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THE RIGHT TO REPRODUCTIVE AUTONOMY IN INDIA: CONSTITUTIONAL CHALLENGES TO THE SURROGACY (REGULATION) ACT, 2021 AND THE ASSISTED REPRODUCTIVE TECHNOLOGY (REGULATION) ACT, 2021

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ABSTRACT
Reproductive autonomy constitutes one of the most significant dimensions of the constitutional guarantee of personal liberty, dignity, bodily integrity, and decisional privacy. In India, the enactment of the Surrogacy (Regulation) Act, 2021 and the Assisted Reproductive Technology (Regulation) Act, 2021 represents a transformative shift from an unregulated commercial fertility industry to a highly restrictive statutory framework governing assisted reproduction and surrogacy. While the legislative intent behind these enactments is to prevent commercialization of women's reproductive capacities, trafficking of children, unethical medical practices, and exploitation of economically vulnerable women, the regulatory framework has simultaneously generated substantial constitutional concerns. The exclusion of unmarried individuals, live-in partners, LGBTQIA+ persons, foreign nationals, Overseas Citizens of India (in several contexts), and several categories of intending parents raises profound questions regarding equality, reproductive choice, privacy, and substantive due process under the Constitution of India.

This paper critically examines the constitutional validity of various provisions of the Surrogacy (Regulation) Act, 2021 and the Assisted Reproductive Technology (Regulation) Act, 2021 through the prism of Articles 14, 15, 19, and 21 of the Constitution. The paper argues that reproductive autonomy extends beyond the right to terminate a pregnancy and necessarily includes the right to conceive, to access fertility treatment, to form a family, and to determine the manner of reproduction without arbitrary State interference. Drawing upon landmark judicial pronouncements including Suchita Srivastava v. Chandigarh Administration, Justice K.S. Puttaswamy v. Union of India, Navtej Singh Johar v. Union of India, Joseph Shine v. Union of India, and X v. Principal Secretary, Health and Family Welfare Department, the paper evaluates whether the restrictions imposed by the regulatory regime satisfy constitutional standards of proportionality, reasonableness, and non-discrimination.

The study further traces the evolution of reproductive rights in India, analyses the legislative framework governing assisted reproduction, and situates India's regulatory model within the broader discourse of international human rights and comparative constitutional law. It concludes that although the legislative objective of preventing exploitation is constitutionally legitimate, several statutory exclusions and restrictions require judicial reconsideration or legislative reform to ensure that reproductive autonomy remains a meaningful constitutional guarantee in contemporary India.

Keywords: *Reproductive Autonomy; Assisted Reproductive Technology; Surrogacy; Right to Privacy; Constitutional Morality; Article 21; Equality; Reproductive Justice; Bodily Integrity; Family Rights.*

INTRODUCTION
The capacity to decide whether, when, and how to have children constitutes one of the most intimate exercises of human freedom. Reproductive decision-making lies at the intersection of bodily integrity, personal liberty, privacy, family life, gender equality, and human dignity. In constitutional democracies, these interests are increasingly recognised as integral components of fundamental rights rather than matters of State benevolence. The Indian Constitution, though it does not expressly mention reproductive rights, has witnessed a dynamic judicial interpretation whereby reproductive autonomy has gradually been subsumed within the expansive ambit of Article 21 and related constitutional guarantees.

Technological advancements over the past three decades have fundamentally transformed the landscape of human reproduction. Assisted Reproductive Technology ("ART"), including In Vitro Fertilisation (IVF), Intracytoplasmic Sperm Injection (ICSI), cryopreservation, gamete donation, embryo transfer, and gestational surrogacy, has enabled millions of individuals to overcome infertility and exercise their reproductive aspirations. India emerged during the first two decades of the twenty-first century as one of the world's largest

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destinations for reproductive tourism because of comparatively affordable medical infrastructure, availability of surrogate mothers, and absence of comprehensive statutory regulation.[1]

The rapid commercialisation of surrogacy, however, generated serious ethical, legal, and constitutional concerns. Numerous reports documented instances of exploitation of economically disadvantaged women, lack of informed consent, trafficking of children, abandonment of children born with disabilities, multiple embryo transfers without medical necessity, absence of post-partum care, and contractual arrangements heavily skewed in favour of intending parents and fertility clinics.[2] These concerns prompted repeated calls for legislative intervention.

