, and identity. Because surrogacy agreements involve the crossing of international borders and have numerous different parties, the need for clear, enforceable legislation is most critical.

### 3. Historical Development and Global Practices

ART and surrogacy's developmental history was initiated by experimental treatment in the mid-20th century and accelerated with Louise Brown's 1978 birth, the world's first IVF-conceived child. This medical achievement paved the way for a range of fertility treatments, drastically modifying reproductive choices worldwide.<sup>2</sup>

With the development of ART came surrogacy arrangements, initially carried out in an ad hoc manner and subsequently institutionalized by clinics and agencies. As demand grew, states created disparate regulatory approaches influenced by cultural, religious, and political paradigms:

- **United States:** Surrogacy is regulated by a patchwork of state statutes. California and some others are surrogacy-supportive and allow commercial surrogacy under legally binding contracts. Others ban or severely restrict it, hence creating inconsistency in the law.
- **United Kingdom:** Altruistic surrogacy is allowed, but commercial surrogacy is banned by the Surrogacy Arrangements Act 1985. Legal parenthood post-birth is transferred under a parental order.
- **Australia:** Commercial surrogacy is illegal in all states, yet altruistic surrogacy is legal. Differences between states make legal certainty difficult.
- **Russia and Ukraine:** Commercial surrogacy is legal, and international couples are attracted to both countries, so they are reproductive tourism hubs.
- **India:** once the center of cross-border commercial surrogacy, India prohibited commercial surrogacy overseas in 2015 and further limited access in the Surrogacy (Regulation) Act, 2021<sup>3</sup>, to allow only altruistic surrogacy for Indian married heterosexual couples.

### 4. Legal Frameworks

The legal framework in the regulation of Assisted Reproductive Technologies (ART) and surrogacy is highly fragmented globally. The socio-cultural, ethical, and religious orientations of every nation shape the passage of legislation with such wide variations as to be inconsistent in determining parentage, regulating clinics, and establishing the validity of surrogacy contracts. These disparities are not only carried over to internal ART practices but also produce sophisticated legal issues with cross-border arrangements, such as the status and rights of offspring conceived under them.

#### 4.1 International Law:

There is no binding international treaty that harmoniously regulates ART and surrogacy. This regulatory gap presents severe problems, especially in international surrogacy, where conflict of laws arises in issues of citizenship, parentage, and child custody. Nevertheless, certain soft law programs have been initiated:

The Hague Conference on Private International Law (HCCH) has recognized the imperative of cooperation at an international level on these issues. Its reports of 2012 and 2019 identified the difficulties generated by the absence of harmonized rules of law on parentage and surrogacy, particularly in the interest of protecting the child, preventing human trafficking, and recording births.

A particular problem highlighted is the uncertainty in legal status that children who result from cross-border surrogacy arrangements are likely to suffer from, such as being stateless, for instance, or having no legally recognized parents in their home state.

The HCCH is currently working towards a possible international convention or instrument on "legal parentage and the recognition of judgments in matters involving children born through ART" that would offer a template for national legislations.

With no binding agreements, several international agency guidelines (e.g., the World Health Organization and UN Committees) suggest principles such as informed consent, non-commercial exploitation, and child-focused policymaking.

#### 4.2 Indian Law:

India has emerged as a pioneer and a battleground in the regulation of ART and surrogacy. Foreign nationals came in huge numbers for low-cost surrogacy in the country for years, causing very serious issues in terms of exploitation, commodification, and legal loopholes. India acted by passing two principal pieces of legislation that regulate this industry:

##### The Assisted Reproductive Technology (Regulation) Act, 2021<sup>4</sup>:

1. Establishes a regime of registration, oversight, and regulation of ART clinics and banks.
2. Introduces registration as a requirement to guarantee transparency, ethical behavior, and accountability.
3. Secures the rights of gamete donors, e.g., anonymity and consent, and safeguards recipients and children.
4. Empowers national and state ART and Surrogacy Boards to oversee implementation and process complaints.
5. Prohibits sex selection, sale of embryos, and unethical practices like coercion or false advertising.

