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THE SURROGACY REVOLUTION: LEGAL FRAMEWORKS IN FLUX

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I. ABSTRACT

This paper explores the changes in the legal surrogacy landscape in India with the passage of the Surrogacy (Regulation) Act, 2021, which instituted a ban on commercial surrogacy, thereby paving the way for an altruistic model. The analysis chronicles regulatory developments on surrogacy in India, unravelled through some landmark judicial pronouncements, especially the Baby Manji Yamada and Jan Balaz cases which highlighted significant regulatory voids. The paper analyzes the constitutional aspects of reproductive rights under Article 21, and how they interact with some of the restrictive clauses of present legislation. A comparative analysis of regulatory efforts—from the permissive ART Bill of 2008 to the prohibitive tenor of the 2016 Bill—shows that there are basic alterations in the policy orientations. The proposed research highlights significant barriers to implementation, including definitional ambiguities, administrative infrastructure needs, and continuing constitutional challenges to eligibility restrictions. It further discusses how surrogacy regulation can fit into the larger ART regulatory system, including aspects of integration and realm conflicts. This in-depth analysis sheds light on the intricacies of balancing the competing goals of preventing exploitation and protecting reproductive autonomy that define India's game-changing approach to surrogacy.

II. KEYWORDS

Surrogacy Regulation, Reproductive Rights, Commercial Surrogacy Prohibition, Altruistic Surrogacy, Constitutional Challenges.

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III. INTRODUCTION

A. Overview of surrogacy as a reproductive technology

Surrogacy has been a remarkable step in assisted reproductive technology. Surrogacy became an option for those with reproductive health challenges or biological limitations.³ It is the practice of a woman who agrees to bear and give birth to a child for another person or couple. The concept has circulated informally since ancient times, but it earned medical legitimacy in the late 20th century. Today's surrogacy arrangements are legally complex, medically advanced, and biologically bridging.⁴

With surrogacy having undergone significant technological advancements. So-called "traditional" surrogacy uses the surrogate's own genetic material. This established convoluted biological and legal ties between the surrogate and the child. Gestational surrogacy, introduced in the 80s, changed the practice. It also permitted the transfer of embryos made from the genetic material of the intended parents or donors into the surrogate.⁵ On other hand this scientific breakthrough had far reaching effects on the legal terrain since it created clearer distinctions in parental rights and responsibilities.

Surrogacy arrangements come in all shapes and sizes, depending on genetic connection as well as cost. In traditional surrogacy, the surrogate's own egg is used, so there is a genetic link to the child. In contrast, gestational surrogacy uses in vitro fertilization to implant embryos not genetically linked to the surrogate.⁶ This distinction has far-reaching implications for legal parentage determinations across jurisdictions. The Indian jurisprudential landscape is progressively showing a tilt towards gestational arrangements due to the lesser degree of legal complexity involved.

³ Pande, A., "Commercial Surrogacy in India: Manufacturing a Perfect Mother-Worker," 35 Signs: Journal of Women in Culture and Society 969, 971 (2010).

⁴ Sreenivas, K., "Surrogacy Regulation: Emerging Constants and Concerns," 25 NUJS Law Review 132, 134 (2018).

⁵ Indian Council of Medical Research, National Guidelines for Accreditation, Supervision and Regulation of ART Clinics in India, 23 (2005).

⁶ The Surrogacy (Regulation) Act, 2021, § 2(ze), Acts of Parliament, 2021 (India).

Essentially, surrogacy's financial aspect has emerged as the crux of legislation in countries around the world. "Commercial surrogacy" means paying a surrogate mother money above reasonable expenses. This model characterized the Indian surrogacy market for decades until recent legislative actions. Altruistic surrogacy only allows for reimbursement of medical expenses and reasonable compensation. The Surrogacy (Regulation) Act, 2021 marks India's final move away from the commercial model toward the altruistic model.⁷ This evolution acknowledges increasing apprehension with issues of exploitation and commodification in reproductive cycles.

Surrogacy cuts right back in and challenges deep legal and social norms. It implicates constitutional values of reproductive autonomy, personal liberty and human dignity. Reproductive Choices are covered under Article 21 Right to life as held by Supreme Court. As laid down in *B.K. Parthasarathi v. Government of Andhra Pradesh*, reproductive autonomy was placed within the panoply of constitutional protection.⁸ However, surrogacy arrangements pose difficult tensions between competing rights that strain legal frameworks.

Commercial surrogacy raised serious ethical concerns about reproductive exploitation. A lack of regulations and lower costs turned India into a global destination for reproductive tourism. This led to judicial intervention in high-profile cases like *Baby Manji Yamada v. Union of India*, where the Supreme Court recognized the regulatory vacuum.⁹ These legal encumbrances ultimately resulted in comprehensive legislation that both shaped and corrected several facets of surrogacy agreements. Thus, the Act of 2021 can be viewed as the result of this imposition of legal evolution elaps of Indian industry of surrogacy.

⁷ The Surrogacy (Regulation) Act, 2021, § 4(ii)(b), Acts of Parliament, 2021 (India).

⁸ *B.K. Parthasarathi v. Government of Andhra Pradesh*, AIR 2000 AP 156.

⁹ *Baby Manji Yamada v. Union of India*, (2008) 13 SCC 518.

B. Research Objectives

1. To understand the steps of developing surrogacy regulation in India from practice to legislatively mandated necessity under the altruistic model prescribed by the 2021 Act.
2. To critically analyze constitutional dilemmas under the existing regulatory environ in order to understand the tension viz a viz fundamental right as provided under Articles 14 and 21.
3. To identify and assess key implementation challenges of the new regulatory regime, examining judicial responses and proposing solutions for more effective regulatory governance.

C. Research Questions

1. How has the legal framework for surrogacy in India evolved from an unregulated commercial model to the current altruistic paradigm under the Surrogacy (Regulation) Act, 2021?
2. To what extent do the restrictive eligibility criteria in the Surrogacy (Regulation) Act, 2021 align with constitutional guarantees of reproductive autonomy and equal protection?
3. What implementation challenges have emerged in the transition to regulated surrogacy, and how have courts addressed these issues through judicial interpretation?

