RESEARCH PAPER

Examining Bodies, Drugs, and Dignity: Medical and Psychological Dimensions of Surrogacy and ART for Transgender Community in India

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Abstract
In recent years, India's reproductive law has undergone fundamental transformation through the Surrogacy (Regulation) Act, 2021 and the Assisted Reproductive Technology (Regulation) Act, 2021 (ART Act). These legislative developments propose mechanisms for regulating fertility services, ensuring ethical conduct of clinics and protection of surrogate mothers, while attempting to define eligibility criteria for intended parents. However, these laws also create legal, social, and constitutional challenges—particularly regarding access for *transgender persons*, *LGBTQIA+ individuals*, *single men*, and *non-heteronormative families*. Issues related to medical oversight, drug-related harms in reproductive procedures, and psychological and physical risks to surrogates and patients further complicate this landscape. This paper provides an integrated analysis of these legal frameworks, identifies key jurisprudential themes and emerging case law, examines practical and ethical concerns, and offers targeted recommendations to strengthen reproductive justice in India.

Keywords – Surrogacy Regulation, Transgender Parenthood, ART Risks, Psychological Damage and Medical Boards.

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Introduction

The desire for parenthood occupies a central position in human existence, intertwining deeply personal aspirations with broader social, cultural, and legal dimensions. Parenthood is not merely a biological event but a socially constructed institution shaped by law, morality, medicine, and evolving notions of family. For individuals and couples unable to conceive naturally due to infertility, medical conditions, or biological limitations, the emergence of assisted reproductive technologies (ART) and surrogacy has transformed reproductive possibilities. These technological advancements have redefined traditional understandings of procreation, kinship, and parental identity by enabling conception beyond sexual reproduction.

India has historically been a prominent global destination for reproductive services, particularly commercial surrogacy, owing to comparatively lower medical costs, advanced fertility clinics, and a large population of economically vulnerable women willing to act as surrogates. However, the absence of a robust regulatory framework prior to 2021 led to widespread ethical concerns, including exploitation of surrogate mothers, commodification of women's reproductive labour, lack of informed consent, and uncertainty regarding the legal status and citizenship of children born through such arrangements. In response to these challenges, the Indian legislature enacted the Surrogacy (Regulation) Act, 2021 and the Assisted Reproductive Technology (Regulation) Act, 2021, marking a significant shift from a market-driven reproductive regime to a tightly regulated legal structure.

The stated objectives of these enactments include preventing exploitation, eliminating commercial surrogacy, regulating fertility clinics and ART banks, ensuring medical accountability, and safeguarding the welfare of surrogate mothers and children born through assisted reproduction. The laws establish national and state-level regulatory boards, impose strict eligibility conditions for commissioning parents, mandate medical screening and insurance coverage for surrogate mothers, and criminalize unethical medical practices. From a regulatory standpoint, these statutes represent an effort to balance technological advancement with ethical restraint and social responsibility.

However, despite their protective intent, these laws have generated substantial legal and constitutional

debate. A major critique concerns their exclusionary framework, which restricts access to ART and surrogacy primarily to married heterosexual couples and, in limited circumstances, single women. Transgender persons, same-sex couples, unmarried partners, and single men are categorically excluded from the statutory definition of "intended parents." Such exclusions reinforce heteronormative and cis-normative family structures, effectively denying reproductive autonomy to marginalized communities whose rights to equality, dignity, privacy, and personal liberty have been judicially recognized by the Indian judiciary. This legislative approach appears incongruent with constitutional jurisprudence developed in landmark judgments such as *Navtej Singh Johar v. Union of India*, *NALSA v. Union of India*, and *Justice K.S. Puttaswamy v. Union of India*, which affirm bodily autonomy and decisional privacy as intrinsic to Article 21 of the Constitution.

Beyond issues of access and equality, the medical dimensions of ART and surrogacy raise serious concerns regarding physical and psychological harm. ART procedures typically involve intensive hormonal drug regimens, invasive medical interventions, repeated cycles of egg retrieval or embryo transfer, and prolonged medical supervision. Improper administration or commercial pressure to maximize success rates can expose women—both intended mothers and surrogates—to significant health risks, including ovarian hyperstimulation syndrome, hormonal imbalance, long-term reproductive complications, and mental health disorders such as anxiety, depression, and emotional trauma. Surrogate mothers, in particular, may face compounded vulnerabilities due to socio-economic pressures, lack of medical literacy, and power asymmetries between commissioning parents, clinics, and intermediaries.

