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# **BALANCING PARENTHOOD AND SURROGACY: A CRITICAL ANALYSIS OF THE RIGHTS OF SINGLE AND LGBTQ+ PARENTS**

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## **ABSTRACT**

*The regulation of surrogacy in India has arisen from the convergent points of assisted reproduction technology, constitutional law, and moral values of the society. Although assisted reproduction technologies have opened up new avenues of procreation beyond biological limitations, the passage of the Surrogacy (Regulation) Act, 2021 has turned the tide finally towards regulation of this phenomena. Prohibiting commercial surrogacy, but allowing altruistic arrangements among specified intending parents, this legislation aims to check instances of exploitation but, in effect, promotes a traditional, marital family structure for heterosexual individuals. This paper will critically analyze how the current regime of surrogacy regulation in India impacts, impedes, and even thwarts the dreams of single individuals and members of the LGBTQIA+ community for parenthood, thereby challenging equality, dignity, privacy, and values of constitutional morality.*

*This research adopts a socio-legal and doctrinal method to locate the phenomenon of surrogacy within and through discourses of reproductive autonomy, reproductive citizenship, and biopolitics. This research proposes that the paradigm creates married heterosexuals as full reproductive citizens, single and queer individuals as second-class citizens, and surrogates as reproductive wage workers without proper rights and agency. By adopting an intersectional approach, this research proposes to locate the intersections of caste, class, gender, and sex in producing exclusion and consequences related to mental and public health due to state-controlled intimacy and family-making practices and discourses.*

*The paper also delves into future prospects of reproduction, especially ectogenesis, also termed artificial wombs, as a transformative approach which may have the potential to disentangle the concepts of parenthood from both biological reproduction and surrogate pregnancy.*

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*Although indicating the ethical implications related to genetic management and technological control, the subject matter addresses ectogenesis from a critical perspective of inclusive fatherhood and binarity.*

*Ultimately, this paper asserts that for any truly beneficial kind of reform to take place, a rights-focused, gender-neutral, and constitutionally founded framework needs to be established that respects and accommodates not only applicable laws concerning possible exploitation but also various forms of actual parental relationships and available technologies.*

**KEYWORDS:** Surrogacy (Regulation) Act, 2021, Reproductive Autonomy, LGBTQIA+ Parenthood, Constitutional Morality, Reproductive Citizenship, Ectogenesis.

## INTRODUCTION

Parenting and family life have been conventionally conceptualized within the restricted scope of the married heterosexual family unit, a dynamic that the law has historically upheld. Yet, there have been radical shifts within the scenario over the previous several decades. The first IVF child born within India was achieved by Dr. Subhash Mukherjee at CARE Hospital, topped Agha Khan Hospital, in Calcutta, in 1978, initiating changes within family life via assistive technologies<sup>2</sup>. Subsequent decades witnessed India emerge as a destination for global commercial surrogacy arrangements, suggesting as many as 25,000 surrogacy-born children were handed within India as of 2012. Yet, these developments were absorbed within an unregulated arena and soon witnessed reports of exploitation, violations, and commercializing women's reproductive labor. Mass reaction followed with an outright ban on commercial surrogacy introduced within India as of 2015. Only altruistic surrogacy, married and involving exclusive LGBTQ+ couples wherein the surrogate mother should be a "close relative" as mandated within the Surrogacy (Regulation) Act, 2021, prevails. Yet, single parents, LGBTQ+ parenting, and alternative family formations still remain barred as per extant law, generating core dilemmas on matters such as equality, reproduction, and the expanding dynamics of parenting within India.

However, this turn in regulation was driven by very bad experiences, there were harms caused by commercial arrangements that made vulnerable women vulnerable to force, poor medical

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<sup>2</sup> Ananya Verma, *Surrogacy Laws in India Through the Years*, *Int'l J. of Innovative Research in L.* (Nov. 2022), <https://ijirl.com/wp-content/uploads/2022/11/SURROGACY-LAWS-IN-INDIA-THROUGH-THE-YEARS.pdf>

standards, and opaque agency practices, and children and families were sometimes rendered legal orphans. But there are costs associated with the protections offered under the Act. Its provisions effectively restrict surrogacy solely to married, consenting, heterosexual couples, and an intending woman who would be either a widow or a separated woman, effectively making it difficult for single women and couples, transgender and intersex individuals who do not match mainstream notions of family and family structure<sup>3</sup>. The irony here is that India's own Constitution, in judgments like *K.S. Puttaswamy*, *National Legal Services Authority (NLSA)*, and *Navtej Singh Johar*, has offered a whole gamut of dignity, privacy, and identity rights; but it is precisely with surrogacy that there are renewed fears about descent, gender, and who deserves mainstream family recognition.