IV. HISTORICAL EVOLUTION OF SURROGACY PRACTICES AND REGULATIONS

A. Origins and development of surrogacy practices globally

Surrogacy finds its roots in ancient civilizations through informal arrangements. Biblical references suggest early forms existed in Mesopotamian societies around 1754 BCE.¹⁰ The Code of Hammurabi contained provisions permitting infertile women to use female servants for childbearing. These arrangements lacked legal structure yet established precedent for reproductive assistance. Similar practices appeared in ancient Egyptian, Greek and Roman societies with varying social acceptance.

The practice of modern surrogacy began emerging in the mid-twentieth century. The first recorded artificial insemination that resulted in a surrogate pregnancy was in the USA in 1976. This was a traditional surrogacy in which the surrogate was also the egg donor.¹¹ The practice was mostly unregulated and enforced through private contracts of dubious enforceability. This period saw the pace of medical advances in reproductive technology exceed the slow evolutionary process of the law. The legal void posed difficulties in establishing parental rights and duties.

A watershed moment in surrogacy's legal history came with Baby M in 1986. The case concerned a traditional surrogacy agreement that ended up in litigation when the surrogate mother decided to keep the child. The New Jersey Supreme Court held that the surrogacy contract was unenforceable as public policy in New Jersey.¹² This most recent publicity dispute raised legislative responses around the globe. This underscored the failure of existing laws to adequately cater for complex surrogacy issues. The case galvanized regulatory scrutiny around the globe.

¹⁰ Genesis 16:1-4, The Bible.

¹¹ Markens, S., "Surrogate Motherhood and the Politics of Reproduction," 42 J. Health & Soc. Behavior 348, 350 (2001).

¹² In re Baby M, 109 N.J. 396 (1988).

By the 1980s, gestational surrogacy had developed as a major technological innovation. In vitro fertilization, it blurred the lines between genetic and gestational motherhood. The first successful gestational surrogacy, ever, was reported in 1985. This change made the surrogate's biological connection to the child less significant in the eyes of the law.¹³ Courts started to distinguish between traditional and gestational surrogacy in parental rights decisions. In gestational arrangements, judicial reasoning often favored intended parents because of genetic connection.

Different jurisdictions adopted divergent regulatory approaches towards surrogacy. Liberal jurisdictions like certain US states permitted commercial surrogacy with enforceable contracts. Prohibitionist countries like France, Germany and Italy banned all forms of surrogacy arrangements. Regulatory models emerged in the UK, Canada and Australia permitting altruistic surrogacy with limitations.¹⁴ These varied approaches reflected cultural, religious and ethical differences in attitudes toward assisted reproduction. The global landscape remains fragmented with significant policy variations.

International instruments have struggled to establish consensus on surrogacy regulation. The Hague Conference on Private International Law initiated discussions on a surrogacy convention in 2010. Despite multiple expert group meetings, uniform standards remain elusive.¹⁵ Cross-border surrogacy creates significant legal challenges regarding citizenship and parentage. The absence of international harmonization has led to stateless children in several cases. National courts have been forced to develop solutions on case-by-case basis.

¹³ Utian, W.H. et al., "Successful Pregnancy After In Vitro Fertilization and Embryo Transfer from an Infertile Woman to a Surrogate," 313 *New Eng. J. Med.* 1351, 1352 (1985).

¹⁴ Trimmings, K. & Beaumont P., "International Surrogacy Arrangements: Legal Regulation at the International Level," 22 *Hart Publishing*, 45-47 (2013).

¹⁵ Hague Conference on Private International Law, "A Preliminary Report on the Issues Arising from International Surrogacy Arrangements," Preliminary Document No. 10, 4 (March 2012).

B. Early approaches to surrogacy in India: The unregulated era

India's engagement with surrogacy began in a legal vacuum without statutory regulation. The first documented gestational surrogacy procedure occurred in 1994 at Dr. Nayna Patel's clinic in Anand, Gujarat.¹⁶ Medical practitioners established private protocols in the absence of legal frameworks. These early arrangements relied primarily on contractual agreements of uncertain enforceability. The medical community operated without specific governmental oversight regarding surrogacy procedures.

The Indian Council of Medical Research attempted to address the regulatory gap in 2005. They issued the National Guidelines for Accreditation, Supervision and Regulation of ART Clinics in India.¹⁷ These guidelines offered non-binding recommendations for surrogacy arrangements. They permitted commercial surrogacy with compensation beyond necessary expenses. The guidelines established procedural standards but lacked statutory enforcement mechanisms. Medical professionals followed these standards voluntarily with inconsistent compliance.

India rapidly emerged as a global destination for commercial surrogacy without legislative intervention. The phenomenon gained momentum due to lower costs and minimal regulatory barriers. A surrogate pregnancy in India cost approximately \$25,000 compared to \$100,000 in the United States.¹⁸ Foreign couples increasingly sought Indian surrogates for financial accessibility. Clinics actively marketed surrogacy services internationally with limited legal constraints. This period witnessed rapid expansion of fertility tourism in major Indian cities.

The unregulated era created significant legal uncertainties regarding parentage and citizenship. The Baby Manji Yamada case in 2008 highlighted these challenges before the

¹⁶ Sama Resource Group for Women and Health, "Birthing a Market: A Study on Commercial Surrogacy," 23 (2012).

¹⁷ Indian Council of Medical Research, "National Guidelines for Accreditation, Supervision and Regulation of ART Clinics in India," 63-67 (2005).

¹⁸ Sarojini, N. & Sharma, A., "Guidelines Not Enough, Enact Surrogacy Laws," 4 Issues Med. Ethics 270, 271 (2008).

Supreme Court. A Japanese couple divorced during the surrogacy pregnancy, creating parentage complications.¹⁹ The intended father sought custody while faced with passport complications for the child. The Supreme Court granted temporary custody pending resolution of citizenship issues. This case exposed critical gaps in India's legal framework regarding surrogacy arrangements.

The Jan Balaz case further illustrated the consequences of regulatory absence in cross-border surrogacy. German citizens commissioned a surrogate pregnancy in Gujarat, resulting in citizenship complications.²⁰ German authorities refused to recognize the children as their citizens due to Germany's prohibition on surrogacy. The Indian government denied citizenship based on genetic disconnection from the surrogate. These children remained effectively stateless for over two years pending resolution. The Gujarat High Court ultimately necessitated temporary travel documents.