Responding to these challenges, Parliament enacted two comprehensive legislations:

- The Assisted Reproductive Technology (Regulation) Act, 2021, and
- The Surrogacy (Regulation) Act, 2021.

Together, these enactments constitute India's first comprehensive statutory framework governing fertility treatment and surrogacy arrangements.

Unlike several foreign jurisdictions that regulate commercial surrogacy subject to safeguards, India adopted an overwhelmingly prohibitory model. Commercial surrogacy was prohibited, only altruistic surrogacy was permitted, eligibility criteria were substantially narrowed, and numerous categories of individuals—including unmarried persons, same-sex couples, live-in partners, transgender persons, and several foreign intending parents—were effectively excluded from accessing surrogacy. Similar restrictions were incorporated into the ART framework through extensive eligibility requirements and licensing mechanisms.

Although the legislative objective of protecting vulnerable women and preventing reproductive exploitation commands constitutional legitimacy, the restrictive architecture of these enactments has provoked intense constitutional debate. Critics contend that the statutory exclusions disproportionately interfere with decisional privacy, reproductive liberty, and equality without sufficient empirical justification. They argue that the State has substituted individual reproductive choice with a paternalistic regulatory model rooted in traditional notions of family and marriage.

The constitutional controversy has become particularly significant after the Supreme Court's transformative constitutional jurisprudence on privacy, dignity, sexual orientation, and decisional autonomy. Beginning with *Suchita Srivastava v. Chandigarh Administration*[3] and culminating in *Justice K.S. Puttaswamy v. Union of India*[4], *Navtej Singh Johar v. Union of India*[5], *Joseph Shine v. Union of India*[6], and *X v. Principal Secretary, Health and Family Welfare Department*[7], the Court has repeatedly emphasised that personal autonomy forms the core of constitutional liberty.

These judicial developments invite a fundamental constitutional question:

Can Parliament regulate reproductive technologies to prevent exploitation without simultaneously infringing the constitutional right of individuals to decide the manner in which they wish to establish a family?

This paper seeks to answer this question through a doctrinal analysis of constitutional jurisprudence, statutory provisions, judicial precedents, and comparative legal principles.

"[1] Law Commission of India, **228th Report on Need for Legislation to Regulate Assisted Reproductive Technology Clinics as well as Rights and Obligations of Parties to a Surrogacy** (2009).

[2] Ministry of Health and Family Welfare, Government of India, **Report of the Expert Group on Assisted Reproductive Technology** (2016).

[3] *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1.

[4] *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

[5] *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

[6] *Joseph Shine v. Union of India*, (2019) 3 SCC 39.

[7] *X v. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi*, (2022) 10 SCC 1.

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Meaning and Scope of Reproductive Autonomy

Reproductive autonomy refers to an individual's freedom to make informed decisions concerning reproduction without arbitrary interference from the State, society, family, or private institutions. It encompasses the liberty to decide:

- whether to reproduce;
- whether to avoid reproduction;
- when to have children;
- how many children to have;
- whether to access contraception;
- whether to terminate pregnancy;
- whether to use assisted reproductive technologies;
- whether to become a genetic parent;
- whether to adopt; and
- whether to employ gestational surrogacy where medically necessary.[1]

Modern constitutional theory recognises reproductive autonomy as considerably broader than reproductive health. While reproductive health concerns medical access and healthcare services, reproductive autonomy concerns decisional freedom itself.

Professor Ronald Dworkin famously described reproductive choices as among the "most profound and personal decisions" affecting human dignity because they concern an individual's conception of life, family, morality, and identity.[2]

Similarly, the reproductive justice movement developed by scholars and activists emphasises that meaningful reproductive freedom requires three interconnected rights:

1. the right to have children;
2. the right not to have children; and
3. the right to raise children in safe and dignified conditions.[3]

This broader conception has increasingly influenced constitutional adjudication across democratic jurisdictions.

Within Indian constitutional law, reproductive autonomy has evolved through judicial interpretation rather than explicit constitutional amendment. The Supreme Court has progressively interpreted Articles 14, 19, and 21 to include various dimensions of reproductive decision-making.

