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# A Critical Analysis of India's Surrogacy Laws and Their Impact on Reproductive Health, Intended Parent and Surrogate Mothers

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**Abstract** **Objectives:** Surrogacy constitutes a significant component of assisted reproductive healthcare and falls within the broader framework of reproductive rights and maternal health governance. In the context of India, the rapid expansion of commercial surrogacy prior to legislative intervention positioned the country as a global hub for reproductive medical tourism. While this growth reflected advancements in reproductive health services and affordability, it also exposed significant concerns regarding maternal exploitation, regulatory vacuum and asymmetrical bargaining between intended parents and surrogate mothers. The enactment of the Surrogacy (Regulation) Act, 2021 represents a transformative regulatory shift from an unregulated commercial model to a prohibitionist regime permitting only altruistic surrogacy under narrowly defined statutory conditions. While the legislation seeks to align India's reproductive governance with the objectives of SDG 3 (Good Health and Well-Being) by promoting ethical medical practices and safeguarding maternal health, it simultaneously raises serious constitutional and public health concerns. This study undertakes a doctrinal and constitutional analysis of the 2021 Act, evaluating whether its restrictive framework genuinely advances reproductive health protection or instead undermines reproductive autonomy, equality and access to safe assisted reproductive technologies. The research argues that although the legislation intends to curb exploitation, its exclusionary provisions may paradoxically generate new forms of inequality and health insecurity, thereby challenging India's commitment to universal access to reproductive healthcare under the Sustainable Development Goals framework. The study concludes by proposing regulatory reforms that balance maternal protection, reproductive autonomy and public health oversight within India's federal structure, ensuring that surrogacy governance meaningfully contributes to the realization of SDG 3 while remaining constitutionally sound.

**Key Words** Surrogacy, India, SDG 3, Good Health and Well-Being, Reproductive Health Governance, Maternal Health Protection, Assisted Reproductive Technology (ART), Constitutional Law, Gender Equality, Medical Tourism Regulation, Reproductive Autonomy

## INTRODUCTION

Surrogacy involves a woman becoming pregnant and carrying a child with the understanding that legal parenthood transfers to the intended parents upon the child's birth. In India, surrogacy became available with the progress of assisted reproductive technologies and, in particular, with the development of technologies that would aid in pregnancies where the woman could not carry to term due to medical reasons or had previously failed to achieve pregnancy. However, for nearly twenty years, surrogacy practices in India developed without any comprehensive legal structure and the development of these practices were instead a function of government policy, private contracts and minimal judicial oversight.

The first attempts to regulate surrogacy in India occurred with the Indian Council of Medical Research, National Guidelines for Accreditation, Supervision and Regulation of ART Clinics in India [1]. While the 2005 Guidelines established a framework for the operation of Assisted Reproductive Technology (ART) clinics in India, the 2005 Guidelines did not provide for statutory enforcement of the Goals (ICMR, 2005). Therefore, commercial surrogacy contracts were approached in a way that contractors had total

freedom regarding the issues of eligibility, surrogates' compensation, medical insurance coverage and post-delivery protection.

The Law Commission of India, in Report No. 228 [2], acknowledged the necessity of legislation regarding ART clinics and the rights and duties of the parties in surrogacy arrangements .Judicial proceedings have also uncovered structural ambiguity. In Baby Manji Yamada v. Union of India, 13 SCC 518 [3], the Supreme Court highlights the lack of statutory guidance on the nationality and custodial recognition of the parties involved, thus, bringing to the fore the complications of an international surrogacy arrangement. The case of Jan Balaz v. Anand Municipality, 1 GLR 699 (Gujarat High Court) [4] similarly addressed the question of citizenship of the offspring born through cross-border surrogacy and brought to light the legal ambiguity surrounding such situations.