Furthermore, the psychological implications of surrogacy extend beyond the surrogate to intended parents and children born through ART. Emotional distress arising from failed cycles, attachment and detachment issues during pregnancy, and identity-related concerns of children necessitate a holistic understanding of reproductive justice that goes beyond mere regulation of clinics. The absence of mandatory psychological counseling, post-procedure mental health care, and long-term monitoring mechanisms reveals a significant gap in the current legal framework.

Against this backdrop, this article undertakes a comprehensive examination of the legal, medical, and ethical dimensions of surrogacy and assisted reproductive technologies in India. Adopting a rights-based analytical framework, it critically evaluates the legislative architecture, explores emerging judicial trends, and interrogates the intersection of reproductive autonomy with gender identity, sexual orientation, and bodily integrity. The study further assesses the role of medical and regulatory boards, the implications of drug-related practices in reproductive medicine, and the need for inclusive, humane, and constitutionally compliant reforms. Through this analysis, the article argues that reproductive technologies must be governed not merely as medical procedures but as matters of fundamental human rights, social justice, and constitutional morality.

Research Methodology

The present study adopts a doctrinal and analytical research methodology, supplemented by a socio-legal and comparative approach where necessary. The doctrinal method is employed to critically examine statutory provisions governing surrogacy and assisted reproductive technologies in India, particularly the Surrogacy (Regulation) Act, 2021 and the Assisted Reproductive Technology (Regulation) Act, 2021, along with relevant constitutional provisions under Articles 14, 15, 19, and 21 of the Constitution of India. Judicial decisions of the Supreme Court of India and various High Courts are analysed to understand the evolving jurisprudence on reproductive autonomy, bodily integrity, privacy, gender identity, and LGBTQIA+ rights. Emphasis is placed on landmark rulings such as *Justice K.S. Puttaswamy v. Union of India*, *NALSA v. Union of India*, and *Navtej Singh Johar v. Union of India*, which form the constitutional backbone of the rights-based analysis undertaken in this paper.

In addition, a socio-legal approach is adopted to examine the real-world implications of these laws on surrogate mothers, intended parents, transgender persons, and other marginalized groups. Secondary sources including scholarly articles, medical journals, government reports, policy papers, and ethical guidelines are used to assess medical risks, drug-related concerns, and psychological impacts associated with ART and surrogacy. A comparative perspective is briefly employed to contextualize India's regulatory framework against international reproductive justice standards and human rights norms.

Research Hypothesis

The study is guided by the following hypotheses:

H_1: The Surrogacy (Regulation) Act, 2021 and the Assisted Reproductive Technology (Regulation) Act,

2021, while intended to prevent exploitation and unethical practices, disproportionately restrict reproductive autonomy and access to parenthood for transgender persons, LGBTQIA+ individuals, and non-traditional families.

- **H_2:** The existing regulatory framework inadequately addresses the physical and psychological harms arising from ART procedures and surrogacy, particularly in relation to hormonal drug administration, informed consent, and post-procedure medical and mental health care.
- **H_3:** The exclusionary eligibility criteria under the current reproductive laws are inconsistent with constitutional principles of equality, dignity, privacy, and bodily autonomy as interpreted by the Indian judiciary.
- **H_4:** Strengthening medical oversight, inclusive legal recognition, and rights-based regulatory mechanisms can significantly enhance reproductive justice without compromising ethical safeguards.

Research Gap

Despite the growing body of literature on surrogacy and assisted reproductive technologies in India, several critical gaps remain unaddressed. Existing scholarship largely focuses either on the ethical concerns of commercial surrogacy or the regulatory mechanics of ART clinics, often treating legal, medical, and psychological dimensions in isolation. There is a noticeable lack of integrated analysis that simultaneously examines constitutional rights, medical risks, drug-related implications, and the lived experiences of marginalized communities affected by reproductive laws.