The evolution may broadly be divided into four phases:

First, recognition of bodily integrity and personal liberty.

Second, recognition of reproductive choice as part of privacy.

Third, recognition of dignity and decisional autonomy.

Fourth, extension of reproductive rights to unmarried women and diverse family structures.

This judicial trajectory provides the constitutional foundation for evaluating the validity of contemporary fertility legislation.

Evolution of Reproductive Rights in India

Indian reproductive jurisprudence has evolved considerably over the past five decades.

[1] World Health Organization, **Sexual Health, Human Rights and the Law** (WHO, Geneva, 2015).

[2] Ronald Dworkin, *Life's Dominion: An Argument about Abortion, Euthanasia and Individual Freedom* (Vintage Books, 1994).

[3] Loretta Ross & Rickie Solinger, *Reproductive Justice: An Introduction* (University of California Press, 2017).

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Initially, judicial discourse surrounding reproductive rights remained confined to population control policies, sterilisation programmes, and abortion regulation under the Medical Termination of Pregnancy Act, 1971.

Gradually, however, constitutional adjudication shifted towards an autonomy-centred understanding of reproductive decision-making.

The first significant constitutional articulation emerged in Suchita Srivastava v. Chandigarh Administration.[1]

The case concerned a mentally challenged woman residing in a government institution whose pregnancy resulted from sexual assault. The Chandigarh Administration sought judicial permission for termination of pregnancy despite the woman's expressed desire to continue with the pregnancy.

Rejecting the State's request, the Supreme Court observed that reproductive choice forms an inseparable component of personal liberty under Article 21.

Justice K.G. Balakrishnan observed:

"There is no doubt that a woman's right to make reproductive choices is also a dimension of personal liberty under Article 21."

The Court further clarified that reproductive rights include both:

- the right to carry pregnancy to full term, and
- the right to terminate pregnancy subject to statutory limitations.

The judgment represented a paradigm shift by recognising reproductive choice as a constitutional right independent of medical necessity.

Subsequent decisions expanded this jurisprudence.

In Justice K.S. Puttaswamy v. Union of India, a nine-judge Constitution Bench unanimously recognised privacy as a fundamental right intrinsic to Article 21.[2]

The Court held that privacy protects:

- bodily integrity;
- decisional autonomy;
- family life;
- intimate personal relationships;
- sexual orientation; and
- reproductive decisions.

Justice Chandrachud observed that privacy protects "the sanctity of family life, marriage, procreation, the home and sexual orientation."

This recognition profoundly altered constitutional analysis concerning reproductive technologies.

Any legislative restriction affecting decisions relating to conception, fertility treatment, surrogacy, or parenthood must now satisfy constitutional standards of legality, legitimate State aim, necessity, and proportionality.

The constitutional foundation was strengthened further through Navtej Singh Johar v. Union of India, wherein the Supreme Court held that constitutional morality rather than social morality must guide interpretation of fundamental rights.[3]

Similarly, in Joseph Shine v. Union of India, the Court reaffirmed that the Constitution protects decisional autonomy in intimate relationships and rejects patriarchal assumptions regarding family structures.[4]

[1] *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1.

[2] *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

[3] *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

[4] *Joseph Shine v. Union of India*, (2019) 3 SCC 39.

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Most recently, in X v. Principal Secretary, Health and Family Welfare Department, the Supreme Court extended abortion rights under the Medical Termination of Pregnancy Act to unmarried women by interpreting statutory provisions in a constitutionally inclusive manner.[1]

Justice Chandrachud observed that constitutional guarantees cannot discriminate between married and unmarried women because reproductive autonomy belongs to every individual.

This reasoning possesses considerable implications for constitutional challenges against statutory provisions limiting assisted reproduction solely to married couples.

The evolution of reproductive jurisprudence therefore demonstrates a consistent movement away from State paternalism towards individual autonomy.

Consequently, the constitutional validity of restrictive reproductive legislation must now be examined in light of this expanded understanding of liberty, dignity, equality, and privacy.