During this period, the socio-legal scholarship has also focused on the commercial surrogacy industry. While Pande [5], Saravanan [6] describe the structural inequities of clinic-mediated surrogacy, Deomampo [7] reviews the concerns of legal regulation of the cross-border surrogacy market. The periodic enforcement actions and media coverage also documented numerous instances of regulatory violations and rogue practices in some of the fertility networks Reuters [8,9]. All these factors have contributed to the ongoing policy debate regarding the adequacy of contract-based regulation.

As a consequence, Parliament responded with the Surrogacy (Regulation) Act [10], which introduced a framework based on prohibitions. Under Section 4, surrogacy may only be conducted in certain situations, which include a medical reason, such as a specific condition provided by a District Medical Board Section 4(ii)(a), certifications applicable to intending couples and to surrogate mothers section 4(ii)(b), the surrogate mother having an insurance coverage of thirty-six months section 4(iii)(a) and a judicial order of parentage and custody section 4(iii)(b). Section 5 of the Act also prohibits commercial surrogacy, save for what may be provided in section 4. Chapter VII outlines the penalties for exploitation, advertising and surrogacy conducted without the proper authorization, which includes the offences and penalties that are stated in sections 38 and 39 through 45.

As a result of this, the 2021 Act shows a movement from a market-inspired and contract-based form of regulation to a form of regulation that is based on centralised, prohibitive and criminal regulation. This paper attempts to place such a form of regulation in the continuum of history and doctrine and to ascertain whether the present form of regulation is in the framework of the gaps in regulation and is also consistent with the tenets of the Constitution with regard to equality and decisional autonomy.

**Objectives of the Study**

This research aims to:

- Analyse the Surrogacy (Regulation) Act, 2021 through a doctrinal lens
- Examine its legal and ethical coherence in light of Articles 14 and 21 of the Constitution of India
- Compare India's regulatory model with the surrogacy frameworks of the United States, the United Kingdom, Ukraine and Brazil
- Evaluate the implications of India's shift from commercial to altruistic surrogacy

**Research Questions**

- Does the Surrogacy (Regulation) Act, 2021 adequately safeguard the rights and interests of surrogate mothers, intending parent(s) and children born through surrogacy within the Indian legal framework?
- To what extent does the Surrogacy (Regulation) Act, 2021 reconcile protective regulation with constitutional guarantees of equality and reproductive autonomy for surrogate mothers, intending parent(s) and children born through surrogacy?

**Significance of the Study**

Surrogacy (Regulation) Act, 2021, is the first law in India that aims to regulate Surrogacy and for the first time substitutes the commercially mediated system by building a new legal framework of just bans. It is a well-known fact that the commercial surrogacy system has been criticized. This study undertakes a focused doctrinal evaluation of the 2021 framework within Indian constitutional jurisprudence and comparative regulatory analysis. The study clarifies the legal implications of India's transition from commercialization to controlled altruism and contributes to a structured understanding of contemporary reproductive regulation.

**Literature Review**

Surrogacy and the various legal, ethical, economic and sociological implications, has been the focus of a significant number of academic publications. Drafting the Surrogacy (Regulation) Act, 2021 enabled the Indian government to legally respond to the exploitation and grossly unethical treatment of the surrogacy services. Nevertheless, the inflexible restrictions on commercial surrogacy are said to create barriers for both would-be parents and prospective surrogate mothers. When India moved toward an only altruistic surrogacy model, the country created legal and financial problems because a number of women used to engage in surrogacy for financial sustenance. In the same vein, argues that demand for commercial surrogacy, which is banned, does not simply go away, but is forced into the unregulated, illegal and underground markets, where the surrogate mothers are unprotected and un-entitled to rights. Some scholars have made attempts to evaluate India's surrogacy policies concerning policies of other countries. In their comparative study of surrogacy practices in the US, UK and Ukraine, Allan [11] noted that in the US, commercial surrogacy is legal and governed by contractual agreements. Unlike the US, the UK and India have surrogacy policies that are only based on altruism. However, Ukraine remains a surrogacy destination because of her liberal commercial

surrogacy policies. In the context of India, DasGupta [12] highlighted the enforcement problem and its ramifications concerning legal citizenship, parentage, contracts and disputes. There is extensive discussion on the discriminatory policies of the Indian government with respect to the surrogacy rights of single parents and individuals belonging to the LGBTQ+ community. As some scholars have noted, India's policies on reproductive rights are indeed quite limited [13].