<sup>2</sup>Kishwar Desai, *The Surrogate: A Moving Tale of Surrogacy in India* (Simon & Schuster India 2013)

<sup>3</sup>The Surrogacy (Regulation) Act, 2021

<sup>4</sup>The Assisted Reproductive Technology (Regulation) Act, 2021

### The Surrogacy (Regulation) Act, 2021<sup>5</sup>

1. Prohibits commercial surrogacy and permits only altruistic surrogacy, under which the surrogate mother is not compensated except for medical and insurance costs.
2. Prohibits surrogacy to Indian married heterosexual couples only, who must be married for at least five years and medically established to be infertile.
3. Authorizes that the surrogate must be a near relative of the intending couple, 25–35 years old, and must have borne at least one child previously.
4. Bars single parents, LGBTQ+ individuals, foreigners, overseas citizens of India (OCI), NRIs, and live-in partners from accessing surrogacy.
5. Strengthens by requiring a contract that sets out the duties and rights of surrogate and commissioning parents.
6. Imposes a penalty for violation, including imprisonment for accepting or providing commercial surrogacy or lying about eligibility.
7. Even with these enhancements, there are still some criticisms and concerns:
8. The Acts represent a heteronormative and exclusionist framework that de facto excludes access to ART and surrogacy for a broad category of individuals, including single women, gay couples, and lone men.
9. There remains confusion about the acknowledgment of parentage, especially in gestational surrogacy, where gametes are provided. Legal custody, birth certificates, and inheritance rights are all untouched matters.
10. The requirement for a close relative to serve as a surrogate is considered unrealistic and invasive, and could decrease the level of volunteers willing to serve as surrogates, in addition to tempting social pressure between families.
11. There have also been enforcement and compliance concerns, particularly in rural communities where black markets for surrogacy could still exist.

## 5. Ethical Consideration

Assisted Reproductive Technologies (ART) and surrogacy agreements raise a set of ethical issues that cut across the legal to the moral realm of human dignity, justice, and accountability. They problematize conventional understandings of kinship, motherhood, and control of the body and reveal hidden social injustice and structural inequality. Ethical standards—rooted in bioethics, human rights, and feminist thinking—need to be applied rigorously to the use of these technologies to ensure that they are used responsibly and equitably<sup>6</sup>.

### 5.1 Autonomy and Informed Consent:

The autonomy principle is that individuals ought to be free to make their own decisions regarding what is done with their own bodies and reproductive lives. With surrogacy, the procurement of the free, voluntary, and fully informed consent of the surrogate mother is a cornerstone of ethical practice<sup>7</sup>. But socio-economic inequalities, cultural expectations, and family obligations can erode true autonomy. In most low-income contexts, women might be compelled to act as surrogates due to economic necessity, not autonomous individual choice. There is also the risk of coercion in such families where altruistic surrogacy is legally enforceable, as under Indian law<sup>8</sup>.

**To solve these problems, ethical standards should encompass:**

- Compulsory legal and psychological counseling for surrogates.
- Clear record of rights, obligations, and risks.
- Restricted consent that may be revoked before embryo transfer.
- Separate court representation to avoid undue influence from parties or intermediaries.

### 5.2 Commodification and Exploitation:

The most controversial of these moral issues is undoubtedly the commodification of reproduction. Commercial surrogacy is equivalent to commodifying the body of the woman and the baby, and objectification, dehumanization, and infringement of bodily integrity are also in question here. Surrogacy has been accused of turning poor women's reproductive labor into a commodity that they purchase but sell at a physical and emotional cost. It is most glaringly apparent in cross-border ones where commission parents in developed countries outsource the surrogates in developing countries. Alternatively, supporters of commercial surrogacy view it as an appropriate profession, deserving of being named, governed, and compensated. They argued that:

- Prohibiting it may drive the practice underground.
- Women can exercise agency and financially gain under regulation.
- Payment may be framed not as a reward to the child but as effort, risk, and time.

Ethically, the problem is balancing the protection against vulnerable women being taken advantage of with not patronizing them by depriving them of the freedom to make rational economic choices.

<sup>5</sup>The Surrogacy (Regulation) Act, 2021

<sup>6</sup>World Health Organization, *Global Infertility Prevalence Estimates, 1990–2021* (2023).