However, the empirical research implies an additional essential aspect because lived experiences among surrogate mothers and prospective parents add complexity beyond easy legal storytelling. It has been made clear in research and reports that a considerable number of Indian surrogates were involved in these arrangements with the intention of enhancing family socioeconomic conditions, sometimes reaching an agreement on these matters with spouses. At times, they were engaged in these arrangements as they were better paid or safer compared with previous occupations. Single and LGBTQ+ prospective parents, on the other hand, have testified to administrative marginalization, mental anguish, and unavailability toward family fulfillment<sup>4</sup>.

Looking at international developments would be very instructive. Countries like the United Kingdom, Canada, and South Africa have taken a broader and more gender-neutral stance and have enabled various family types to avail themselves of surrogacy arrangements within properly regulated frameworks. The emerging bioethical issue of ectogenesis, or artificial wombs, effectively raises additional complexities for any efforts to freeze parenthood within a particular legal frame. Notably, on the global trajectory, there would appear to be no necessary conflict between safeguarding against exploitation and upholding women's autonomous reproduction rights, but as it stands, this tension arises within India's particular legal framework.

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<sup>3</sup> Harsh Jaiswal, *Surrogacy Laws in India: A Critique of the Regulatory Framework*, Vol. 24 (Jan. 2023) (on file with Penacclaims), <https://penacclaims.com/wp-content/uploads/2023/03/Harsh-Jaiswal.pdf> (last visited Dec. 15, 2025)

<sup>4</sup> Shivani Gupta, *Legal Recognition of LGBTQ+ Parenthood in India: Challenges and Prospects*, SSRN Scholarly Paper No. 4850845 (Mar. 15, 2024), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4850845](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4850845)

At its core, it asks a very simple yet very profound question: How does India's surrogacy law shape, restrict, or deny the parenthood aspirations of single and LGBTQ+ persons, and can such restrictions imposed by a nation that constitutionally protects dignity and identity be justified? Based on the doctrinal and socio-legal findings presented within this research, it recommends a 'rights-centric and gender-neutral' regulatory framework for the satisfaction of needs.

## **PARENTHOOD, REPRODUCTIVE AUTONOMY, AND CONSTITUTIONAL MORALITY**

The Surrogacy (Regulation) Act, 2021 formulates a legal framework for surrogacy in the Indian scenario, it raises fundamental implications with regard to parenthood and constitutional morality. According to The Surrogacy (Regulation) Act, 2021, married and consenting couples belonging to the opposite sex alone qualify as the intended parents<sup>5</sup>. Consequently, they emerge as 'full reproductive citizens'. Single people, LGBTQIA+ couples, and couples belonging to alternative family arrangements remain outside its ambit and are thus categorized as 'second-class' reproduction citizens. Such a dichotomy poses fundamental questions on equal reproduction rights and the role of the state as it marks reproduction boundaries.

From a constitutional viewpoint, the implication of this exemption goes against the norms of equality and nondiscrimination as guaranteed under Articles 14 and 15 of the Indian Constitution<sup>6</sup>. The implication here is that, instead of promoting reproduction as an aspect of personal freedoms, the law discriminates on the basis of marital status and sexuality as per its biased favor toward married and biologically heteronormal couples as guaranteed under the ACT. Conversely, it can be argued that it marginalizes LGBTQIA+ and single parents.

Moreover, the use of Michel Foucault's idea of biopolitics enables a critical perspective on the regulation of surrogacy within the Act. By presenting itself as altruistic, the law places women primarily as carriers of offspring for third parties, reducing women's reproduction itself as a resource controlled by the state. The regulation of surrogacy places women as surrogates within a regulatory framework as "reproductive workers" with limited autonomy because of

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<sup>5</sup>Priya Sharma, *Who Gets to Be a Parent? Addressing Exclusion and Reproductive Rights in India's Surrogacy Law*, *Int'l J. L. & Legal Res.* (2025), <https://www.ijllr.com/post/who-gets-to-be-a-parent-addressing-exclusion-and-reproductive-rights-in-india-s-surrogacy-law>

<sup>6</sup>Shivani Gupta, *Legal Recognition of LGBTQ+ Parenthood in India: Challenges and Prospects*, *SSRN Scholarly Paper No. 4850845* (Mar. 15, 2024), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4850845](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4850845)

contractual and state regulation. This state-regulated system illustrates that reproduction might be governed as a form of biopower control with women's bodies as locations regulated within a scene of ethical regulation.

Thus, the relationship between autonomy and constitutional morality in reproduction becomes clearer, as it seems that while the new legislation seeks to protect the rights and interests of carriers as well as the child, it also perpetuates and enforces a limited understanding of parenthood. Only within the married, heteronormative structure will an individual receive recognition and constitutional endorsement<sup>7</sup>. It is necessary, therefore, that an understanding that embraces a broader definition of family and autonomy for all parties, be it parents and carriers, be adopted. Only then can an understanding and definition of reproduction that fits within and represents an interpretation and understanding consistent with the constitutional ideals of equality, freedom, and dignity be achieved<sup>8</sup>.