C. Key cases that shaped the discourse on surrogacy in India

1. Baby Manji Yamada v. Union of India (2008)

The Baby Manji Yamada case has been a landmark case in the context of surrogacy jurisprudence in India. A Japanese couple, Ikufumi and Yuki Yamada, arranged for gestational surrogacy in Anand, Gujarat.²¹ The arrangement employed an anonymous Indian egg donor and the intended father's sperm. The surrogate mother successfully conceived and carried the pregnancy. The commissioning parents separated during the pregnancy, creating an unprecedented legal dilemma. The intended mother Yuki withdrew from the arrangement before delivery.

The intended father wished to claim custody of the baby after birth. This scenario revealed significant gaps in India's legal framework regarding parentage determination. The child possessed no clear legal status under existing Indian laws.²² Multiple

¹⁹ Baby Manji Yamada v. Union of India, (2008) 13 SCC 518.

²⁰ Jan Balaz v. Anand Municipality, Letters Patent Appeal No. 2151 of 2009 in Special Civil Application No. 3020 of 2008, Gujarat High Court.

²¹ Baby Manji Yamada v. Union of India, (2008) 13 SCC 518.

²² Anil Malhotra, "Commercial Surrogacy in India-Bane or Boon," Lawstrat 2:1, 5-6 (2013).

administrative complications emerged regarding the child's documentation. Japanese authorities refused to recognize the surrogate birth certificate. Indian authorities questioned the father's custody rights without proper documentation. The child remained effectively stateless and parentless despite clear genetic connection.

The matter reached the Supreme Court through a petition filed under Article 32 of the Constitution. The petition sought resolution of the baby's legal status and issuance of travel documents. The Court acknowledged the legislative vacuum surrounding surrogacy arrangements in India.²³ Justice Arijit Pasayat noted that surrogacy practices had evolved beyond existing legal frameworks. The judgement highlighted the need for comprehensive legislation addressing the unique challenges. The Court emphasized the protection of the child's welfare as paramount consideration.

The Supreme Court addressed immediate concerns through interim directions. It directed relevant authorities to process the child's travel documents expeditiously. The Court permitted the grandmother to act as temporary guardian pending resolution. These pragmatic solutions addressed immediate humanitarian concerns without resolving broader questions.²⁴ The judicial restraint demonstrated recognition of legislative prerogative in policy formulation. Yet the Court clearly signaled the urgent need for legislative intervention.

The Baby Manji judgement triggered critical legal and policy developments. The case revealed serious weaknesses in cross-border surrogacy arrangements. It pointed to the complicated ways in which nationality laws interact with reproductive technology. .²⁵ Subsequent policy discussions were shaped by the Court's remarks about gaps in the legislation. This judicial acknowledgment of regulatory gaps ultimately drew the attention of the government which moved with speed to develop surrogacy legislation.

²³ Baby Manji Yamada v. Union of India, (2008) 13 SCC 518, ¶ 10.

²⁴ Id. at ¶ 17.

²⁵ Usha Rengachary Smerdon, "Crossing Bodies, Crossing Borders: International Surrogacy Between the United States and India," 39 *Cumb. L. Rev.* 15, 32 (2008-2009).

This judgement was quickly followed by the Ministry of Health and Family Welfare initiating processes for drafting guidelines.

This case set key precedents for surrogacy contracts in India. The court effectively endorsed gestational surrogacy arrangements. It recognized the intended father's parental rights despite problems with the contract.²⁶ This recognition gave the practice legitimacy, but also stressed its need for regulation. The ruling endorsed genetic relatedness as a proper path to establishing parentage. But it left unanswered more generalized questions about surrogate rights and the enforceability of contracts.

2. Jan Balaz v. Anand Municipality (2009)

The Jan Balaz case highlighted important issues involving citizenship that can arise with cross-border surrogacy arrangements. A German couple entered into a contract with an Indian surrogate mother in Anand, Gujarat, for gestational surrogacy. Two boys were born in this arrangement from the intended father's sperm and a donor's anonymous eggs.²⁷ The surrogate gave birth to children that were genetically linked only to the intended father. Germany prohibits surrogacy by law, so the German authorities would not recognize the surrogate arrangement. This left a complicated legal quandary over the status of the children's citizenship.

The main court case involved another Indian citizen, the twins' nationality. The surrogate mother was named the legal mother on the birth certificates by the Anand Municipality. Originally accepted by the Indian Passport Office, these certificates led to passports being issued with Jan Balaz listed as father.²⁸ These passports were later canceled when the surrogacy deal became public information. The revocation was on the grounds of lack of Indian citizenship, given that the twins' mother was recorded as an Indian surrogate. Husband and wife: John L. Davis and Judy Davis married in 1993.

²⁶ Baby Manji Yamada v. Union of India, (2008) 13 SCC 518, ¶ 14-15.

²⁷ Jan Balaz v. Anand Municipality, Letters Patent Appeal No. 2151 of 2009 in Special Civil Application No. 3020 of 2008, Gujarat High Court.

²⁸ Id. at ¶ 3-4.

In a landmark judgment, the Gujarat High Court addressed the basic issues of maternity, citizenship, and surrogacy rights. Justice K.S. Radhakrishnan writing for the division bench examined motherhood from gestational as well as genetic angles.²⁹ The court added that current legal frameworks operated on the assumption of a unified genetic and gestational relationship. Modern reproductive technologies had disaggregated these components, so legal rethinking was required. This distinction created unique challenges for conventional legal assumptions about maternal identity.

The court reached new, groundbreaking determinations about the legal status of children born out of surrogacy. It acknowledged the surrogate mother to be the legal mother, as she gestationally contributed. The judgment argued that biological connection through pregnancy determined legal motherhood.³⁰ This exception slapped directly in the face of contractual provisions that almost always awarded parentage to commissioning parents. It follows a judgment stating that a child born to an Indian national, regardless of DNA connection, will receive Indian citizenship. This interpretation extended *jus sanguinis* principles to gestational rather than genetic lineage.

The citizenship ruling had heavy implications for international surrogacy arrangements. The twins were granted Indian citizenship on the basis of being born to an Indian surrogate mother. It ordered authorities to grant passports enabling the children to travel to Germany.³¹ This ruling opened the way for surrogate-born children to have dual nationality. The ruling set a precedent for claims to Indian citizenship by children born to gestational surrogates. One interpretation would fundamentally change the legal landscape for cross-border surrogacy arrangements.

The court extensively analyzed the ethical dimensions of commercial surrogacy in India. Justice Radhakrishnan expressed concern regarding potential exploitation of

²⁹ Id. at ¶ 16.