Furthermore, limited academic attention has been paid to the exclusion of transgender persons and LGBTQIA+ individuals from ART and surrogacy within the framework of post-*NALSA* and post-*Navtej Singh Johar* jurisprudence. The role of medical and regulatory boards, particularly in monitoring drug usage, ensuring informed consent, and addressing psychological harm, remains underexplored in legal discourse. Additionally, the psychological consequences of surrogacy—both for surrogate mothers and intended parents—are often treated as peripheral rather than integral to reproductive justice.

This study seeks to bridge these gaps by offering a holistic, rights-based evaluation of surrogacy and ART laws in India. By integrating constitutional analysis with medical ethics and human rights perspectives, the paper contributes to a more comprehensive understanding of reproductive justice and advocates for inclusive and constitutionally aligned legal reforms.

Literature Review

Scholarly discourse on surrogacy and assisted reproductive technologies (ART) in India has expanded significantly over the past two decades, particularly following the country's emergence as a global hub for reproductive services prior to legislative intervention. Existing literature broadly engages with ethical, legal, medical, and human rights dimensions of reproductive technologies; however, the depth and focus of analysis vary considerably across disciplines. This review critically examines major strands of scholarship and identifies lacunae relevant to the present study.

Surrogacy and the Ethics of Reproductive Labour

Early academic writings largely conceptualized surrogacy as a form of *reproductive labour*, emphasizing concerns of exploitation, commodification of women's bodies, and socio-economic asymmetries between surrogate mothers and commissioning parents. Scholars such as Amrita Pande and Rudrappa argue that commercial surrogacy in India operated within a framework of structural inequality, where economically disadvantaged women entered surrogacy arrangements under constrained choices, often without full awareness of medical and psychological risks. Feminist critiques highlight how contractual models reduced surrogates to gestational instruments, thereby undermining bodily autonomy and dignity.

While these studies played a pivotal role in shaping the narrative that led to legislative regulation, they often adopt a protectionist approach that advocates prohibition over reform. Critics of this stance argue that an outright ban on commercial surrogacy, as implemented under the Surrogacy (Regulation) Act, 2021, fails to address underlying socio-economic vulnerabilities and instead pushes the practice underground, increasing the risk of unregulated exploitation.

Legal Regulation of ART and Institutional Oversight

Legal scholarship on ART regulation in India primarily focuses on institutional mechanisms, licensing of clinics, and ethical governance. Commentaries on the Assisted Reproductive Technology (Regulation) Act, 2021 examine the creation of national and state ART boards, mandatory registration of clinics, and penal

provisions for unethical practices. Scholars have welcomed the emphasis on accountability and record-keeping but express concern over bureaucratic centralization and procedural rigidity.

A recurring critique in the literature is the absence of effective grievance redressal mechanisms for patients and surrogates. Several studies note that restricting the power to initiate legal proceedings to regulatory boards may limit access to justice for affected individuals. Moreover, literature reveals insufficient attention to the enforcement capacity of regulatory bodies, raising doubts about the practical efficacy of statutory safeguards.

Medical and Drug-Related Risks in ART Procedures

Medical literature extensively documents the physiological risks associated with ART procedures, particularly ovarian stimulation protocols involving hormonal drugs. Studies published in reproductive medicine journals highlight complications such as ovarian hyperstimulation syndrome (OHSS), hormonal imbalances, thrombosis, and long-term reproductive health implications. However, legal scholarship has rarely engaged with these findings in depth.

Where medical risks are discussed in legal literature, they are often treated as peripheral concerns rather than central to reproductive rights analysis. There is limited interdisciplinary engagement between law and medicine on informed consent, standardization of drug regimens, and accountability for medical negligence in ART clinics. This disjunction between medical evidence and legal regulation constitutes a significant gap that the present study seeks to address.

Psychological Impact of Surrogacy and ART

Psychological and sociological studies underline the emotional complexities associated with infertility treatment and surrogacy. Research indicates that repeated ART cycles can lead to anxiety, depression, emotional burnout, and feelings of inadequacy among intended parents. Surrogate mothers may experience attachment conflicts, emotional distress following relinquishment of the child, and social stigma within their communities.