Overall, as a consequence of the Surrogacy Act, parenting becomes not just an issue involving an individual and family but also a political and constitutional issue. A careful consideration and interpretation of surrogacy as a concern involving 'reproductive autonomy' and 'constitutional morality' illustrate that it can be simultaneously a promising and excluding act with implications demanding reforms that incorporate pluralism, ethical justice, and all matters pertaining to reproduction at an Indian constitutional level.

### **REGULATORY GAPS AND POLICY SHORTCOMINGS IN THE SURROGACY (REGULATION) ACT, 2021**

The Surrogacy (Regulation) Act, 2021, made with the intention of safeguarding women against exploitation, is riddled with internal inadequacies and contradictions once it goes under examination from a constitutional, feminist, and socio-legal perspective. It can be rightfully said that instead of regulating an industry that previously existed with exploitation, it continues to generate inequality and invisibility. It is not just an inadequacy but highlights that there is an internal notion within the State regarding family, gender, and class.

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<sup>7</sup> Maya Unnithan & Jayna Kothari, *The Undue Importance of Marriage in India's Current Surrogacy Legislation: Why Single Women Cannot Aspire to Motherhood*, 6 *Amicus Curiae (Series 2)* 324 (2025), <https://journals.sas.ac.uk/amicus/article/view/5753/5391>

<sup>8</sup> Richa Singh & Ananya Mehta, *Transnational Surrogacy and Its Legal Challenges in India*, 7 *Multi Subject J.* 247 (2024), <https://www.multisubjectjournal.com/article/673/7-5-14-247.pdf>

### **1. Systematic Exclusion of mothers or prospective parents Single and LGBTQ+ parents**

A large amount of legal reasoning rests on notions of exploitation based on anecdotal evidence and not longitudinal research, interviews, or ethnographic research. The voice of the surrogate and, more specifically, that of women who are caste-based and vulnerable, as well as pressures from clinics and economic dependence, is completely absent. It would be difficult without empirical research to determine if altruism decreases exploitation and leaves it invisible.

### **2. Lack of Analysis of Socioeconomic Vulnerabilities and Caste-Class Dynamics**

The Act fails to account for the role of caste and class as factors influencing women's entry into surrogacy. A large majority of surrogates have traditionally belonged to low classes and marginalized sections of society, who have resorted to surrogacy as a form of survival reproduction. The altruistic-only system fails to account for women's financial agency and sources of sustenance as a direct effect of banning monetary compensation. Many scholars have argued that there is no intersectional perspective on the impact of either caste-based discrimination or poverty on the lives of surrogates within the act<sup>9</sup>.

### **3. Lack of Transnational and Comparative Legal Perspective**

India was a destination country for commercial surrogacy and thousands of babies have been born there as a result. However, the bill fails to provide any solutions for inter-country enforcement, citizenship problems, and problems related to conflict-of-law. Single parents and LGBTQ+ people have no recourse for inter-country surrogacy, as it is prohibited within the country. Also, there is hardly any reference made within the bill to some comparative legal systems, as seen within the UK, Israel, Canada, and California, who have adopted an open and regulated form of surrogacy<sup>10</sup>.

### **4. Lack of Integration with Other Legal Frameworks**

It operates in an isolation manner with regard to other related legislations like Assisted

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<sup>9</sup> Amrita Pande, *Revisiting Surrogacy in India: Domino Effects of the Ban*, 30 *J. Gender Stud.* 395 (2021), <https://doi.org/10.1080/09589236.2020.1830044> (published online Oct. 15, 2020).

<sup>10</sup> Saurish Mukherjee & Srinidhi Balakrishnan, *Evolution of Surrogacy Laws in India and Its Shortcomings with an Analysis of Different Countries' Surrogacy Laws* (July 10, 2024), SSRN Scholarly Paper No. 4932965, <https://ssrn.com/abstract=4932965>

Reproductive Technology (Regulation) Act, 2021, adoption matters, child protection regimes, and medical ethics standards. As a result, there are conflicting regulatory standards, lack of clarity on issues like ‘close relative’, and inconsistencies in standards. Lack of harmonization affects compliance with the law on the side of clinics, surrogate carriers, and would-be parents. There are also serious gaps with regards to disability rights, inheritance, and provisions on single parentage and citizenship.