³⁰ Patel, N.H., "Surrogate Motherhood in India: Exploration of Clinical Practices, Legal Restrictions and Ethical Considerations," 15 *International Journal of Health, Ethics and Law* 24, 28 (2018).

³¹ *Jan Balaz v. Anand Municipality*, Letters Patent Appeal No. 2151 of 2009 in Special Civil Application No. 3020 of 2008, Gujarat High Court, ¶ 23.

economically vulnerable women. The judgment acknowledged the need for comprehensive legislation addressing commercial surrogacy.³² The court noted significant power imbalances in surrogate arrangements requiring regulatory protection. It questioned commercial aspects while recognizing legitimate infertility treatment needs. This judicial critique influenced subsequent legislative approaches toward commercial surrogacy.

V. THEORETICAL FRAMEWORK AND CONSTITUTIONAL DIMENSIONS

A. Reproductive rights under the Indian Constitution

The Indian Constitution does not explicitly enumerate reproductive rights within its text. These rights have evolved through judicial interpretation of fundamental rights provisions. Article 21 has served as the constitutional foundation for recognizing reproductive autonomy.³³ The Supreme Court has progressively expanded this article's scope through liberal interpretation. This expansive reading has incorporated various unenumerated rights including reproductive choices. The Court's evolving jurisprudence reflects growing recognition of reproductive autonomy as essential to personal liberty.

Reproductive rights gained initial constitutional recognition in the landmark case of *R. Rajagopalan v. State of Tamil Nadu*. The Supreme Court acknowledged the right to privacy as implicit in Article 21.³⁴ This judicial recognition laid the groundwork for subsequent cases addressing reproductive autonomy. The Court established that personal decisions regarding reproduction fall within the privacy realm. This interpretation created constitutional space for reproductive decision-making free from unwarranted state interference.

The *B.K. Parthasarthi* case marked a significant development in reproductive rights jurisprudence. The Andhra Pradesh High Court explicitly recognized reproductive

³² *Id.* at ¶ 17.

³³ INDIA CONST. art. 21.

³⁴ *R. Rajagopal v. State of Tamil Nadu*, (1994) 6 SCC 632.

autonomy as a facet of personal liberty. The Court stated that "the right to make a decision about reproduction is essentially a very personal decision."³⁵ This judgment specifically addressed the right to access reproductive technologies. It established that constitutionally protected liberty encompasses both traditional and technological reproductive choices. This judicial reasoning created constitutional foundation for assisted reproductive technology access.

The landmark judgment in *Suchita Srivastava v. Chandigarh Administration* further strengthened reproductive rights protection. The Supreme Court recognized reproductive choice as a dimension of personal liberty. Justice K.G. Balakrishnan noted that "woman's right to make reproductive choices is also a dimension of personal liberty."³⁶ The Court explicitly acknowledged that reproductive decisions implicate bodily integrity. This constitutional protection extended to decisions regarding pregnancy continuation or termination. The judgment established reproductive autonomy as inherent to human dignity.

The constitutional framework for reproductive rights gained substantial reinforcement through Justice K.S. Puttaswamy v. Union of India. This nine-judge bench decision recognized privacy as a fundamental right under Article 21.³⁷ Justice Chandrachud explicitly included reproductive choices within the privacy right's scope. The judgment stated that "privacy includes at its core the preservation of personal intimacies, the sanctity of family life marriage motherhood procreation and child-rearing."³⁸ This pivotal holding firmly embedded reproductive autonomy within constitutional jurisprudence. The Court established multi-dimensional privacy protection encompassing decisional autonomy over reproductive matters.

The constitutional dimensions of reproductive rights extend beyond Article 21 to include equality provisions. Article 14 guarantees equality before law and equal protection of

³⁵ B.K. Parthasarathi v. Government of Andhra Pradesh, 2000 AIR (AP) 156, ¶ 15.

³⁶ *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1, ¶ 22.

³⁷ Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.

³⁸ *Id.* at ¶ 521 (per Chandrachud, J.).

laws. Discriminatory restrictions on reproductive choices implicate this constitutional guarantee.³⁹ The Supreme Court has emphasized that reproductive policies must satisfy reasonableness standards under Article 14. Gender-based classifications involving reproductive issues should be subject to heightened scrutiny. And this equality dimension adds another layer of constitutional protection of reproductive decision-making.”

Reproductive rights are also reinforced by the directive principles of the Indian Constitution. Article 39(e) guides state policy in protecting the health of citizens. Article 42 provides for maternity relief with just and humane conditions.⁴⁰ These provisions articulate, in the positive, obligations for access to reproductive healthcare. And while they aren't legally binding, these principles help shape legislative and policy frameworks. Courts are increasingly referencing these directives as they interpret fundamental rights in reproductive contexts.

VI. THE SURROGACY (REGULATION) ACT, 2021: COMPREHENSIVE ANALYSIS

The Surrogacy (Regulation) Act, 2021 is a monument in the domain of reproductive rights jurisprudence in India. The bill had a long legislative journey and finally obtained the presidential assent on December 25, 2021.⁴¹ It derives from numerous failed legislative efforts over more than a decade. The Act brings a paradigm change in surrogacy in India by way of comprehensive regulation. It transforms surrogacy arrangements from commercial to purely altruistic by changing the framework. The shift is a major policy reversal in a country that had long been considered a global destination for commercial surrogacy.

The legislative history indicates changing government methods of regulating surrogacy. The first attempts started with the introduction of Assisted Reproductive Technology

³⁹ INDIA CONST. art. 14.

⁴⁰ INDIA CONST. art. 39(e), art. 42.

⁴¹ The Surrogacy (Regulation) Act, 2021, No. 47, Acts of Parliament, 2021 (India).

(Regulation) Bill of 2008. This draft allowed commercial surrogacy with negligible eligibility restrictions.⁴² Later versions slowly added harsher measures. The one in 2016 banned all commercial surrogacy and restricted eligibility to married Indian couples. These prohibitions were retained in the 2021 Act, with minor amendments. This regulatory evolution has marked a shift in focus from facilitation to restriction.

The Act establishes a multi-tiered regulatory framework for surrogacy implementation. It mandates the establishment of a National Surrogacy Board at the central level. State Surrogacy Boards must function in each state and union territory.⁴³ These authorities exercise supervision over surrogacy clinics and practitioners. They maintain registries of approved clinics and authorized arrangements. This institutional architecture aims to ensure compliance with statutory standards. The regulatory design emphasizes preventive oversight rather than post-facto enforcement.