Surrogacy has been studied for its ethical implications extensively. Qadeer [14] and Patra [15] argue that the ethical issues surrounding surrogacy are complex, as the practice could be viewed as empowering and financially beneficial, but could also potentially be perceived as economically exploitative. Some scholars argue that surrogacy is positive for poorer women, while other scholars contend that such practices grossly depersonalize women's reproductive labour is treated as disposable and women are treated as reproductive labour. Rudrappa [16] argues that Indian surrogate mothers, particularly in their socio-ethnic rural settings, lack the ability to make autonomous decisions and, as a result, are subjected to the patriarchal economic structures that surround them. Moreover, Majumdar [17] explains that there exists a psychological contradiction regarding surrogacy, in that a mother may be emotionally distressed after the postpartum period while another mother experiences a sense of fulfilment in her role in helping a family achieve parenthood.

Deonandan *et al.* [18] indicates that a possible consequence of more countries enacting laws against commercial surrogacy is an increase in illegal cross-border surrogacy and surrogacy tourism. More focus is being placed on the U.S. and Ukraine for the provision of surrogacy services because of their clear and enforceable (contract) laws, unlike India. Panitch [19] states that due to her more recent laws on surrogacy, less surrogacy is occurring in India. United Nations Human Rights Council [20] notes the start of global activism toward the better treatment of women surrogates and indicates that some countries promote women (married) without children to become surrogates for economic reasons. This means that India's legal system, in a sense, is being protective of women, but it disregards the possibility that some women (from poorer countries) may become more willing to engage in surrogacy because of the legal and economic restrictions on cross-border (commercial) surrogacy. This has created a significant amount of interest in literature concerning surrogacy and other interrelated fields. Before 2021, India was one of the leading countries in medical tourism, discusses the legal and medical aspects and the role of the tourism industry in this field.

Foreign clients required integrated services that involved everything from pre-birth contractual arrangements to post-birth certificate issuance, encompassing services from fertility clinics, attorneys and doctors. Menon [21] states that the newly opened opportunities provided such an overwhelming number of services that there was a legal surplus regarding the number of surrogacy services and contracts available within the country. There are still insufficient analyses of the economic sectors such as medicine or tourism and the evolving nexus of surrogacy law.

Recent scholarship expands the discourse by situating surrogacy within broader public health and medical regulatory frameworks.

Gopalan *et al.* [22], in their study on food adulteration and public health, emphasize how regulatory gaps in health-related sectors can produce systemic harm to vulnerable populations. Although focused on food safety, their analysis underscores the broader principle that inadequate regulation in health-governed markets-including assisted reproductive services-can expose marginalized groups to disproportionate risks. This regulatory-health nexus is directly relevant to surrogacy governance under SDG 3 (Good Health and Well-Being).

Similarly, Gopalan *et al.* [23], in examining the legal complexities of medical negligence in telemedicine in India, highlight the evolving challenges of healthcare accountability in technologically mediated medical practices. Assisted Reproductive Technologies (ART), including surrogacy arrangements, operate within comparable medico-legal frameworks where informed consent, standard of care and liability remain critical. Their findings reinforce the necessity for coherent regulatory mechanisms to ensure maternal health protection and prevent clinical negligence within surrogacy practices.

Selvamuthu *et al.* [24], in their study on perceptions of health insurance schemes and healthcare disparities across Asian populations, emphasize access, equity and policy responsiveness in healthcare systems. Their analysis is particularly relevant to surrogacy, as surrogate mothers often belong to economically disadvantaged groups with limited healthcare access outside contractual arrangements. The absence of comprehensive long-term medical insurance coverage for surrogate mothers post-delivery raises significant concerns regarding equitable healthcare access and financial risk protection-core objectives under SDG 3 and SDG 10 (Reduced Inequalities).