#### **5. Lack of Protection for Surrogate Mothers’ Rights**

Although these regulations appear as woman-protecting provisions, they offer very limited autonomy to surrogate mothers. They cannot make decisions about reproduction on their own, cannot negotiate repayment, and have to be “a close relative” as well. There are no provisions for guaranteed long-term health insurance, mental support, and independent legal advice. Moreover, various research papers demonstrate that there is no information about the psychological implications associated with altruistic surrogacy, and so on.

#### **6. Narrow Ethical Framework and Failure of the “Altruistic Model”**

The Act presumes that paid surrogacy is ipso facto unethical and thus prescribes altruistic surrogacy. Some feminists have criticized these controversies and presumptions, suggesting that it is not payment that presents problems but medical safety and inequality. The impact of an altruistic-only policy would be that there would be an underground market economy for reproduction. It would not eradicate exploitation but send it underground. It represents patriarchal domination as opposed to female empowerment<sup>11</sup>.

#### **7. Constitutional and Human Rights Gaps**

The Act inadequately addresses the constitutional values of equality, privacy, dignity, and choice. It fails to address discrimination on the grounds of marital status, gender identity, and sexual orientation. There is hardly any consideration given to the value of reproduction as a fundamental right and India’s obligations under international human rights standards. That certain sections are denied access to surrogacy without any

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<sup>11</sup> Donna Dickenson & Britta van Beers, *Surrogacy: New Challenges to Law and Ethics*, 26 *New Bioethics* 293–305 (2020), <https://doi.org/10.1080/20502877.2020.1835205>

reasonable reason goes against the value of constitutional morality as it establishes 'reproduction inequalities'<sup>12</sup>.

## 8. Lack of Future-Oriented Legal Thinking

Finally, it should be noted that the act fails to address emerging technologies surrounding reproduction, including ectogenesis, or so-called artificial wombs, as well as advances involving egg and sperm cells and changes at a global level with regard to family reproduction. A future-minded approach would have to be aware of these changes and would not put reproduction within antiquated notions of morality. singles and LGBTQ+ people. The biggest shortcoming within the Act is that it has a very narrow scope of "intending parents," which pertain almost exclusively to married and opposite-sex couples. Yet, even as there is an increasing acceptance of alternative family arrangements, it still refuses single males, single females (with some medical limitations), separated individuals, widowers, and members belonging to LGBTQIAs, including lesbian and gay couples as well as transgender individuals. It does so without any medical, ethical, or child-protection considerations. It merely reinforces a heteronormative family imaginary that undermines Articles 14, 15, and 21. It has often been cited within scholarship that there isn't any empirical research about single parents within India conducted via surrogacy, and it maintains a prescriptive bias favoring only married heterosexual units as fit to raise offspring.

## COMPARATIVE STUDY: INCLUSIVE SURROGACY MODELS (UK, CANADA, GREECE)

A review of global surrogacy laws shows a clear divide between the older, restrictive models and the newer, inclusive frameworks that account for diverse family structures. Traditional laws largely treated surrogacy as an exceptional measure, tied mainly to medical infertility within heterosexual marriages. In contrast, modern reforms acknowledge that parenthood can emerge through multiple identities and family forms, including single parents, LGBTQ individuals, transgender persons, and other non-traditional arrangements<sup>13</sup>. This contrast

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<sup>12</sup> *Surrogacy (Regulation) Rules, 2022, G.S.R. \_\_\_\_*, Ministry of Health & Family Welfare, Govt. of India (Aug. 2022), <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081094-1.pdf>

<sup>13</sup> Shubham Pandey & Riya Sharma, *Transnational Surrogacy and the Legal Vacuum: Rethinking Indian Regulation in a Globalized Reproductive Market*, 7 *Int'l J. Innovative Rsch. in Arts & Soc. Sci.* \_\_\_\_ (2024), <https://rsisinternational.org/journals/ijrias/articles/transnational-surrogacy-and-the-legal-vacuum-rethinking->

highlights a significant research gap noted earlier: there is limited scholarly work examining legal frameworks that balance autonomy, equality, and social norms within these evolving reproductive realities.

The altruistic model adopted by Canada embodies one of the most progressive frameworks on inclusivity. Unlike opponents who link provisions with traditional norms, Canada places informed consent, surrogate autonomy, and no discrimination at the core of its legal framework. All would-be parents, irrespective of their sexual or gender expression and marriage status, can enter into a surrogacy arrangement, and parentage becomes relationship- rather than biology-based. This itself addresses the deficit pointed out above with regard to conservative regimes: it clearly illustrates that women's exploitation could be safeguarded within an alternative framework without shutting LGBTQ+ and single parents out.