Constitutional Framework Governing Reproductive Autonomy in India

Although the Constitution of India does not expressly recognise a "right to reproduction", the Supreme Court has consistently interpreted reproductive autonomy as an intrinsic facet of several fundamental rights, particularly Articles 14, 15, 19, and 21. The constitutional validity of the Surrogacy (Regulation) Act, 2021 ("Surrogacy Act") and the Assisted Reproductive Technology (Regulation) Act, 2021 ("ART Act") must therefore be tested against this integrated constitutional framework.

Unlike ordinary socio-economic legislation, reproductive legislation directly regulates intensely personal decisions concerning family formation, genetic parenthood, bodily integrity, and intimate relationships. Consequently, judicial scrutiny requires not merely a formal examination of legislative competence but a substantive assessment of whether statutory restrictions disproportionately impair constitutionally protected autonomy.

4.1 Article 21: Right to Life, Personal Liberty and Reproductive Choice

Article 21 provides that:

"No person shall be deprived of his life or personal liberty except according to procedure established by law."[2]

Beginning with Maneka Gandhi v. Union of India,[3] Article 21 has undergone a remarkable expansion. The expression "personal liberty" no longer denotes mere freedom from physical restraint; it encompasses every aspect of human dignity necessary for meaningful existence.

The Supreme Court has recognised within Article 21:

- bodily integrity;
- decisional autonomy;
- reproductive choice;
- privacy;
- dignity;
- family life;
- sexual autonomy;
- mental health;
- healthcare; and
- procreative liberty.

The jurisprudential foundation of reproductive autonomy was firmly established in Suchita Srivastava v. Chandigarh Administration, wherein the Supreme Court held:

[1] *X v. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi*, (2022) 10 SCC 1.

[2] INDIA CONST. art. 21.

[3] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

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"A woman's right to make reproductive choices is also a dimension of personal liberty under Article 21."[1]

The Court further observed that reproductive choice includes both:

- the right to procreate; and
- the right to abstain from procreation.

Although the case concerned abortion, its constitutional reasoning extends equally to assisted reproduction and surrogacy because both concern decisions regarding reproduction.

The subsequent Constitution Bench decision in Justice K.S. Puttaswamy v. Union of India elevated reproductive choice to the broader doctrine of decisional privacy.

Justice Chandrachud observed:

"Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, home and sexual orientation."[2]

The judgment further introduced the four-fold proportionality test, requiring that every restriction upon privacy satisfy:

1. legality;
2. legitimate State purpose;
3. rational nexus;
4. proportionality and procedural safeguards.

Every restrictive provision of the Surrogacy Act and ART Act must therefore satisfy these constitutional requirements.

Article 14: Equality Before Law

Article 14 prohibits arbitrary State action and guarantees equality before law and equal protection of laws. Modern Article 14 jurisprudence extends beyond reasonable classification. In E.P. Royappa v. State of Tamil Nadu,[3] the Supreme Court held that arbitrariness itself violates Article 14.

Similarly, in Shayara Bano v. Union of India,[4] the Court reaffirmed that legislation founded upon manifest arbitrariness is unconstitutional. Consequently, statutory exclusions from reproductive technologies require objective constitutional justification. The Surrogacy Act excludes numerous categories of persons from access to surrogacy despite their biological inability to conceive naturally. The constitutional question is whether these classifications genuinely relate to prevention of exploitation or merely reinforce conventional notions of family.

Article 15: Non-Discrimination

Article 15 prohibits discrimination based upon:

- religion;
- race;
- caste;
- sex;
- place of birth.

Although marital status and sexual orientation are not expressly enumerated grounds, constitutional jurisprudence has progressively interpreted "sex" to include gender identity and sexual orientation.

[1] *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1.

[2] *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

[3] *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 SCC 3.

[4] *Shayara Bano v. Union of India*, (2017) 9 SCC 1.

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In Navtej Singh Johar,[1] the Supreme Court held that constitutional guarantees extend equally to LGBTQIA+ persons.

Article 19 and Individual Freedom
Article 19 protects various freedoms essential to individual self-development.

Although reproductive decisions are not expressly mentioned under Article 19, the Supreme Court has repeatedly interpreted individual autonomy as integral to democratic freedom.

In **Joseph Shine**, the Court observed that constitutional liberty protects personal choices relating to intimate relationships free from State paternalism.[2]

The same reasoning becomes relevant where Parliament prescribes an exclusive model of family eligible for assisted reproduction.