## METHODS

### Research Methodology

The methodology for this study is doctrinal legal research methodology with a judicious structured comparative study. The focus will be on the Surrogacy Regulation Act, 2021 and how it merges with other statutes and the Constitution of India on the incorporation of reproductive technology as a constituent part of the Assisted Reproductive Technology (Regulation) Act, 2021. Doctrinal research means looking deeply into sources of primary law; The Surrogacy Regulation Act, 2021, Assisted Reproductive Technology (Regulation) Act, 2021, the Constitution (i.e. articles 14 and 21 and litigation on Surrogacy, Parentage and Cross Border Reproductive Laws). For the research purpose, the researcher has studied Legislation, Parliamentary Debates and other associated research documents to decipher the Legislative intent, the Legal Framework and the the(PP) the Substantive Legislation (The Act) shift from Commercial Surrogacy to Altruistic Surrogacy.

The other materials added for the research, to provide a secondary context, which is as peer-reviewed articles, monographs, socio-legal ethnographies and bioethics literature on India's era of Commercial Surrogacy and its Regulation, are used to provide a context of said statutory developments and to find the doctrinal and governance issues which academic writings. In providing the research analysis on Implementation, informal collusions, or regulatory issues, the analysis of the research is limited to materials, case law, government documents and publications.

This research employs a purposive comparative technique. The United States, the United Kingdom, Ukraine, China and Brazil are chosen as representative jurisdictions to demonstrate certain regulatory models, including the permissibility of contracts, altruistic, commercial and professional-ethical governance. The analysis does not aim at normative transplantation, but rather the differing patterns of structural design within the law. In regards to the distribution of income, the organization of the health system and the level of institutional capacity, the study explicitly recognizes these variables to avoid a simplistic comparison of the jurisdictions.

**Structural Design of the 2021 Surrogacy Framework**

The Surrogacy (Regulation) Act of 2021 somewhat fenced off the legal regime of surrogacy by introducing numerous, almost insurmountable barriers, while leaving other areas of law open, but tightly controlled by a regime of conditional permissibility versus criminal prohibition. Section 4, for example, attempts to specify some substantive preconditions for the legal permissibility of surrogacy, which includes the certification of a therapeutic need by a District Medical Board, certifications of the intending parent(s) and the involved surrogate, a judicial parentage and custody order, insurance coverage to the surrogate mother for a period of not less than thirty-six months and judicial parentage and custody orders.

Broadly speaking, Section 5 of the Act concerns the prohibition of commercial surrogacy, with the exception of what is provided in Section 4. The practical essence of this Act is to shift the paradigm of regulation from permissibility to prohibition, with substantive framework of the Act. Moreover, the Act establishes a National Surrogacy Board and State Surrogacy Boards (with some limited advisory and supervisory) roles and establishes certain regulations for the registration and oversight of clinics to come into effect concurrently with the Assisted Reproductive Technology (Regulation) Act, 2021.

This section analyses the offenses related to commercial surrogacy, advertising, exploitation and related crimes. The banning of certain activities is a significant break from a governance model that has and in some instances, still does, operate with a soft-law, contractual approach.

Legislative frameworks of this kind typically exhibit three principal characteristics: (i) restrictive provisions pertaining to eligibility, (ii) a requirement of prior institutional certification before embryo transfer and (iii) an absolute prohibition on commercial activity. These design elements provide the basis for assessing both the regulatory coherence and the pragmatic implications of the framework as a whole.

**Regulatory Design, Implementation Challenges and Institutional Implications**

**Insurance Coverage and Post-Partum Welfare Safeguards:** One of the relevant provisions of the Surrogacy (Regulation) Act, 2021 is that since the commencement of the Act, insurers have been required to cover the maternity insurance of surrogate mothers for 36 months section 4(iii)(a). This is a noteworthy statute that aims to promote the welfare of surrogate mothers. Empirical and ethnographic studies done previously during the commercial surrogacy era have chronicled the deficits in even the most rudimentary and ethnographically documented studies concerning post-delivery medical follow-ups and the absence of a long-term plan for the protection of the mother's health .As a result of the absence of post-delivery health monitoring, the insurance provision in the Surrogacy Act appears to be the first example of extending legal protection to surrogate mothers and their health, specifically to the period following childbirth.