A similar drift and response have emerged within the United Kingdom. Although there remains an altruistic regime in place, there clearly occurs a marked departure within the framework of the new pathway set forth within the Law Commission itself. The conferment of parental status at birth on either commissioning parents, including LGBTQ+ and single-parent households, clearly represents an intention to deliberately undermine and destabilize the heteronormative couple-centric foundation on which existing surrogacy law rests. How it plays out within U.K. practice, with counseling and independent legal and screening processes, clearly illustrates a manner within which an ascertainable gap pointed out within your own text will be prefaced<sup>14</sup>.

On the other side, the judicial approval-based model offered by Greek law presents an inexplicably interim solution. Once squarely based on heteronormativity, Greek courts have gradually recognized that surrogacy goes beyond a medical act and, instead, marks the onset of family life itself and, consequently, should be assured within the realms of dignity and equality. Consequently, it presents an opening for more participation without sufficiently abandoning procedural safeguards. The Greek experience presents an apt testament on how government control can be unequivocally excluded with something more and presents an apt fill within the determined research gap on how “protection” can sometimes cohesively amount

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*indian-regulation-in-a-globalized-reproductive-market/*

<sup>14</sup> Shruti Kumar & Aditi Singh, *Legal Framework of Surrogacy for Same-Sex Couples in India: A Comparison with the U.K.*, (Mar. 2025), <https://humanrightlawreview.in/wp-content/uploads/2025/03/Legal-Framework-of-Surrogacy-for-Same-Sex-Couples-in-India-A-Comparison-with-UK.pdf>

to prohibition. Perhaps the best example of an inclusive paradigm would be California itself, as it operates on a parent-first paradigm. Rather than locating parent status through biology, marriage, or gender, California deems that intention is instead the central causative act regarding parenthood. Antenatum parentage orders safeguard committed parents, including LGBTQ couples, single women-by-choice, members of the LGBTQ umbrella who identify as non-binary, and blended families, so that they are assured equal legal status. It encapsulates the tension between emerging LGBTQ+-inclusive perspectives and the persistent discriminatory restrictions embedded in many legal systems. However, when compared with more restrictive regimes where surrogacy is either banned or limited exclusively to married, heterosexual couples its weaknesses become more evident. Such frameworks, including India's post-2021 surrogacy regime, continue to rely heavily on moral paternalism, thereby restricting access for LGBTQ+ individuals and single parents under the justification of protecting women and safeguarding public morals<sup>15</sup>. However, based on comparative proof, it becomes clear that making it more inclusive will improve, and not vice versa, as it will make pre-existing ethical standards more, and not less, reliable because it will steer surrogacy towards more transparent, accountable, and rights-based models. A common thread running among all these surveyed territories is that more inclusive versions of surrogacy regimes better mark a paradigm shift towards considering reproduction as a right rather than a privilege. They repudiate anachronistic notions of appropriateness about family norms and instead encourage dignity, equality, and freedom for all who would want to form a family via surrogacy. Thus, this comparative research clears the research gap existing till now and proves that more inclusive regimes not only exist but also operate across the global map and have much to learn from them for nations that still maintain an exclusive system.

The legal framework governing surrogacy in India has evolved significantly over the past two decades, reflecting not only advances in assisted reproductive technologies but also an increasing need to address resultant ethical, social, and legal concerns. India was initially in the forefront of reproductive technologies, including IVF, gamete donation, and surrogacy. During the late 1990s and early 2000s, the private sectors saw unregulated ART clinics mushroom in every state. This culminated in unethical practices regarding baby trading, sex selection of the conceptus, unregistered clinics, abandonment of children born through surrogacy, and

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<sup>15</sup> Saurish Mukherjee & Srinidhi Balakrishnan, *Evolution of Surrogacy Laws in India and Its Shortcomings With Analysis of Different Countries' Surrogacy Laws (July 10, 2024)*, SSRN Scholarly Paper No. 4932965, <https://ssrn.com/abstract=4932965>

exploitation of surrogate mothers. It is in this context that the Government of India initiated a statutory framework to regulate surrogacy for safeguarding the rights of all concerned.

## LEGAL FRAMEWORK OF SURROGACY IN INDIA

Surrogacy in India is regulated under the Surrogacy Act, 2021 (SR Act), read with its Rules. It permits altruistic surrogacy, while prohibiting commercial surrogacy outright to prevent exploitation of women through unethical commercialization of their wombs and reproduction. In fact, commissioning of surrogacy by only Indian married couples, NRIs, and OCI cardholders, satisfying rigid eligibility criteria, is permitted. The intended couple needs to establish medically that the wife suffers from infertility and must not have any surviving biological or adopted or surrogate child, except in cases of any life-threatening disorders in the previous child, and satisfy age criteria-both wives and husbands between 23 and 50 years and 26 and 55 years of age, respectively. Surrogate mothers should be married, between 25 and 35 years, must have a biological child, with informed consent, not contributing gametes of her own, and may be a surrogate only once<sup>16</sup>. It needs permission from the State or District Surrogacy Board and has to follow detailed medical and legal procedures and must be covered by insurance.