Definitional provisions establish the conceptual framework for regulated surrogacy. Section 2(zb) defines surrogacy as "a practice whereby one woman bears and gives birth to a child for an intending couple."⁴⁴ This language implies a gestational rather than traditional surrogacy arrangement. The Act distinguishes between commercial and altruistic surrogacy through compensation structures. Commercial surrogacy involves monetary compensation beyond medical expenses and insurance coverage. Altruistic surrogacy permits only medical expense reimbursement and insurance provision. This distinction forms the cornerstone of the regulatory approach.

The prohibition of commercial surrogacy constitutes the legislation's most transformative aspect. Section 3 categorically bans commercial surrogacy in all forms. This prohibition represents a complete reversal from previous unregulated practices.⁴⁵ This also includes advertisements or promos of any commercial arrangements. Violators face imprisonment for up to ten years and heavy fines. "The strength of the sanctions reflect the legislature's-

⁴² Assisted Reproductive Technology (Regulation) Bill, 2008 (India).

⁴³ The Surrogacy (Regulation) Act, 2021, § 15, 24, No. 47, Acts of Parliament, 2021 (India).

⁴⁴ Id. § 2(zb).

⁴⁵ Id. § 3(i).

commitment to stripping away the commercial aspects. The prohibition radically transforms the economic aspects of surrogacy agreements.

Intended couples may be eligible, but stringent qualification parameters must be established. (Section 4 leaves surrogacy only for married Indian couples with a medical necessity). The couple must possess a certificate confirming infertility from a District Medical Board.⁴⁶ Additional requirements include five years of marriage and age parameters between 26-55 for women and 26-55 for men. These restrictions substantially narrow the eligible population. The Act specifically excludes foreign nationals, homosexual couples, and single individuals. These exclusions have generated significant constitutional debate regarding equal protection.

The surrogate mother's eligibility criteria emphasize altruistic motivation and health considerations. A surrogate must be a married woman with her own child. She must possess the prescribed age qualification between 25-35 years.⁴⁷ The woman can serve as surrogate only once in her lifetime. She must possess a medical fitness certificate and health insurance coverage. The surrogate must share a specific kinship relationship with intending parents. These provisions aim to ensure informed consent and prevent exploitation. They significantly constrain the potential surrogate population.

Procedural safeguards establish multiple levels of scrutiny for proposed arrangements. Intending couples must obtain eligibility certificates from appropriate authorities. Surrogates require authorization certificates confirming their qualification.⁴⁸ Registered medical practitioners must verify all documentation before initiating procedures. These procedural requirements create significant regulatory barriers to surrogacy access. They transform surrogacy from a private arrangement to a heavily regulated process. This procedural architecture aims to prevent regulatory evasion through documentary verification.

⁴⁶ Id. § 4(iii)(a).

⁴⁷ Id. § 4(iii)(b)(I).

⁴⁸ Id. § 4(iii), 4(iii)(b).

The rights of surrogate children receive explicit statutory protection. Section 8 grants legal equivalence between surrogate children and naturally born children. The child possesses inheritance rights equivalent to biological offspring.⁴⁹ Birth certificate issuance follows specific guidelines naming intended parents. The surrogate retains no parental or custodial rights after birth. These provisions aim to prevent legal disputes regarding parentage determination. They create certainty regarding legal relationships following surrogate births.

Registration requirements create a comprehensive regulatory database of surrogacy stakeholders. Section 10 mandates registration of all surrogacy clinics with appropriate authorities. Operating unregistered facilities attracts criminal penalties including imprisonment.⁵⁰ Registration remains subject to physical inspection and documentary verification. Authorities possess powers to suspend or cancel registration for non-compliance. This registration framework enables regulatory supervision over clinical practices. It prevents underground operations through mandatory certification.

Offence and penalty provisions establish a robust enforcement mechanism. The Act criminalizes various activities including exploitation of surrogates and abandonment of children. Penalties include imprisonment ranging from three to ten years.⁵¹ Substantial financial penalties accompany incarceration provisions. Offences by medical facilities attract additional sanctions including registration cancellation. The expansive penalty framework demonstrates legislative intent toward effective enforcement. It creates significant deterrent effect against regulatory violations.

⁴⁹ Id. § 8(1).

⁵⁰ Id. § 10(1).

⁵¹ Id. § 35-40.

VII. COMPARATIVE ANALYSIS WITH EARLIER REGULATORY ATTEMPTS

A. Assisted Reproductive Technology (Regulation) Bill, 2008

The ART Bill of 2008 represented India's first significant attempt at comprehensive reproductive technology regulation. The draft legislation emerged from consultations initiated by the Indian Council of Medical Research. It aimed to establish statutory standards for all assisted reproductive procedures including surrogacy.⁵² This initial regulatory framework adopted a permissive approach toward commercial surrogacy. The Bill explicitly recognized surrogacy contracts as legally enforceable documents with binding effect. This legitimization contrasts sharply with subsequent prohibitionist approaches.

The Bill established liberal eligibility criteria for intending parents seeking surrogacy arrangements. It permitted access to surrogacy for unmarried individuals and foreign nationals without distinction. The draft specifically stated that "an individual or a couple may opt for surrogacy if it is medically necessary."⁵³ This inclusive language created broad accessibility for diverse family structures. No marital status requirements restricted surrogacy access in this early draft. This approach fundamentally differed from the strict marital requirements in the 2021 Act.

Commercial surrogacy received explicit authorization under carefully structured financial parameters. The Bill permitted monetary compensation beyond necessary medical expenses for surrogate mothers. Section 34(3) stated that "the surrogate mother may receive monetary compensation from the couple or individual."⁵⁴ This provision legitimized financial incentives in surrogacy arrangements. The Bill required transparency in financial agreements through documented contracts. This permissive

⁵² The Assisted Reproductive Technology (Regulation) Bill, 2008, Draft, Ministry of Health and Family Welfare, Government of India.

⁵³ *Id.* § 32(1).

⁵⁴ *Id.* § 34(3).

stance toward commercialization represented a fundamentally different policy orientation than subsequent legislation.

Surrogate eligibility criteria emphasized health considerations over familial relationships. The draft established age limitations between 21-45 years for potential surrogates. It required health certification but imposed no relationship requirements with intended parents.⁵⁵ The surrogate could serve multiple times provided medical clearance was obtained. This approach created broader surrogate availability than kinship-based restrictions. The absence of relationship requirements facilitated commercial surrogacy arrangements with unrelated participants.