Yet, a plethora of issues exist. For example, the Act is silent on the minimums that insurers must cover, the extent and categories of medical complications that may be claimed, whether there is a reasonable coverage for psychosocial harm and the means by which insurers may be held to the compliance of these provisions. The provisions of the Act that may lay claim to the surrogate mothers' provisions of grievance redress mechanisms to be accessible to the public, in which surrogate mothers may lay claims to the denial of claims to their insurers, also appear to be silent. The regulatory scholarship in the governance of health care has documented that the welfare provisions of regulations substantively require operational detail, as well as the mechanisms to ensure regulatory compliance through audits (ICMR [1]).

In comparison, the United Kingdom uses an expenses-only model under the Surrogacy Arrangements Act 1985, which places a great deal of reliance on the evolving profession's guidance and the interpretation of divisible reimbursements along with a lot of judicial oversight. As opposed to this, Brazil's model relies mainly on the Federal Council of Medicine resolutions [25] and therefore, oversight from the profession is given priority instead of the law. India's model also combines the purpose of welfare and criminalization and however, the insurance protective mechanisms will only work in the long run if the ART regulatory framework is transparent.

**Compensation Structure and the Economics of Altruism**

Section 5 of the 2021 Act bans commercial surrogacy and only allows altruistic surrogacy under which medical and related expenses can be reimbursed. This is a radical shift from the market-mediated surrogacy environment in India. Socio-legal studies of the commercial period have analysed surrogacy as a form of reproductive labour conscripted within a sufficiently unequal economic structure. While highlighting the structural imbalances, these studies have documented that the presence

of financial compensation was a predominant factor for participation by the financially vulnerable.

The shift to an altruistic model is justified as a way of avoiding commodification and exploitation of surrogates. However, reproductive governance literature warns that removing compensation does not eliminate demand; it simply shifts the focus of the economic motivators and the visibility of the market. In several jurisdictions in the U.S., gestational surrogacy is treated as a legally enforceable contract; in the U.K., payments to surrogate mothers may only be made for "reasonable expenses." Compensated surrogacy is contractually clear in Ukraine .These jurisdictions show that they have different ways of balancing the prevention of exploitation and contract enforceability.

The Indian model's use of altruism presumes the existence of voluntary surrogate participants located within non-transactional relational networks. The model's sustainability hinges on the balance between medically justified demand and socially offered supply. To determine the operational feasibility of altruistic surrogacy as a standalone activity moving outside the informal incentivized arrangements, a substantial commitment to systematic empirical monitoring is warranted.

**Eligibility Design and Access Feasibility**

The act states that surrogacy is only legal for intending parents that fulfil certain marital and medical conditions and that surrogate mothers must comply with age and reproductive history requirements set forth by the Act in Section 4. Policy briefs and parliamentary debates [26] have rationalized these restrictions as protective measures from misuse and commercialization of surrogacy.

In terms of regulatory design, the pool of eligible participants is intentionally narrowed by these criteria. In comparative governance, access frameworks that are excessively restrictive run the risk of either underservice of the targeted functionality (i.e., the desired legal utilization) or the intended functionality being displaced to other jurisdictions. The case of China shows that formal prohibition with statutory restrictions does not automatically lead to the elimination of informal surrogacy networks. In contrast, Brazil and the UK have altruistic models that configure professional oversight as opposed to criminal regulation.

India's eligibility criteria demonstrate a conscious choice of a particular normative order. Its functionality in the long run is contingent on whether the balance of factors being addressed that include the prevention of exploitation and reasonable accessibility to medically warranted pathways of ART are addressed.