Directive Principles and International Obligations
Articles 38, 39(e), 39(f), 42 and 47 impose obligations upon the State to safeguard maternal health and dignity.

Similarly, India is party to several international instruments recognising reproductive rights:

- Universal Declaration of Human Rights, 1948;
- International Covenant on Civil and Political Rights;
- International Covenant on Economic, Social and Cultural Rights;
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Although not directly enforceable, these instruments significantly influence constitutional interpretation.[3]

Legislative Background of the Surrogacy (Regulation) Act, 2021
India initially possessed no statutory regulation governing surrogacy.

Commercial surrogacy developed primarily through private contracts.

Following the birth of Baby Manji Yamada, India emerged as an international hub for reproductive tourism due to:

- comparatively low medical costs;
- availability of surrogate mothers;
- absence of statutory restrictions;
- advanced fertility infrastructure.

By 2012, India's surrogacy industry was estimated to be worth nearly US$400 million annually, although precise estimates varied.[4]

However, the industry witnessed widespread allegations of:

- exploitation of poor women;
- lack of informed consent;
- abandonment of surrogate children;
- trafficking;
- inadequate medical regulation;
- multiple embryo implantation;

[1] *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

[2] *Joseph Shine v. Union of India*, (2019) 3 SCC 39.

[3] *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 (recognising that international conventions may guide constitutional interpretation where not inconsistent with domestic law).

[4] Debra Spar, *The Baby Business: How Money, Science and Politics Drive the Commerce of Conception* (Harvard Business Review Press, 2006); Law Commission of India, **228th Report on Need for Legislation to Regulate Assisted Reproductive Technology Clinics as well as Rights and Obligations of Parties to a Surrogacy** (2009).

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- unsafe hormonal procedures.

The 228th Law Commission Report (2009) therefore recommended comprehensive legislation prohibiting commercial exploitation while permitting ethical surrogacy.[1]

After several unsuccessful Bills, Parliament enacted:

- Surrogacy (Regulation) Act, 2021
- Assisted Reproductive Technology (Regulation) Act, 2021

6. Salient Features of the Surrogacy (Regulation) Act, 2021

The Surrogacy (Regulation) Act, 2021 marks a watershed in India's approach to regulating surrogacy by replacing the previously unregulated commercial surrogacy regime with a statutory framework that permits only altruistic surrogacy. The Act was enacted with the stated objectives of preventing the commercialization of women's reproductive capacities, prohibiting the exploitation of surrogate mothers, curbing unethical medical practices, and safeguarding the welfare of children born through surrogacy.[2] The legislation seeks to strike a balance between facilitating reproductive opportunities for genuinely infertile couples and protecting vulnerable women from being reduced to instruments of reproductive labour.[3]

One of the most significant features of the Act is the complete prohibition of commercial surrogacy. Section 4 permits only altruistic surrogacy, under which the surrogate mother is entitled only to reimbursement of medical expenses, insurance coverage and other prescribed incidental expenses.[4] Any payment beyond these permissible expenses constitutes commercial surrogacy and attracts penal consequences under the Act.[5] The legislative philosophy behind this prohibition is that the human body and reproductive capacity should not become commodities capable of commercial exploitation. However, constitutional scholars have questioned whether an absolute prohibition on compensated surrogacy is the least restrictive means of achieving the State's objective of preventing exploitation.[6]

The Act also prescribes stringent eligibility criteria for intending parents. Under Section 2(g), an "intending couple" generally refers to a legally married man and woman fulfilling the statutory conditions relating to age and infertility.[7] The intending couple must obtain a certificate of infertility and satisfy various statutory prerequisites before undertaking surrogacy. Consequently, unmarried couples, persons in live-in relationships, same-sex couples, transgender persons and several other categories of intending parents remain excluded from the statutory framework.[8] Furthermore, while widows and divorced women within the prescribed age limit may access surrogacy, unmarried women and all single men are excluded. These restrictions constitute one of the principal constitutional challenges to the Act under Articles 14 and 21 of the Constitution.[9]

The legislation further mandates that every surrogacy arrangement must satisfy multiple procedural safeguards before commencement. The intending parents are required to obtain a Certificate of Essentiality and a Certificate of Eligibility, while the surrogate mother must be provided with prescribed insurance coverage to protect her against pregnancy-related complications.[10] These requirements are intended to ensure transparency, informed consent and medical accountability throughout the surrogacy process.