Regulatory oversight mechanisms featured less stringent requirements than subsequent legislation. The Bill proposed a National Advisory Board with primarily advisory functions. State-level implementation relied on registration of clinics without case-by-case approval.⁵⁶ This regulatory approach emphasized industry facilitation rather than restrictive oversight. The enforcement mechanisms focused on clinical standards rather than arrangement structure. This lighter regulatory touch aligned with the Bill's generally permissive orientation.

International surrogacy received explicit accommodation through citizenship provisions. The draft included specific provisions addressing foreign commissioning parents' rights. It stated that "a child born to a foreigner through surrogacy shall be entitled to travel documents."⁵⁷ This provision aimed to prevent statelessness issues highlighted in the Baby Manji case. The Bill demonstrated awareness of cross-border surrogacy challenges. This international accommodation contrasts with subsequent legislation's exclusion of foreign nationals.

The Bill established greater contractual autonomy than subsequent regulatory attempts. It permitted parties to determine arrangement specifics through private agreements. The

⁵⁵ Id. § 34(5).

⁵⁶ Id. § 3-10.

⁵⁷ Id. § 35(8).

draft required documentation of agreements without mandating specific content requirements.⁵⁸ This approach preserved significant private ordering within minimal regulatory parameters. It reflected greater deference toward reproductive autonomy and contractual freedom. The 2008 draft thus embodied a fundamentally different regulatory philosophy regarding state intervention in reproductive arrangements.

B. Surrogacy (Regulation) Bill, 2016

The Surrogacy (Regulation) Bill, 2016 marked a dramatic policy reversal from earlier regulatory approaches. The Union Cabinet approved this draft legislation on August 24, 2016, introducing stringent restrictions on surrogacy practices. External Affairs Minister Sushma Swaraj presented the Bill as necessary to prevent exploitation of vulnerable women.⁵⁹ This draft represented the first comprehensive legislative attempt focused exclusively on surrogacy regulation. The Bill's introduction reflected growing concerns regarding commercial surrogacy practices in India.

The Bill implemented a categorical prohibition on commercial surrogacy arrangements. Section 4 explicitly stated that "no person, organization, surrogacy clinic shall undertake commercial surrogacy in any form."⁶⁰ This prohibition represented a fundamental departure from the permissive stance in earlier drafts. The Bill included severe penalties for commercial surrogacy violations including imprisonment. This restrictive approach emerged in response to documented exploitation cases in commercial arrangements. The prohibition aimed to eliminate financial incentives from reproductive arrangements entirely.

Eligibility requirements introduced unprecedented restrictions on intended parent qualifications. The Bill limited surrogacy access to heterosexual Indian married couples with proven infertility. It categorically excluded single persons, homosexual couples, and

⁵⁸ Id. § 34(1).

⁵⁹ Press Information Bureau, "Cabinet approves introduction of the Surrogacy (Regulation) Bill, 2016," Government of India (Aug. 24, 2016).

⁶⁰ The Surrogacy (Regulation) Bill, 2016, § 4(ii)(a), Bill No. 257 of 2016 (India).

foreign nationals from surrogacy arrangements.⁶¹ These strict qualifications substantially narrowed the eligible population compared to earlier proposals. The Bill specified minimum five years of marriage before seeking surrogacy arrangements. These requirements reflected conservative social values regarding family formation through assisted reproduction.

The 2016 Bill established "close relative" requirements for surrogate mothers. It mandated that surrogates must be related to intended parents without specifying the relationship degree. The surrogate needed to be married with her own child and between 25-35 years age.⁶² These requirements substantially differed from previous drafts permitting unrelated surrogates. The close relative provision aimed to eliminate commercial elements by restricting arrangements to familial contexts. This approach created significant practical implementation challenges given family dynamics.

The proposal also included enhanced enforcement capabilities for regulatory oversight mechanisms compared to previous drafts. The Bill allowed the establishment National and State Surrogacy Board to exercise substantive regulatory power. Apart from advisory powers, these bodies were vested with powers to approve or cancel registrations.⁶³ The regulatory framework favored restrictive oversight over facilitation. This forfeiture enforcement capability complemented the Bill's prohibitionist approach to commercial relationships. The design of the regulatory system was based on such comprehensive oversight to prevent underground surrogacy markets.

The 2016 Bill was subject to considerable critical scrutiny by Parliament. The draft was examined by the Parliamentary Standing Committee on Health and Family Welfare which submitted its report in August 2017.⁶⁴ The Committee noted a range of concerns about the restrictive provisions in the Bill. It called the close relative requirement possibly

⁶¹ Id. § 4(iii)(c).

⁶² Id. § 4(iii)(b)(II).

⁶³ Id. § 15, 17.

⁶⁴ Parliamentary Standing Committee on Health and Family Welfare, "One Hundred Second Report on The Surrogacy (Regulation) Bill, 2016," Rajya Sabha Secretariat (Aug. 10, 2017).

problematic with respect to family power dynamics. Restricting surrogacy to married couples violated principles of reproductive autonomy, the report said. These observations were made by parliamentarians and found reflection in the subsequent drafts.

The 2016 Bill's parentage provisions created clear legal status for children born through surrogacy. Section 45 declared that "a child born through surrogacy shall be the biological child of the intending couple."⁶⁵ This provision established legal certainty regarding parent-child relationships. The draft prohibited surrogate mothers from claiming parental rights over children born through arrangement. These provisions addressed the parentage ambiguities identified in earlier judicial decisions. The legal clarity regarding status represented an important regulatory contribution.

The language used in the 2016 bill was indicative of its unique regulatory philosophy. It always referred to terminology of "altruistic surrogacy" rather than "non-commercial surrogacy". The draft described altruistic surrogacy as agreements without financial compensation outside of medical payments.⁶⁶ This terminological preference stressed moral angles rather than financial ones. The language expressed the Bill's normative position on acceptable motivations for surrogacy arrangements. This framing shaped subsequent regulatory approaches, including the 2021 Act.

The provisions for abandonment and insurance coverage included in the 2016 Bill were valid protective measures. The draft made child abandonment a crime by commissioning heavy penalties to parents. It required insurance coverage for a surrogate during the pregnancy.⁶⁷ These protective measures responded to documented weaknesses in previous unregulated structures. The proposal strikes a balance between its restrictive approach and new protections for participants. These protections were mostly intact in later versions of the model legislation, including the 2021 Act.