Despite this evidence, legal and policy-oriented literature often marginalizes psychological harm, focusing predominantly on physical safety and contractual compliance. Few scholars have examined the absence of mandatory psychological counseling or mental health support as a rights violation. The limited incorporation of mental health perspectives into reproductive law highlights a normative gap between lived experiences and legislative priorities.

Transgender, LGBTQIA+, and Reproductive Rights

Post-*NALSA* and post-*Navtej Singh Johar* scholarship has increasingly addressed the reproductive rights of transgender and LGBTQIA+ persons. Scholars argue that reproductive autonomy is an essential component of gender identity and personal liberty. Comparative studies demonstrate that several jurisdictions recognize diverse family forms and permit access to ART irrespective of marital status or sexual orientation.

In the Indian context, however, literature reveals a disconnect between constitutional recognition of queer identities and statutory exclusion from reproductive technologies. Existing analyses critique the ART and Surrogacy Acts for reinforcing heteronormativity and biological essentialism. Yet, most studies focus on doctrinal inconsistency without sufficiently exploring the practical consequences of exclusion, such as denial of fertility preservation for transgender persons undergoing gender-affirming treatment.

Reproductive Justice and Rights-Based Frameworks

The concept of reproductive justice—originating from intersectional feminist theory—has gained traction in Indian legal scholarship. Authors emphasize that reproductive rights extend beyond access to medical technologies and encompass social, economic, and cultural conditions necessary for informed and autonomous decision-making. However, Indian legal discourse remains largely regulation-centric, prioritizing control and prevention of misuse over empowerment and inclusion.

The literature reveals an absence of comprehensive rights-based analyses that integrate constitutional law, medical ethics, psychological well-being, and gender justice within a single framework. This fragmentation limits the potential of scholarship to influence holistic policy reform.

Synthesis and Relevance to the Present Study

In sum, existing literature provides valuable insights into specific dimensions of surrogacy and ART but lacks an integrated, interdisciplinary approach. There is limited scholarship that simultaneously addresses legal exclusion, medical and drug-related risks, psychological harm, and the rights of transgender and LGBTQIA+ persons within the Indian reproductive law framework. The present study builds upon and extends existing literature by bridging these thematic silos and offering a comprehensive rights-based critique of India's reproductive regulation regime.

Legislation Governing Surrogacy and ART in India

Surrogacy (Regulation) Act, 2021 – The Surrogacy (Regulation) Act, 2021 prohibits *commercial surrogacy* and instead permits only *altruistic surrogacy*—where no monetary payment is made to the surrogate, except for medical expenses and insurance. The Act sets stringent eligibility criteria for commissioning parents: generally, a *married heterosexual couple*, with specific age limits (female 23–50; male 26–55), and a medical necessity for surrogacy. Single men, same-sex couples, and others outside traditional family units are excluded. *Cross-border surrogacy* is effectively banned, reversing India's earlier position as a reproductive tourism destination. These restrictions have ignited constitutional challenges on grounds of discrimination and violation of fundamental rights.

The Act also requires *surrogacy agreements* with medical assurances and mandates insurance coverage for the surrogate during and after pregnancy. The law seeks to balance protection with regulation but has drawn criticism for lack of inclusivity and reinforcement of heteronormative family norms.

Assisted Reproductive Technology (Regulation) Act, 2021 –The ART Act regulates fertility clinics, gamete banks, and ART procedures. It establishes a centralized National Registry and sets standards for operation, record keeping, and ethical conduct. The Act defines eligibility primarily in terms of *married infertile couples* and *single women*, excluding *single men*, *unmarried couples*, and *transgender* and *queer persons*. Critics argue these exclusions violate equality and privacy rights under the Constitution and contradict judicial recognition of LGBTQIA+ rights.

The ART Act also criminalizes unethical practices—such as misuse of gametes and fertility fraud—yet procedural obstacles remain. For instance, victims often cannot directly lodge complaints: only state or national ART boards may file indictments related to violations, potentially delaying justice.

Core Issues in Surrogacy and ART Regulation

Inclusivity and Equality – Both statutes narrowly define eligibility, reflecting a *heteronormative* understanding of family life. Transgender individuals and LGBTQIA+ couples face legal barriers to accessing reproductive assistance. As recently reported by the government in litigation before the Kerala High Court, transgender persons are currently not eligible for ART services under existing laws, highlighting this exclusion.