For effective implementation, the Act establishes the National Surrogacy Board and corresponding State Surrogacy Boards, entrusted with policy formulation, supervision of implementation, regulation of surrogacy

[1] Law Commission of India, **228th Report on Need for Legislation to Regulate Assisted Reproductive Technology Clinics as well as Rights and Obligations of Parties to a Surrogacy** (2009).

[2] The Surrogacy (Regulation) Act, 2021, Statement of Objects and Reasons.

[3] Ministry of Health and Family Welfare, Government of India, *The Surrogacy (Regulation) Bill, 2019: Background Note*.

[4] The Surrogacy (Regulation) Act, 2021, sec 4.

[5] Id. sec 35–41.

[6] Amrita Pande, *Commercial Surrogacy in India: Manufacturing a Perfect Mother-Worker* (Routledge 2014).

[7] The Surrogacy (Regulation) Act, 2021, sec 2(g), 4.

[8] Id. sec 2(g), 2(r), 4.

[9] INDIA CONST. arts. 14 & 21.

[10] The Surrogacy (Regulation) Act, 2021, sec 4(ii).

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clinics and promotion of ethical standards in reproductive medicine.[1] Every surrogacy clinic is required to obtain statutory registration, and no institution is permitted to undertake surrogacy procedures without such registration.[2]

The Act also incorporates stringent penal provisions. Commercial surrogacy, advertisement of commercial surrogacy services, sale or purchase of embryos or gametes, exploitation of surrogate mothers and abandonment of children born through surrogacy constitute criminal offences punishable with imprisonment and substantial fines.[3] These penal provisions reflect Parliament's determination to dismantle the previously flourishing commercial surrogacy industry and replace it with a strictly regulated altruistic model.

Constitutional Challenges to the Surrogacy (Regulation) Act, 2021 and the Assisted Reproductive Technology (Regulation) Act, 2021

Despite their legitimate objective of preventing exploitation and ensuring ethical regulation of assisted reproduction, both the Surrogacy Act and the ART Act have attracted sustained constitutional criticism. Constitutional scholars contend that several provisions disproportionately interfere with reproductive autonomy while failing to accommodate the diversity of contemporary family structures recognised by constitutional jurisprudence.[4]

The foremost constitutional challenge arises from the legislation's restriction of surrogacy primarily to heterosexual married couples and certain categories of widowed or divorced women. By excluding unmarried persons, live-in partners, same-sex couples, transgender persons and several other categories of intending parents, the legislation adopts a traditional conception of family that appears increasingly inconsistent with the constitutional principles articulated in *Navtej Singh Johar v. Union of India*, *Joseph Shine v. Union of India* and *Justice K.S. Puttaswamy v. Union of India*.[5] The exclusion of entire classes of citizens from accessing reproductive technologies raises serious questions under Articles 14 and 21 of the Constitution.

The exclusion of unmarried individuals presents another important constitutional issue. While widows and divorced women are permitted to access surrogacy, unmarried women and single men remain entirely excluded irrespective of medical necessity. Such differentiation appears difficult to reconcile with the Supreme Court's decision in *X v. Principal Secretary, Health and Family Welfare Department*, wherein the Court unequivocally held that reproductive autonomy cannot depend solely upon marital status.[6]

Similarly, the exclusion of LGBTQIA+ persons and transgender individuals has generated considerable constitutional debate. Following *National Legal Services Authority v. Union of India*, *Navtej Singh Johar v. Union of India* and *Supriyo @ Supriya Chakraborty v. Union of India*, constitutional jurisprudence increasingly recognises diverse family structures and individual autonomy in matters of identity and intimate relationships. The continued operation of a heteronormative statutory framework therefore raises questions concerning indirect discrimination and substantive equality.