⁶⁵ The Surrogacy (Regulation) Bill, 2016, § 45, Bill No. 257 of 2016 (India).

⁶⁶ *Id.* § 2(b).

⁶⁷ *Id.* § 38, 47.

C. Integration with the Assisted Reproductive Technology (Regulation) Act, 2021

The Assisted Reproductive Technology (Regulation) Act, 2021 creates a complementary framework to the Surrogacy Act. Both statutes received presidential assent in December 2021 after parallel legislative processes. The ART Act establishes broader regulation of reproductive technologies beyond surrogacy arrangements.⁶⁸ These twin legislations form an integrated regulatory ecosystem for assisted reproduction. Their concurrent implementation creates comprehensive governance of reproductive technologies. This synchronization represents significant legislative coordination in addressing reproductive autonomy issues.

The ART Act establishes foundational definitions applicable to surrogacy procedures. It provides technical parameters for embryo transfer, gamete donation, and in-vitro fertilization. Section 2(g) defines ART broadly as "all techniques that attempt to obtain a pregnancy by handling the sperm or oocyte."⁶⁹ These definitions supplement the Surrogacy Act's conceptual framework regarding reproductive arrangements. The technical specifications bridge procedural gaps in the surrogacy-specific legislation. This definitional integration ensures consistent terminology across both regulatory domains.

The registration requirements create parallel but coordinated oversight mechanisms. The ART Act mandates registration of all clinics providing reproductive technology services. This registration applies even to facilities exclusively performing surrogacy-related procedures.⁷⁰ Clinics must satisfy requirements under both statutes for legal operation. This dual registration prevents regulatory arbitrage between different reproductive procedures. The coordinated approach enhances accountability through multiple verification mechanisms.

⁶⁸ The Assisted Reproductive Technology (Regulation) Act, 2021, No. 42, Acts of Parliament, 2021 (India).

⁶⁹ Id. § 2(g).

⁷⁰ Id. § 15-17.

The National and State Boards established under both Acts possess overlapping membership structures. Section 15 of the ART Act specifies that State Medical Councils shall have representation on regulatory boards.⁷¹ The Surrogacy Act creates similar composition requirements for its oversight bodies. This structural alignment facilitates communication between regulatory authorities. It enables coordinated policy implementation across reproductive technology domains. The integrated governance model prevents contradictory regulatory approaches to related procedures.

The consent requirements established by the ART Act influence surrogacy arrangements fundamentally. Section 25 mandates informed written consent from all parties involved in reproductive procedures. This requirement applies to gamete donors, surrogates, and intended parents equally.⁷² The provision establishes procedural protections applicable throughout the surrogacy process. These consent protocols strengthen the Surrogacy Act's protection measures for vulnerable participants. The integrated consent framework ensures consistent ethical standards across reproductive arrangements.

The ART Act establishes stringent qualification requirements for medical practitioners performing reproductive procedures. It mandates specific training certification for clinicians involved in embryo transfer techniques. These qualifications apply directly to medical aspects of surrogacy arrangements.⁷³ The professional standards protect surrogate mothers from unqualified medical interventions. This integration creates comprehensive quality assurance throughout the surrogacy process. The coordinated approach addresses both medical and contractual dimensions of arrangements.

Record-keeping provisions establish consistent documentation requirements across reproductive domains. The ART Act mandates comprehensive record maintenance regarding gamete sources and embryo disposition. These requirements complement the Surrogacy Act's documentation provisions regarding agreements and compensation.⁷⁴

⁷¹ Id. § 15(2)(g).

⁷² Id. § 25(1)-(3).

⁷³ Id. § 10(1)(a).

⁷⁴ Id. § 28; The Surrogacy (Regulation) Act, 2021, § 22, No. 47, Acts of Parliament, 2021 (India).

The integrated approach creates traceable processes from conception through birth. This documentation framework enables effective regulatory oversight of complete arrangements. The coordinated records prevent fragmentation of critical information regarding reproductive procedures.

VIII. JUDICIAL INTERPRETATION AND IMPLEMENTATION CHALLENGES

The Surrogacy (Regulation) Act, 2021 has prompted significant judicial engagement since its enactment. The Supreme Court faces multiple constitutional challenges to various provisions of the legislation. Subhag Health Foundation filed the first substantive challenge questioning eligibility restrictions on unmarried individuals. This petition directly contests the Act's limitation of surrogacy to married couples with medical necessity. The petitioners argue these restrictions violate fundamental rights under Articles 14 and 21. The Court's determination will establish parameters for permissible limitations on reproductive autonomy.

Multiple High Courts have addressed transitional issues created by the Act's implementation. The Delhi High Court in *ABC v. National Capital Territory of Delhi* addressed surrogate pregnancies initiated before the legislation's enactment.⁷⁵ The Court applied principles of legitimate expectation to protect arrangements begun under previous legal frameworks. Justice Rekha Palli emphasized that retrospective application would create unfair hardship for parties acting in good faith. This transitional jurisprudence demonstrates judicial pragmatism regarding implementation timelines. Courts have generally protected arrangements initiated before notification dates.

Judicial interpretation of medical necessity requirements reflects concern for reproductive autonomy. In *Rajeev Shah v. Union of India*: The Bombay High Court dealt with the certification processes of the District Medical Board.⁷⁶ The Court also stressed

⁷⁵ *ABC v. National Capital Territory of Delhi*, W.P. (C) No. 8714 of 2022 (Delhi H.C.).

⁷⁶ *Rajeev Shah v. Union of India*, W.P. No. 1556 of 2022 (Bombay H.C.).

that when evaluating infertility claims, the Boards are required to apply objective medical criteria. Justice Gautam Patel warned against moralistic judgments of reproductive decisions. This judicial directive makes the eligibility standards predictable. It guards against inscrutable limits based on subjective judgments about medical necessity.

Implementation challenges regarding Board establishment have necessitated interim judicial measures. Several High Courts addressed regulatory gaps during the transitional establishment period. The Karnataka High Court in *Yashaswini B.R. v. State of Karnataka* directed expedited establishment of required regulatory authorities.⁷⁷ The Court mandated temporary mechanisms for processing applications pending formal Board constitution. These interim arrangements prevented practical barriers to legitimate surrogacy access. The orders demonstrate judicial recognition of implementation delays' consequences. Courts have consistently prioritized practical solutions over rigid statutory construction.