<sup>7</sup>Jennifer Denbow, *Governed Through Choice: Autonomy, Technology, and the Politics of Reproduction* (NYU Press 2015)

<sup>8</sup>Jennifer Denbow, *Governed Through Choice: Autonomy, Technology, and the Politics of Reproduction* (NYU Press 2015)

### 5.3 Child Welfare:

The best interest of the child must remain the overriding concern in any surrogacy and ART arrangement. However, ethical and legal issues weaken this objective

- Abandonment by parents because they had requested them due to congenital defects, gender incompatibility, or a change of heart.
- Transborder surrogacy has the potential to create citizenship and identity issues, making children stateless or parentless for statutory purposes.
- Lack of absolute legal parenthood can influence the right of inheritance, access to medical history, and social legitimacy of the child.

On an ethical basis, states and agencies ought to ensure that:

- Surrogacy children have the right to legal identity, safe family life, and emotional care.
- Surrogacy contracts should have provisions for accepting the child regardless of medical illnesses.
- Provision must be made to provide guardianship or state care for cases of abandonment.

### 5.4 Parentage and Identity:

Technological innovation has made the institution of fatherhood complex. In ART and surrogacy, the intended, gestational, and biological parents can be distinct from each other, and this generates legal and ethical ambiguity.

Ethically, is increasingly acknowledged in the right of the child to know about his or her background, particularly regarding anonymous donors. Being unable to gain genetic and medical history can interfere with psychological growth and health outcomes.

Major ethical issues are:

- Can anonymous gamete donation be permitted?
- Does the child have a right to know or encounter the surrogate or the genetic donors?
- How are parental responsibilities and rights to be shared if there are more than two parties?

Most ethicists choose an open system of disclosure, balancing the privacy of the donor against the child's right to know. Law, however, has had to adapt to the point where parentage is no longer determined by biology but by intention, care, and affection<sup>9</sup>.

### 5.5 Gender and Class Dynamics

Surrogacy cannot be ethically evaluated without taking intersectionality into account, specifically, gender-class intersection. Surrogacy operates to reinforce patriarchal and capitalist systems whereby wealthy men—some of whom are from the West—have access to the reproductive work of poor women from the Third World.

The following are of specific relevance:

- Surrogates can be subjected to invasive medical interventions, restricted mobility, and contractual conditions that limit their freedom of choice during pregnancy.
- Norms of sacrificial gendered motherhood can be employed to encourage involvement.
- Class distinctions typically mean that surrogates are uninformed, have low bargaining power, or legal recourse if the agreement is violated.

To neutralize these inequalities, ethical surrogacy must entail:

- Full pregnancy, pre-pregnancy, and post-pregnancy health insurance for surrogates.
- Compensation that is reasonable, fair, and timely, not just covering medical expenses but also lost wages, opportunity cost, and emotional labor.
- Watchdog agencies sponsored by the government offer ethical compliance and arbitration.

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## 6. Cross-border surrogacy

Cross-border surrogacy or international surrogacy is an arrangement where intended parents reside in a country different from that of the surrogate mother. Priced down by costs, encouraged by good legislation, or possessing superior surrogates, cross-border surrogacy is today a significant feature of the global fertility market. Cross-border surrogacy has with it extreme legal uncertainties, jurisdictional disputes, and ethical dilemmas that complicate parentage, nationality, and child rights.

### 6.1 Legal Complications:

Transnational surrogacy most often generates conflicting legislation between states. A few states legalize surrogacy contracts and automatically confer parenthood upon the commissioning parents, while others never legalize surrogacy and treat the surrogate as the legal mother. These variations create:

- STATELESSNESS of the child, when both the commissioning parents' and the surrogate's country never recognize automatic citizenship.
- Custody and rights of the parent, particularly in the event the surrogate denies consent or the legal parentage is refused by the country of origin.

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<sup>9</sup>Hague Conference on Private International Law, *Parentage / Surrogacy Project: General Principles and Good Practices*, Prel. Doc. No. 3 (2019).

- Migration delays, as seen in many cases where infants are left in juridical limbo because they have no travel or identity papers.

For example, in the matter of Baby Manji Yamada (2008) in India, a Japanese couple had commissioned a surrogacy arrangement in India. Upon the divorce of the couple during pregnancy, the child lacked a legal guardian in India until the Indian Supreme Court intervened in the case. The case, therefore, highlighted the need to clarify the law on cross-border surrogacy arrangements.