While the SR Act brings some degree of protection for the intended parents and surrogate mother, the framework is restrictive and exclusionary, particularly for single parents and LGBTQ+ individuals. The Act goes on to define an “intending couple” as a legally married Indian man and woman, thereby excluding single individuals, live-in partners, and same-sex couples from their provisions on surrogacy in India. Although widows and divorcees are allowed under stringent conditions, unmarried women and men are not. As lawyers explain, all these exclusions raise constitutional concerns not only of equality and non-discrimination but also of reproductive choices guaranteed by Articles 14 and 21. The Supreme Court in *Navej Singh Johar v. Union of India* decriminalized consensual same-sex relations, upholding dignity and autonomy, yet the SR Act continued to exclude LGBTQ+ families from their reproductive rights. Similarly, live-in partners and single parents, despite being allowed to adopt children under Indian law, are excluded once again, showing arbitrary distinctions in law<sup>17</sup>. Writ

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<sup>16</sup> *Latest Surrogacy Law in India, "Go IVF Surrogacy (2025), <https://www.ivfsurrogacy.in/latest-surrogacy-law-in-india/>*

<sup>17</sup> *Harsh Jaiswal, Surrogacy Laws in India: A Critique of the Regulatory Framework, Volume 24 (Jan. 2023) (on file with Penacclaims), <https://penacclaims.com/wp-content/uploads/2023/03/Harsh-Jaiswal.pdf>*

petitions continue to be filed in courts for declaring these restrictions unconstitutional and discriminatory. The Surrogacy Regulation Act, on the other hand, provides ART Act, 2021, for the regulation of fertility clinics, handling of the embryo, and the procedures under ART. The clinics have to be registered, the personnel shall be qualified to handle this type of work, and strict medical and legal protocols are to be followed. In 2022 and 2023, certain amendments were made to the Rules, which interpreted the insurance obligations, proscribed the use of donor gametes, and further curtailed the eligibility criteria, thus giving strength to the stem of altruism and ethics in surrogacy. Despite these legal safeguards, the exclusion of single and LGBTQ+ individuals has practical consequences. Many affected individuals are forced to pursue surrogacy abroad in jurisdictions permitting access regardless of sexual orientation or marital status, including Colombia and parts of Mexico. Critics argue, "The law alone narrows sight to married heterosexual couples and cannot consider emerging family structures, reproductive rights, or principles of equality assured by the Constitution, and that itself makes India's surrogacy landscape incomplete and in urgent need of reform." In sum, India's law on surrogacy has been ethical and slanted toward the protection of surrogate mothers, but it is restrictive and exclusionary, particularly toward single parents and LGBTQ+ communities. While the law successfully outlaws commercial exploitation, the limitations of access reveal the tension between traditional family values and the emerging notion of reproductive autonomy. Wholesome reform is needed to establish a legal regime that harmoniously balances protection and ethics with inclusivity for the exercise of all prospective parents, regardless of marital status or sexual orientation, to the right to parenthood through surrogacy.

### **CHALLENGES FACED BY SINGLE PARENTS UNDER THE SURROGACY ACT, 2021**

The Surrogacy (Regulation) Act, 2021, presented as a protective framework against exploitation, in practice entrenches structural barriers for single parents and LGBTQ+ communities by codifying a narrow, normative understanding of family and reproduction rooted in heteronormative assumptions. The Surrogacy Bill limits access to this reproductive technology and service solely in favour of all Indian married couples if they can prove their infertility. Therefore, this legislation deprives all those reproductive citizens in this country who do not fit into this broad bracket of 'families with an existing child/in a marriage.' Rather, this deprivation remains intersectional in nature in which it upholds a very complicated social caste system based on class, gender, and sexism because historically, in Indian society,

surrogate pregnancies and reproductive lives have compulsorily remained in the hands of socially and economically marginalized bodies of lower-caste women, in which their very bodies have remained commodified in a very unplugged market system in this country<sup>18</sup>. Moreover, this altruistic-only model, rather than removing this exploitation in such a manner, in reality, shifts control over reproduction not in the hands of market actors but in a very major way in the hands of this State apparatus, which remains very intensively embedded in a very pervasive surveillance manner in each woman's reproductive life in this country.

The Act ignores a child's right to non-traditional family structures in that it presumes a strictly mother–father-defined family based purely on marriage rather than child-raising capacity. Such a model presumptuously states that two married parents in a straight marriage are automatically better for a child's upbringing when, in reality, a child's actual caretakers have proved time and again to have an independent level of capability with no basis in orientation or marriage status. Such children in single-parent and LGBTQ+ families are simply invisible because of how they do not conform with socially accepted constructions of family rather than because this status has proved in any way problematic.