The statutory prohibition of commercial surrogacy has likewise generated competing constitutional perspectives. While Parliament justifies the prohibition as necessary to prevent exploitation of economically vulnerable women, critics argue that a carefully regulated compensated surrogacy model could equally achieve this objective while respecting bodily autonomy and contractual freedom.[7] Applying the proportionality doctrine laid down in *Justice K.S. Puttaswamy*, the relevant constitutional inquiry is whether an absolute prohibition represents the least restrictive means available to achieve the legislative objective.

Finally, both enactments raise significant concerns relating to informational privacy because they require extensive collection and storage of highly sensitive reproductive and genetic information. Since the Supreme

[1] Id. sec 16–24.

[2] Id. sec 11–15.

[3] Id. sec 35–41.

[4] Sharmila Rudrappa, *Discounted Life: The Price of Global Surrogacy in India* (New York University Press 2015).

[5] *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1; *Joseph Shine v. Union of India*, (2019) 3 SCC 39; *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

[6] *X v. Principal Secretary, Health and Family Welfare Department*, (2022) 10 SCC 1.

[7] Law Commission of India, *228th Report on Need for Legislation to Regulate Assisted Reproductive Technology Clinics as well as Rights and Obligations of Parties to a Surrogacy* (2009).

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Court has recognised reproductive and medical information as falling within the protected sphere of privacy under Article 21, any statutory interference with such information must satisfy the constitutional requirements of legality, necessity, proportionality and adequate procedural safeguards.

Judicial Analysis of Leading Indian Decisions

Indian constitutional jurisprudence concerning reproductive autonomy has evolved primarily through judicial interpretation rather than legislative enactment. Several landmark decisions collectively establish that reproductive decision-making forms an integral component of constitutional liberty, dignity, privacy, and equality.

The earliest significant decision concerning surrogacy was **Baby Manji Yamada v. Union of India**, wherein the Supreme Court confronted issues arising from an international commercial surrogacy arrangement involving a Japanese couple and an Indian surrogate mother. Although the Court did not pronounce upon the constitutional validity of commercial surrogacy, it recognised the existence of surrogacy as a legally permissible reproductive practice in the absence of statutory prohibition and directed that the welfare of the child should remain paramount.[1] The judgment highlighted the urgent necessity for comprehensive legislation governing surrogacy in India.

The complexities of international surrogacy were further illustrated in **Jan Balaz v. Anand Municipality**, wherein the Gujarat High Court considered the citizenship status of children born through surrogacy to foreign intending parents. The Court recognised the genetic relationship between the intending parents and the children and addressed the legal consequences arising from cross-border surrogacy arrangements. Although subsequent legislative developments have altered the legal position, the decision remains significant for illustrating the inadequacies of the pre-regulation legal regime.[2]

A decisive constitutional shift occurred in **Suchita Srivastava v. Chandigarh Administration**, wherein the Supreme Court unequivocally recognised reproductive choice as a component of personal liberty protected under Article 21. The Court observed that reproductive autonomy encompasses both the right to carry a pregnancy to term and the right to terminate a pregnancy, thereby acknowledging that decisions concerning reproduction belong primarily to the individual rather than the State.[3]

The constitutional foundation of reproductive rights was substantially strengthened by the nine-Judge Bench decision in **Justice K.S. Puttaswamy (Retd.) v. Union of India**, which recognised privacy as a fundamental right. The Court identified decisional autonomy, bodily integrity, family life, and procreation as integral components of constitutional privacy. The judgment also formulated the proportionality doctrine, requiring that every restriction upon privacy satisfy the requirements of legality, legitimate State purpose, rational connection, necessity, and procedural safeguards. This doctrinal framework has become the principal constitutional standard against which the Surrogacy Act and the ART Act must be evaluated.[4]

In **Navtej Singh Johar v. Union of India**, the Supreme Court invalidated Section 377 of the Indian Penal Code to the extent that it criminalised consensual same-sex relationships. More importantly, the Court affirmed that constitutional morality rather than social morality must guide constitutional adjudication. The judgment recognised that sexual orientation and intimate personal choices are protected aspects of dignity and autonomy. This reasoning assumes considerable significance in evaluating the exclusion of same-sex couples from the benefits of assisted reproductive technologies.[5]

The Court reaffirmed these principles in **Joseph Shine v. Union of India**, wherein Section 497 of the Indian Penal Code (adultery) was declared unconstitutional. The Court rejected patriarchal conceptions of marriage and emphasised that the Constitution protects decisional autonomy within intimate relationships. The reasoning reinforces the proposition that the State cannot constitutionally impose traditional family models as the exclusive basis for recognising reproductive rights.[6]

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

[2] *Jan Balaz v. Anand Municipality*, AIR 2010 Guj 21.