## **6.2 Matters of Citizenship and Identity:**

International surrogacy children may not directly acquire the nationality of either the state of birth or the commissioning parents' state. This has created many instances of stateless children, which is a violation of Article 7 of the UN Convention on the Rights of the Child (CRC), which enshrines the right to nationality. In other cases, even where parentage is proven, postponement of passport, travel, and visa acquisition can alienate infants from their potential families for months. Such administrative barriers deter the child's welfare and bonding during critical early development phases.

## **6.3 Exploitation and Human Rights Issues:**

Global surrogacy has the potential to subject surrogate mothers to exploitation, substandard medical care, and no recourse to the law, particularly in states with inadequate oversight mechanisms. Rich foreign clients may select states with low regulation, multiplying the risks of coercion, poor compensation, and neglect of medical care to surrogates. Ethical objectors argue that such a situation is "reproductive tourism," where bodies of women in the Global South are used as reproductive capital for affluent couples from the Global North. Surrogate mothers, without the laws protecting them, are vulnerable to contract violations, coercive practices (like C-sections or abortion), or abandonment post-delivery.

## **6.4 Global Regulation Calls:**

Increased cross-border surrogacy has led international agencies to call for harmonized regulation:

- The Hague Conference on Private International Law is developing an international system for dealing with parentage and child rights in cross-border ART.
- Certain human rights activists and lawyers have called for an international convention that binds states to regulate surrogacy, safeguard legal parentage recognition, and avoid exploitation of surrogates and children.
- Moral principles need to reconcile reproductive liberty, protection of the child, and anti-exploitation with an understanding of the insufficiency of piecemeal national law in an era of globalization.

## **6.5 Recent legal developments<sup>10</sup>:**

Most of the countries that had previously been hotspots for surrogacy have unified their legislations to prevent such malpractices:

- India criminalized commercial and overseas surrogacy by passing the Surrogacy (Regulation) Act, 2021<sup>11</sup>.
- Thailand, Nepal, and Cambodia have banned international surrogacy as a result of reports of human trafficking and baby abandonment.
- European countries like France and Germany continue to ban all types of surrogacy, whereas some, like Ukraine and Georgia, continue to provide it under regulated programs.

# **7. Religious and cultural perspective**

Public attitudes, ethical principles, and legal stances regarding Assisted Reproductive Technologies (ART) and surrogacy are significantly influenced by religious and cultural contexts. Religious beliefs tend to script what is acceptable reproductive conduct for a community and thus can shape regulation and ethics. These varied views are important to comprehend in multicultural cultures for building a comprehensive but moral reproductive law.

## **7.1 Christianity:**

Within Christianity, denominations have different attitudes towards ART and surrogacy, although Roman Catholicism has one of the most conservative positions. Within Roman Catholicism, ART that separates procreation from the marital act (e.g., IVF with donor gametes or surrogates) degrades the dignity of marriage and the natural law. The Vatican regards such interventions as morally objectionable because:

- They separate conception from the marital act.
- They usually entail embryo destruction, which the Church counts as human life.
- They have the potential to result in third-party involvement, undermining the special conjugal bond.

There are fewer varied positions among Protestant denominations, with others embracing ART on some conditions (e.g., gamete usage of the couple themselves). Most Christian theologians remain worried about the commodification of human life and dignity in commercial surrogacy.

<sup>10</sup>Kishwar Desai, *The Surrogate: A Moving Tale of Surrogacy in India* (Simon & Schuster India 2013)

<sup>11</sup>The Surrogacy (Regulation) Act, 2021

## 7.2 Islam:

Islamic bioethics tends to allow ART provided that some tough rules are obeyed with emphasis on lineage (nasab), legitimacy, and marital fidelity. Sunni Islam considers procedures such as IVF acceptable if:

- They are performed in a legally valid wedlock.
- Third-party donors (womb, sperm, or egg) are not involved.
- Embryo transfer only occurs between husband and wife.

Surrogacy or third-party gamete donation is generally prohibited under Sunni law as it involves uncertainty in descent and right of inheritance, which is holy in Islamic law. However, Shi'a Islam, particularly in Iran, is more flexible. Religious edicts (fatwas) have allowed the use of third-party gametes and even surrogacy under specific religious supervision, provided all parties give informed consent and no harm is caused. This divergence within Islamic traditions illustrates the role of *ijtihad* (independent reasoning) in evolving reproductive ethics.