**Confirmation of Parentage and Protection of Child Status**

An example of a legislative procedural safeguard is the requirement for judicial parentage and custody orders prior to any embryo transfers Section 4(iii)(b). This mechanism illustrates the protective concern for the legal uncertainties that were present in Baby Manji Yamada v. Union of India (2008) 13 SCC 518 and Jan Balaz v. Anand Municipality (2009) 1 GLR 699, as they pertain to guardianship and citizenship complexities.

The judicial pre-certification model, as has been noted, provides legal certainty at birth and simplifies meant parent status to the legal pre-construction. The Act is however silent on any specific particular children born via surrogacy, as it relies on broad civil registration and child protection statutes. As noted in comparative scholarship on reproductive law, a clear approach to the documentation of identity, nationality and the recognition of the right to citizenship and inheritance within ART is critical.

The conflict of transnational citizenship is, to some extent, mitigated by India's restriction of cross-border surrogacy. The seamless management of medical boards, judiciary and civil registrars, however, is still required to ensure that no procedural gaps and administrative lags occur.

**Contractual Governance and Absence of Specialised Adjudicatory Forum**

The Act also does not provide for a model surrogacy agreement or create a specific adjudicatory tribunal to deal with surrogacy disputes. These are handled by the usual civil and criminal courts. Earlier scholarship dealing with pre-statutory commercial arrangements recorded a multiplicity of contractual terms and enforcement mechanisms.

Wherever compensated surrogacy is legally permitted, particularly in some U.S. states, the underpinning of enforceability is the well-developed family law of that jurisdiction. Brazil appears to be unlike other jurisdictions in that it depends more on professional medical regulation and less on the litigation of disputes. The reliance of India on civil courts does preserve a degree of uniformity in procedure, but this may also be associated with inordinate delays in matters that are time sensitive from a medical perspective. The question of whether the absence of a specialized tribunal has any material impact on the overall efficiency of the dispute resolution process remains an empirical question that is ripe for investigation.

**The Stake of Regulatory Stringency and the Risk of Informalisation**

The comparative literature on the governance of reproduction has pointed out that the impact of particularly stringent regimes has been the emergence of informal and cross-border practices where demand exists .In the case of India and post-2021, systematic national information on informal surrogacy arrangements is barely existent. The singular enforcement actions, as reported in certain media, do reflect regulatory vigilance, but do not illustrate systemic or broad-based phenomena.

Thus, future studies on the displacement effects of the prohibition framework on Assisted Reproductive Technologies (ART) sector will have to be cautious and thoroughly evidence-based. The absence of adaptable empirical evidence regarding access to ART will undermine the prohibition framework.

While the Indian surrogacy system has moved from a contractual market-based system to a state managed altruistic system, the primary focus is on preventing exploitation and ensuring welfare. However, it will require some elements, a clear articulation of the regulation of insurance, defined standards of counselling, harmonization with the ART Act and effective regulation of counselling. While the system will be developing, it is necessary to conduct continuous empirical and doctrinal studies to determine if the system continues to meet the protective aims in addition to evaluating if it maintains the necessary functional access to the reproductive technologies.

**Comparative Regulatory Positioning: India and Structurally Comparable Jurisdictions**

Comparative analysis of surrogacy regulation requires attention not only to formal legal permissibility but also to socio-economic context, healthcare infrastructure and enforcement capacity. High-income jurisdictions such as the United States and the United Kingdom are frequently cited in comparative literature; however, meaningful comparison requires adjustment for income distribution, welfare systems and institutional robustness.

In the United States, surrogacy regulation is state-specific. Certain states, including California, recognise and enforce compensated gestational surrogacy contracts under developed family law doctrines. Professional guidance from the American Society for Reproductive Medicine (ASRM) provides ethical parameters governing compensation, screening and consent procedures (ASRM Legal Professional Group, n.d.) [27]. The enforceability of contracts and judicial familiarity with ART disputes contribute to regulatory predictability. However, this model operates within a high-income healthcare system where surrogate compensation does not intersect with extreme poverty in the same manner as lower-income contexts.