[3] *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1.

[4] *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

[5] *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

[6] *Joseph Shine v. Union of India*, (2019) 3 SCC 39.

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The progressive trajectory continued in **X v. Principal Secretary, Health and Family Welfare Department**, wherein the Supreme Court interpreted the Medical Termination of Pregnancy Act, 1971 to extend abortion rights to unmarried women. The Court categorically held that constitutional protections concerning reproductive autonomy cannot be restricted solely on the basis of marital status. This judgment directly challenges the legislative assumption underlying the Surrogacy Act that reproductive technologies should primarily remain available only to married couples.[1]

More recently, in **Supriyo @ Supriya Chakraborty v. Union of India**, although the Supreme Court declined to recognise a fundamental right to marry for same-sex couples, the Court nevertheless reaffirmed that queer persons enjoy equal dignity and constitutional protection. Several opinions acknowledged that LGBTQIA+ persons possess the right to establish families and participate fully in social life. The reasoning is likely to influence future constitutional challenges concerning exclusion from ART and surrogacy legislation.[2]

RECOMMENDATIONS

A constitutionally balanced regulatory framework should preserve the legitimate objective of preventing exploitation while simultaneously respecting reproductive autonomy as a fundamental constitutional value. Legislative reform may therefore be considered in several respects.

First, eligibility criteria should be expanded to include unmarried individuals, persons in stable domestic partnerships, LGBTQIA+ persons, and transgender individuals, subject to appropriate welfare assessments rather than marital status alone.

Secondly, Parliament may consider replacing the absolute prohibition of commercial surrogacy with a carefully regulated compensated surrogacy model that ensures informed consent, judicial supervision, mandatory counselling, fair remuneration, and independent legal representation for surrogate mothers.

Thirdly, stronger statutory safeguards should be incorporated concerning confidentiality, data protection, and genetic information consistent with the constitutional right to informational privacy.

Fourthly, specialised family courts or designated tribunals may be empowered to resolve disputes relating to parentage, surrogacy agreements, donor rights, and custody in an expeditious manner.

Finally, periodic legislative review should be undertaken to ensure that statutory regulation evolves alongside advances in reproductive medicine and constitutional jurisprudence.

CONCLUSION

The enactment of the Surrogacy (Regulation) Act, 2021 and the Assisted Reproductive Technology (Regulation) Act, 2021 undoubtedly represents a significant legislative milestone in India's attempt to regulate assisted reproduction. The statutes reflect Parliament's legitimate concern regarding commercial exploitation, unethical medical practices, trafficking, and commodification of women's reproductive capacities. These objectives unquestionably serve important constitutional values relating to human dignity and social justice.

Nevertheless, constitutional governance requires that even well-intentioned legislation remain consistent with the guarantees of equality, liberty, privacy, and dignity embodied in the Constitution of India. Contemporary constitutional jurisprudence recognises reproductive autonomy not merely as a medical privilege but as an essential component of decisional freedom, bodily integrity, and family life. Consequently, statutory restrictions that exclude entire classes of individuals solely on the basis of marital status, gender identity, or sexual orientation warrant careful constitutional scrutiny.

The future of reproductive rights in India will ultimately depend upon the judiciary's ability to harmonise the State's regulatory responsibilities with the individual's constitutional right to determine the manner in which family life is established. A rights-oriented regulatory framework grounded in proportionality, inclusiveness, and constitutional morality would better reconcile these competing interests than a regime founded primarily upon prohibition and exclusion. As reproductive technologies continue to evolve, constitutional interpretation must equally evolve to ensure that scientific progress serves human dignity without sacrificing the fundamental freedoms guaranteed by the Constitution.

[1] *X v. Principal Secretary, Health and Family Welfare Department*, (2022) 10 SCC 1.

[2] *Supriyo @ Supriya Chakraborty v. Union of India*, (2023) 16 SCC 1."

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