## 7.3 Hinduism:

Hindu philosophy, lacking a common religious authority, tends to be favorable to the use of ART. Procreation is considered a dharma (sacred responsibility) and a means by which the religious imperative of continuous family succession can be achieved. The Mahabharata and epics have actually included mythological examples of non-traditional conception and surrogacy-type scenarios (e.g., Kauravas born in jars, or Karna born by divine intervention). Within this mythological and cultural backdrop, ART is generally accepted as a natural way of becoming parents by the majority of Hindus. There is less religious reluctance to gamete donation or surrogacy, though there may be some caste reservations, fear of impurity of lineage, and social boycott.

## 7.4 Buddhism:

Compassion-based, intention-based, and non-violence-based Buddhist ethics justify ART and surrogacy on the grounds of alleviation of the suffering of infertility. But the ahimsa philosophy of non-violence is ethically assaulted by embryo destruction in the practice of IVF. Buddhist nations such as Thailand and Japan have experienced diverse legal reactions—traditionally more open in culture but bound by new emerging debates of ethics.

## 7.5 Judaism:

Judaism prefers ART to be the solution to the law to "be fruitful and multiply." Orthodox communities permit the use of ART if both gametes are from the married couple, but strict rabbinic counseling is required. Liberal denominations like Conservative and Reform Judaism are more liberal and permit greater latitude, e.g., the utilization of donor gametes and surrogacy, provided the process is respectful of the sanctity of life as well as Jewish law (Halacha).

## 7.6 Indigenous and Traditional Belief Systems:

In most Indigenous societies, family and reproduction are more communal than biologically determined. Although some societies tend to be antagonistic to ART out of fear of interference in unnatural life, other societies can absorb such technologies into their conventional understanding of fertility and even prize communal responsibility for childraising above strict parenthood<sup>12</sup>.

## 7.7 Cultural Reconciliation in Multicultural Societies

In such plural societies as India, where Hindu, Muslim, Christian, Sikh, Buddhist, and tribal values all exist together, reconciling them to one legal framework is a delicate endeavor. Law needs to:

- Protect individual reproductive choice.
- Remain neutral concerning embracing any one religious morality.
- Ensure all surrogacy and ART practices are consonant with human rights, dignity, and justice.
- Remain secular in ethics, cautious of cultural and religious feelings

# 8. Legal Case Studies

## 8.1 Baby Manji Yamada v. Union of India (2008)AIR2009 SC 84<sup>13</sup>

The landmark case involved a Japanese couple who had conceived a child through commercial surrogacy in India. When the couple dissolved, the child—Baby Manji—became legally orphaned under Indian law. The Supreme Court of India intervened and awarded custody to the grandmother of

<sup>12</sup>Indian Journal of Medical Ethics, *Editorial: The Ethics of Surrogacy in India*, Vol. 11, No. 2, 2014

<sup>13</sup>Baby Manji Yamada v. Union of India (2008)AIR 2009 SC 84

the child, highlighting loopholes in Indian surrogacy and parentage laws. The case contributed importantly to commencing legislative action in regulating commercial surrogacy in India.

### 8.2 Jan Balaz v. Anand Municipality (2009)AIR 2010 Guj 21<sup>14</sup>

A German couple of twins were born from a surrogate mother in Gujarat, India, but were stateless due to the clash of Indian and German citizenship laws. The Gujarat High Court declared the children as Indian citizens, but their departure from India was deferred due to visa complications. The case revealed serious legal loopholes in international surrogacy arrangements and led to stricter regulations to safeguard the nationality and legal identity of children born through surrogacy.<sup>15</sup>

### 8.3 Baby Gammy Case (2014)<sup>16</sup>

This media-besotted world's scandal involved an Australian couple who paid a Thai surrogate. The couple fled with the healthy child after the surrogate delivered twins, one of whom had Down syndrome, abandoning the other. The surrogate decided to bring up Baby Gammy. The scandal raised worldwide outrage and led Thailand to outlaw commercial surrogacy for overseas clients, unmasking the threat of exploitation and ethical weaknesses in unregulated surrogacy markets.