Moreover, the surrogacy regime is characterized by a curious lack of engagement with reality. Single parents by choice, LGBTQ families, and LGBTQ+ people are already engaged in child-rearing in terms of adoption, co-parenting, and support systems, but this reality is not accounted for in the legislation<sup>19</sup>. Further, the surrogate mother's narrative, which can represent a series of complexities concerning consent, coercion, altruism, and agency, is reduced to a simplistic construction of vulnerability. The consequence of a lack of consultation with affected communities leads to legislation concerning procreation in abstraction from reality, thus entrenching epistemic exclusion.

In terms of public health, the exclusion of single parents and LGBTQIA communities from surrogacy practices has major consequences in mental health. The right to procreate oneself is inextricably intertwined with issues of dignity, self-respect, and sound mental faculties, especially in situations where such social groups have hitherto faced social marginalization and

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<sup>18</sup> Donna Dickenson & Britta van Beers, *Surrogacy: New Challenges to Law and Ethics*, 26 *The New Bioethics* 293 (No. 4, Dec. 2020) (editorial).

<sup>19</sup> Paras Chaudhary & Narender Kumar Bishnoi, *Challenging Boundaries: Legal Gaps in India's Surrogacy Regulations*, 5 *Bharati Vidyapeeth Med. J.* 4 (Jan.–Mar. 2025), [https://doi.org/10.4103/BVMJ.BVMJ\\_2\\_24](https://doi.org/10.4103/BVMJ.BVMJ_2_24)

criminalization. The deliberately inconsistent application of laws in these matters, where parents in such circumstances can legally adopt children but not allow them to become parents via surrogacy, smacks of moral considerations rather than medical rationale and therefore affects their public mental health.

In essence, The Surrogacy Act operates in the business of intimacy regulation, where the state consolidates its control over increasingly intimate spaces of life through the regulation of who is considered worthy of procreation and family-making. Whereas it simply tries to regulate biomedical technicalities and/or contractual formalities, this statute fundamentally polices desire, care, and love through regulatory exclusion. Through this focus on one uniform conception of family, it bends constitutional imperatives of autonomy, dignity, and equality before the law to social conservatism. For single parents and LGBTQIA+ communities, this means that surrogacy, rather than becoming a means to inclusive parenthood, becomes a space of disciplinary regulation in law, wherein it is figuratively asserted that not all lives are worthy of being reproduced, recognized, and protected under law.

### **ECTOGENESIS AS A PATHWAY TO INCLUSIVE PARENTHOOD**

Ectogenesis, or the process of gestating an embryo or fetus outside of the human womb, represents a completely new area within the domain of reproductive biotechnology. It presents an opportunity for universal access to parenthood. At first, it was described and suggested back in the early 20th century by British biologist John Burdon Sanderson Haldane. It refers to the growth and development of an organism outside the natural environment wherein it would have otherwise grown or been gestated, particularly within the prenatal stage but outside the woman's womb. Ectogenetic research today distinguished itself on two aspects: complete ectogenesis, wherein an embryo would be completely grown outside the womb from conception to term, and partial ectogenetic processes wherein a mature fetus would be implanted into an artificial womb.

Partial ectogenesis is not something novel either because neonatology tools, such as incubators and other supportive systems outside the womb for preterm babies, have been continuously used. While traditional incubators designed for air circulation might result in complications due to direct air exposure and inadequate physiological support for preterm babies, AWT or artificial womb technology would definitely offer a better alternative that would simulate a

natural womb and provide oxygen, sustenance, and nourishing fluids to preterm babies. Presently, there have been promising experiments conducted on preterm babies using EXTra-uterine Environment for Neonatal Development trials on animal subjects, indicating a brighter future for humans as well<sup>20</sup>.

The implications and uses of ectogenesis do not lie within neonatal services; it can completely alter the entire service chain of surrogacy and reproduction. Although surrogacy helps women gain their reproduction rights, it still raises a considerable amount of ethical and social issues with it. The surrogacy contract might lead to exploitation among women with lower socioeconomic status, and most associated with surrogacy have uncertainties with regards to parentage rights, mostly if it goes beyond national boundaries. Moreover, it still includes physical and medical demands on the pregnant mother with regards to surrogacy. The artificial womb may be poised to address these worries. By obviating the necessity for a gestational mother, ectogenesis avoids some of the ethical troubles and accompanying societal injustices inherent with surrogacy, and instead allows all would-be parents—man and woman, married and unmarried, and biologically capable or incapable—access and full participation within the gestational process. Additionally, ectogenesis promises an unprecedented degree of control within the prenatal stage, enhancing infant health and at the same time safeguarding the procreational freedom of would-be parents. Even as it remains within its experimental stages and very limited trials have as yet been conducted on human subjects with regard to the efficacy and safety of this technology, ectogenesis might potentially offer a verifiable alternative for would-be parents who contemplate traditional surrogacy. That being so, it might be viewed as a remedy that better synchronizes reproduction rights and freedoms with broader societal ideals about justice and parent inclusivity. As it goes with this biotechnology, it reduces biological burden and almost completely avoids problems and challenges existing with traditional surrogacy, and as it goes with ectogenesis, it promises a fundamental remapping within family structure and seeing a future wherein biotechnologies about reproduction will be treated as fair.