The legal limitation amplifies discrimination by denying reproductive autonomy to persons based on gender identity or sexual orientation. This raises important constitutional questions under Articles 14 (Equality), 15 (Non-discrimination), and 21 (Right to Life and Personal Liberty).

Medical Oversight and Drug-Related Issues – The ART and surrogacy involve complex hormonal treatments and invasive procedures. Ovarian stimulation protocols, in vitro fertilization (IVF), and embryo transfers often require high-dose hormones and fertility drugs. While beneficial medically, these regimens carry risks including *ovarian hyperstimulation syndrome*, *blood clots*, and *long-term endocrine effects* when administered without adequate monitoring or informed consent. Professional oversight by a *Medical Board* is essential to safeguard patient health.

Furthermore, unregulated clinics may administer multiple cycles without proper evaluation, increasing cumulative exposure to potent drugs and possible adverse effects. This underscores the need for robust medical guidelines and patient education.

Leading Cases and Judicial Developments

Rights of Transgender and LGBTQIA+ Persons – The exclusion of transgender individuals from ART access has emerged as a contested legal issue. A transgender man's plea to cryopreserve his gametes before gender-affirming surgery challenged the ART Act's limitations. While the government defended the exclusion as policy aimed at child welfare, the case underscores the intersection of reproductive autonomy and gender identity rights.

Other influential case law in India—such as *Vyjayanti Vasanta Mogli v. State of Telangana* (invalidating discriminatory provisions against transgender persons) and *Arun Kumar v. Inspector General of Registration* (recognizing a trans woman as "bride" under marriage law)—reflect broader constitutional recognition of transgender rights that can inform reproductive rights discourse.

Consent, Exploitation, and ART Practices – The consent forms the ethical and legal foundation of all medical interventions, particularly in the domain of assisted reproductive technologies (ART), where procedures are invasive, prolonged, and often accompanied by significant physical and psychological consequences. Informed consent in ART practices requires not merely formal agreement but a comprehensive understanding of medical risks, hormonal drug effects, success probabilities, emotional implications, and legal consequences. However, empirical evidence and judicial observations suggest

that consent in many ART and surrogacy arrangements in India remains procedurally inadequate and substantively compromised.

The judiciary has increasingly recognized that medical practices affecting bodily autonomy must adhere to heightened standards of consent, especially when such practices disproportionately impact marginalized communities. Although *S. Sushma v. Commissioner of Police* does not directly concern ART, the Madras High Court's prohibition of conversion therapy is significant in the broader context of medical consent and bodily integrity. The Court categorically held that medical interventions premised on social prejudice rather than scientific necessity violate the fundamental rights to dignity, autonomy, and mental health of queer individuals. This judicial reasoning reinforces the principle that consent obtained under coercive social norms, misinformation, or psychological pressure is legally untenable. The judgment thus provides an important jurisprudential foundation for evaluating consent in ART procedures involving LGBTQIA+ persons and transgender individuals, who often face systemic discrimination and limited access to unbiased medical counseling.

ART clinics frequently operate within a commercialized healthcare environment, where success rates and financial incentives may overshadow patient welfare. In such settings, consent may be reduced to standardized documentation rather than a meaningful communicative process. Women undergoing egg retrieval or surrogacy arrangements are often not fully apprised of long-term health risks, cumulative effects of repeated hormonal stimulation, or the psychological implications of relinquishing genetic or gestational ties. This raises serious concerns regarding exploitation, particularly when participants belong to economically or socially vulnerable groups.

The judicial interventions by the Kerala High Court in matters concerning illegal surrogacy and unethical ART practices underscore the prevalence of coercion and misinformation in private reproductive services. The Court has expressed alarm over reports indicating that women were induced into surrogacy or egg donation without transparent disclosure of risks, sometimes through misleading assurances, financial inducements, or intermediaries acting as brokers. In several instances, clinics allegedly bypassed statutory requirements by manipulating documentation or exploiting regulatory loopholes. The High Court's directions for investigation highlight the judiciary's acknowledgment that regulatory compliance alone is insufficient to safeguard consent unless accompanied by active oversight and accountability.