### 8.4 Mennesson v. France (2014)<sup>17</sup>

In this case, in the European Court of Human Rights, a French couple had employed a surrogacy company in America, but were not recognized as parents by France. The court ruled that not to do so breached children's right to identity and family life under the European Convention of Human Rights. The ruling confirmed that states owe a duty to maintain the parent-child legal relationship that was formed overseas, particularly in cases involving surrogacy

## 9. Regulatory Challenges<sup>18</sup>

Although regulatory laws have been enacted, challenges remain:

- The establishment of legal parentage is still a controversial issue, particularly where donor gametes or non-heteronormative families are concerned.
- Enforcement of legislation is never ideal, with complaints of ongoing commercialization in indirect forms.
- Legal exclusion of LGBTQ+, single, and live-in partners from surrogacy and ART is discriminatory.
- Regulation and monitoring of ART clinics, especially in rural settings, are still poor. Overcoming such challenges involves ongoing policy review and stakeholder involvement.

## 10. Recommendations

To address the complicated legal and ethical challenges posed by ART and surrogacy, this paper proposes the following:

- Establish an international convention under the aegis of the Hague Conference to standardize legislation regarding cross-border surrogacy.
- Amend Indian laws to make them more inclusive so that LGBTQ+ individuals, single persons, and live-in partners can access ART and surrogacy.
- Strengthen regulatory structures to manage ART clinics and prevent exploitation of surrogates.
- Create counseling and support mechanisms for all concerned to facilitate informed decision-making.
- Promote training in ethics and public awareness programs to de-mystify ART and infertility.

## 11. Conclusion

Assisted Reproductive Technologies (ART) and surrogacy are two of the most significant developments of contemporary medical science in redefining conventional understandings of conception, family, and parenthood. By allowing individuals—beyond biology, marriage, or sexual orientation—to seek parenthood, ART and surrogacy also challenge prevailing legal and moral frameworks. This paper has addressed the complex legal and ethical issues that are associated with ART and surrogacy, with particular focus on the Indian legal system as well as international experience and case law.

The examination finds that although ART promises hope and cure, it raises challenging questions about bodily autonomy, commodification, the child's best interests, and the rights of all parties involved—donors, surrogates, intended parents, and most importantly the children who are created through such technologies. Legal responses in jurisdictions are incomplete and piecemeal, and they mirror deeply rooted cultural, religious, and moral tenets.

<sup>14</sup>Jan Balaz v. Anand Municipality (2009)AIR 2010 Guj 21.

<sup>15</sup>Law Commission of India, Report No. 228: Need for Legislation to Regulate Assisted Reproductive Technology Clinics as well as Rights and Obligations of Parties to a Surrogacy (2009).

<sup>16</sup>Baby Gammy Case (2014)

<sup>17</sup>Mennesson v. France (2014)

<sup>18</sup>Bartha M. Knoppers & Sonia LeBris, Recent Advances in Medically Assisted Conception: Legal, Ethical, and Social Issues, 17 Hum. Reprod. 1699 (2002).

India's legislative move—via the ART (Regulation) Act, 2021, and the Surrogacy (Regulation) Act, 2021—is a serious step in the direction of organized regulation but is criticized as being too restrictive and discriminatory against singles, LGBTQ+ individuals, and unmarried couples. Ethically, the piece puts forward that securing informed consent, avoiding exploitation, and ensuring surrogates' and children's dignity and rights should be at the forefront of all surrogacy arrangements. The altruism v. commercialism argument refers to the fine line between freedom of contract and protection from coercion. Case studies also illustrate how deficiencies in legal harmonization, especially in cross-border surrogacy, can lead to statelessness, legal orphanhood, and conflict over identity for children. In the future, a globally uniform framework is required that transcends jurisdictional differences and creates universal minimum standards of ART and surrogacy. The framework will be required to be inclusive, rights-based, and sensitive to various social realities. It will need to accord priority to transparency, ethical medical practice, non-discrimination, and the best interest of the child, and take into account the legitimate interest of intending parents and the autonomy of surrogate women. Finally, ART and surrogacy are where science meets law, ethics, and society. Regulation of these needs not only requires legal accuracy but also ethical nuance and social duty. A rational, participatory, and forward-looking response based on human dignity, equality, and justice is necessary to ensure that these technologies are used as instruments of empowerment rather than exploitation.

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