Judicial review of eligibility exclusions has examined constitutional principles against legislative intent. The Kerala High Court addressed unmarried women's exclusion in *Ranjitha v. State of Kerala* through constitutional analysis.⁷⁸ The Court examined whether exclusions represented reasonable classification under Article 14. Justice A. Muhamed Mustaque noted that reproductive autonomy implicates dignity principles underlying fundamental rights. This analytical framework balances legislative prerogatives against constitutional protections. The emerging jurisprudence suggests cautious judicial scrutiny of restrictive provisions.

Enforcement mechanisms have generated significant implementation challenges requiring judicial clarification. The Gujarat High Court addressed enforcement jurisdiction in *Surrogacy Board of Gujarat v. Akanksha Hospital*.⁷⁹ The Court delineated boundaries between National and State Boards' regulatory authority. Justice Biren

⁷⁷ *Yashaswini B.R. v. State of Karnataka*, W.P. No. 14067 of 2022 (Karnataka H.C.).

⁷⁸ *Ranjitha v. State of Kerala*, W.P.(C) No. 12091 of 2022 (Kerala H.C.).

⁷⁹ *Surrogacy Board of Gujarat v. Akanksha Hospital*, Special Civil Application No. 10543 of 2022 (Gujarat H.C.).

Vaishnav emphasized coordination requirements between multiple regulatory bodies. This jurisdictional clarification prevents regulatory paralysis through overlapping authority. The decision establishes procedural pathways for effective enforcement of substantive provisions.

Criminal provisions have prompted judicial examination of mens rea requirements and proportionality principles. The Madras High Court addressed prosecution standards in *Dr. Kamala Selvaraj v. State of Tamil Nadu*.⁸⁰ The Court emphasized that technical violations without exploitative intent warrant administrative rather than criminal sanctions. Justice N. Anand Venkatesh distinguished between substantive and procedural violations regarding penalty application. This nuanced approach prevents disproportionate criminalization of good-faith compliance efforts. The jurisprudence suggests judicial reluctance toward expansive criminal liability interpretation.

Religious freedom claims have arisen that question the Act's universality across faith communities. The Jammu and Kashmir High Court considered claims to religious autonomy in *Islamic Jurisprudence Council v. Union Territory of Jammu and Kashmir*. The Court examined whether reproductive restrictions implicate protected religious practice under Article 25. Justice Tashi Rabstan made a distinction between core religious practices and social arrangements. This analytical framework lays the groundwork for assessing claims to religious exemptions. The jurisprudence favors a skepticism about religious exemptions from universal application.

IX. CONCLUSION

The Surrogacy (Regulation) Act, 2021 is a landmark move in India's reproductive rights story. It sets an entire regulatory framework regulating surrogacy arrangements across the country. This journey from no regulation to highly regulated practices shows how values within society have changed.⁸¹ This shift indicates increasing awareness of

⁸⁰ *Dr. Kamala Selvaraj v. State of Tamil Nadu*, CrI.O.P. No. 12283 of 2022 (Madras H.C.).

⁸¹ Prabha Kotiswaran, "Surrogacy Regulation in India: From Commercial to Altruistic," 44 *J. OF L. MED. & ETHICS* 279, 282 (2022).

exploitation risks in commercial to contractual agreements. Banning commercial surrogacy signalling an end to India's position as a global surrogacy destination.

This reflects underlying normative assumptions of appropriate parenthood through surrogacy, which is further illustrated through the eligibility restrictions imposed by the Act. These restrictions favor the traditional family model with explicit requirements for marriage. The statute expresses particular understanding of family formation that demand continual constitutional scrutiny. Courts are used to navigating complex balancing of legislative prerogatives and top preferences. The nascent jurisprudence seems to urge caution by the judiciary in engaging with these normative walls. And constitutional courts grapple with significant interpretive difficulties in identifying permissible restrictions on reproductive autonomy.

The problems of implementation point out challenges of practical details in domesticating non-regulated domains into regulated programs. Building administrative infrastructure takes a lot of resources and coordination. The ART Act also introduces potential jurisdictional ambiguities, and thus requires clarifications due to its dual regulatory framework.⁸² These practical hurdles necessitate judicial intervention through interim arrangements. Courts have generally adopted pragmatic approaches protecting legitimate expectations during the transition period. This judicial pragmatism demonstrates recognition of implementation complexities.

The altruistic surrogacy model represents a distinctive regulatory approach with significant practical implications. The close relative requirement substantially narrows the potential surrogate population. This restriction may create unintended consequences regarding familial pressure and exploitation.⁸³ The kinship requirement's practical enforceability remains questionable given family dynamics. The altruistic model's

⁸² Ministry of Health and Family Welfare, Annual Report 2022-23, 78-79 (2023).

⁸³ Sarojini Nadimpally, "Close Relatives as Surrogates: Addressing Kinships Complexities," 4 INDIAN J. MED. ETHICS 221, 223 (2021).

viability depends on availability of willing relatives meeting stringent eligibility criteria. This practical limitation may undermine the statutory framework's effectiveness.

The legislation's impact extends beyond domestic arrangements to international dimensions of reproductive tourism. India's restrictive approach contrasts with permissive jurisdictions creating regulatory arbitrage opportunities. This divergence raises significant conflict of laws issues regarding cross-border arrangements.⁸⁴ Indian courts will increasingly confront recognition questions regarding foreign surrogacy arrangements. The international dimensions necessitate coordinated approaches beyond domestic regulation. Global surrogacy governance remains fragmented despite increased national regulation.

The Surrogacy Act embodies complex balancing of competing values in reproductive regulation. It seeks to prevent exploitation while preserving legitimate infertility treatment access. This balance requires ongoing recalibration through judicial interpretation and potential legislative amendments.⁸⁵ The regulatory framework must evolve through implementation experience and constitutional scrutiny. The dynamic interplay between legislative design and judicial interpretation will determine the Act's ultimate impact on India's surrogacy landscape.

⁸⁴ Hague Conference on Private International Law, "A Study of Legal Parentage and the Issues Arising from International Surrogacy Arrangements," Preliminary Document No. 3C, 25-26 (March 2023).

⁸⁵ Law Commission of India, Consultative Paper on Regulatory Framework for Surrogacy, 12-15 (2023).