## **RECOMMENDATIONS FOR REFORM**

The issues of single mothers and homosexuality people under the current system of surrogacy demonstrate an underlying structural problem of the Indian law conceptualisation of family,

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<sup>20</sup> *Katarzyna Sus, Surrogacy versus Artificial Womb Technology: The Future of Reproduction in the European Union, 29 Law Rev. 41 (2024).*

reproduction and protection. The law should develop into a model that reduces autonomy, equality and welfare as opposed to exploitation by exclusion, but a principled regulation should replace it. These suggestions strive to reposition the surrogacy law according to the constitutional values, realities in the society and future reproductive advancements, and protect the interests of the various stakeholders involved.

Awareness of Parenthood Beyond Marital and Heteronormative Paradigms.

The law of surrogacy should acknowledge parenthood as an additional practice of personal liberty and desire to have children, and not a privilege of heterosexual married couples. Laws should be revised to cover single parents and LGBTQIA+ individuals and the access to reproductive technologies should not become conditional depending on the alignability with the traditional family models.

### **1. Introduction of a Rights-Based Regulatory Model**

The current model of moral paternalism needs to be lost in favour of a rights-oriented model that places a lot of emphasis on informed consent, dignity, and binding protections. The regulation should be aimed at avoiding coercion and exploitation by checking and holding them responsible, but not by having blanket bans which only work disproportionately to the disadvantaged groups.

### **2. Agency of Surrogate Women Legalized and Secured**

Surrogate mothers should be recognised as independent actors and the rights of their bodies, labour and health should be legally upheld. Reform must compel the independent legal advice, psychological counselling, thorough healthcare insurance, and the long term medical and emotional support such that protection is not through the cost of agency abolition.

### **3. Intersectional Safeguards should be incorporated**

The reform of the law should be done considering the overlapping of caste, classes, gender, and economic vulnerability that determine surrogacy arrangements in India. These structural inequalities must be responsive to regulatory mechanisms that would not promote exploitation but would rather strengthen social marginalization and moral inequalities.

#### **4. Child-Centric Standards without Binary Family Assumptions**

The best interests of the child should be determined without considering that only a mother-father home can take care of the child. The legal norms ought to be concerned with stability, the caring ability, and emotional safety, as it is appropriate to acknowledge the validity of various forms of families and the right of the child to purposeful and caring relationships with parents.

#### **5. Incorporation of Mental Health and Public Health Take into account**

The regulation of surrogacy must be based on the concept of social and human health that addresses both the psychological and emotional aspects of assisted reproduction. Institutionalisation of mandatory counselling, mental health examinations and after birth assistance to surrogates and intending parents, especially those that are single and LGBTQIA+, is needed due to increased social and legal stressors.

#### **6. Rational and Open Regulatory Supervision**

The law must not make it an outright prohibition but it must develop clear licensing, surveillance, and grievance correction systems around the surrogacy arrangements. This sort of proportional regulation would minimize underground practices and allow ethical and accountable and rights-respecting surrogacy.

#### **7. Prospective and Resilient Legal Regimes**

The law of surrogacy should be in a position to address the emerging technologies that are being adopted in reproductive technologies and also new forms of family structure. A responsive regulatory practice based on dignity and consent would avoid legal obsolescence, and make reproductive justice enduring across changes in technologies and social norms.

### **CONCLUSION**

The surrogacy framework in India reflects the deep tension between the State's protective intent and its constitutional commitment to individual autonomy, dignity, and equality. At the same time, shifting surrogacy from commercial surrogacy to altruistic surrogacy tackles exploitation and commodification but entrenches a narrow, heteronormative vision of family, systematically marginalizing single persons and LGBTQIA+ communities. In conditioning

parenthood upon marital status, sexual orientation, and biological norms, the law converts reproductive choice into privilege rather than right.

A constitutionally sound surrogacy regime has to transcend moral paternalism and symbolic protectionism. It needs to consider diverse lived realities of various families, the agency of surrogate women, and the shifting landscapes of reproductive technologies. Surrogacy recalibrated from the perspective of reproductive justice and constitutional morality is not an act of mere legal reform but an inevitable step toward claiming inclusive citizenship, plural family forms, and futures of parenthood in a democratic society.