The United Kingdom adopts an altruistic model under the Surrogacy Arrangements Act 1985, permitting only "reasonable expenses." Judicial authorisation of parental orders post-birth provides structured oversight. While debates regarding reform persist, the UK model functions within a publicly funded health system and relatively narrower income disparities compared too many developing jurisdictions.

Ukraine historically permitted compensated surrogacy with contractual enforceability, attracting cross-border intended parents. The regulatory environment emphasised clarity of parentage but has been shaped by geopolitical instability in recent years.

Structurally comparable jurisdictions offer additional insight. In China, formal prohibition of commercial surrogacy has coexisted with documented underground markets .Ding's empirical analysis of litigation indicates that absence of regulated channels does not eliminate demand, but rather shifts activity into informal sectors. This illustrates a regulatory paradox: prohibition without effective enforcement or alternative legal pathways may reduce transparency rather than incidence.

Brazil permits altruistic surrogacy under resolutions of the Federal Council of Medicine rather than through a criminal prohibition framework. Governance is primarily professional-medical rather than penal. This model demonstrates how regulatory control may be exercised through clinical oversight rather than criminalisation.

Indonesia and the Philippines lack comprehensive statutory surrogacy regimes, resulting in legal ambiguity and potential reliance on broader health or trafficking laws. Such environments underscore the importance of statutory clarity to prevent inconsistent enforcement and legal uncertainty.

India's 2021 framework occupies an intermediate position: it combines criminal prohibition of commercial surrogacy with institutional oversight through National and State Surrogacy Boards, District Medical Boards and judicial pre-authorisation. Unlike China's historical administrative prohibition, India's framework is codified and procedurally detailed. Unlike Brazil, however, enforcement is criminal rather than purely professional-regulatory. The long-term sustainability of India's model will depend upon whether institutional coordination, counselling standards, insurance implementation and access feasibility align effectively with medical demand.

## CONCLUSION

This research aims to (i) conduct a doctrinal analysis of the Surrogacy (Regulation) Act, 2021 along with its interrelation with the Assisted Reproductive Technology (Regulation) Act, 2021, (ii) provide a critique on the systemic consistency of the statutory framework and (iii) position India's regulatory framework model in the international context of comparative governance. The analysis shows that the 2021 framework marks a structural shift from a market-mediated practice of surrogacy to a prohibition-based state overseen altruistic regime.

Regarding the first research question does the existing surrogacy law in India sufficiently address the rights and interests of the key stakeholders and the analysis shows that the statute provides a number of positive procedural safeguards. The requirement of judicial confirmation of parentage, a certificate of eligibility and insurance coverage address gaps in previous jurisprudence and socio-legal literature. These provisions clarify the position of the law as to the status of the child and provide a welfare scheme for surrogate mothers.

The operational analysis reveals a lack of clarity within the statute, including the absence of minimum thresholds for insurance coverage, counselling uniformity, or dispute resolution systems. Statutes that employ restrictive criteria for access place the onus of balancing legal accessibility with intra-institutional coordination vis-à-vis the intersecting functions of medicine, law and regulation. In a federated structure with unevenly distributed and variable healthcare systems and their correlational regulation, the operational reality of legal frameworks depends on uniformity of practical compliance rather than the legal design.

Australian regulations on assisted reproduction consistently show that the relative success of regulation is determined not so much by whether the jurisdiction chooses a commercial or altruistic structure, but whether the structure

is capable of being regulated, monitored and managed by the professions. Even jurisdictions with permissive, altruistic, or prohibitionist frameworks show that the capacity to implement a framework is what determines "success".

Consequently, the purpose of this study is not to state that the Indian framework is inadequate. Instead, it identifies that for the framework to endure sustainably, it must formal clarity on the regulation, institutional coordination and empirical monitoring of accessibility to be measured. Future interdisciplinary research combining legal research, bioethics and the practices of reproductive medicine will be necessary to assess whether the regulatory framework continues to balance the prevention of the exploitation of persons with the operational effectiveness of the reproductive technologies.

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