These cases also reveal a troubling power imbalance between commissioning parents, clinics, and surrogate mothers. While intended parents often possess greater financial and informational resources, surrogate women may lack medical literacy and bargaining power, rendering them susceptible to exploitative arrangements. The absence of independent legal and psychological counseling further exacerbates this imbalance. Consent obtained in such circumstances risks being merely formalistic, failing to meet constitutional standards of voluntariness and informed decision-making.

Moreover, the commodification of reproductive capacity—whether through egg donation, gestational surrogacy, or repeated ART cycles—raises ethical questions about the limits of permissible medical intervention. When financial necessity compels women to undergo physically taxing procedures, the line between choice and coercion becomes blurred. The judiciary's concern, as reflected in High Court observations, signals a recognition that exploitation in ART practices is not always overt but often structurally embedded within healthcare delivery systems.

In this context, the role of medical and regulatory boards assumes critical importance. However, the effectiveness of these bodies depends on their capacity to enforce ethical standards, monitor consent procedures, and respond promptly to violations. Judicial scrutiny has revealed gaps in enforcement, suggesting that regulatory mechanisms must evolve from mere licensing authorities to active protectors of reproductive rights and medical ethics.

In sum, judicial engagement with issues of consent and exploitation in ART practices reflects an evolving understanding of reproductive autonomy as an extension of constitutional dignity and bodily integrity. Cases such as *S. Sushma* and interventions by the Kerala High Court demonstrate that courts are increasingly willing to interrogate medical practices through a human rights lens. These developments underscore the need for a robust legal framework that ensures consent in ART and surrogacy is not merely documented but genuinely informed, voluntary, and respectful of individual autonomy—particularly for women, transgender persons, and queer individuals who remain disproportionately vulnerable within the reproductive healthcare system.

Surrogacy: Ethical, Medical, and Psychological Dimensions

Surrogacy occupies a complex intersection of medical innovation, ethical debate, and human rights discourse. While it offers a viable pathway to parenthood for individuals unable to conceive, it simultaneously raises critical concerns regarding bodily autonomy, health risks, emotional well-being, and socio-economic exploitation. The ethical legitimacy of surrogacy cannot be assessed solely through statutory compliance; rather, it requires a holistic evaluation of the medical and psychological realities experienced by surrogate mothers, intended parents, and children born through such arrangements.

Surrogate Health and Rights

The surrogate mothers are subjected to a series of medically intensive and invasive procedures, beginning with hormonal stimulation and extending through embryo transfer, pregnancy, and childbirth. Repeated administration of fertility drugs, often to synchronize reproductive cycles or increase implantation success, exposes surrogates to health risks such as ovarian hyperstimulation syndrome, hormonal imbalance, metabolic disturbances, and increased likelihood of multiple pregnancies. These medical risks are compounded when surrogates undergo multiple cycles, sometimes at the insistence of commissioning parents or clinics seeking higher success rates.

The Surrogacy (Regulation) Act, 2021 seeks to address some of these concerns by mandating medical screening, age restrictions, and insurance coverage for surrogate mothers. However, practical enforcement of these safeguards remains uneven. Public health studies and judicial observations reveal persistent gaps in protection, including instances of forced or coerced participation, inadequate living arrangements during pregnancy, and insufficient post-delivery medical care. The absence of long-term health monitoring mechanisms for surrogate mothers further undermines their right to health and well-being.

Additionally, socio-economic vulnerability plays a significant role in shaping surrogate participation. Women from marginalized backgrounds may consent to surrogacy under financial duress, raising questions about the voluntariness of consent. The lack of independent legal and medical counseling exacerbates power imbalances, leaving surrogates with limited capacity to negotiate terms or refuse unsafe medical practices. From a rights-based perspective, these conditions challenge the constitutional guarantees of dignity, bodily autonomy, and freedom from exploitation.

Medical literature also documents adverse pregnancy outcomes in unregulated or poorly supervised surrogacy arrangements. Complications such as low birth weight, premature delivery, gestational diabetes, and hypertensive disorders have been observed, particularly where medical protocols prioritize commercial efficiency over maternal health. These outcomes not only endanger surrogate mothers but also implicate the best interests of the child, a principle recognized in both domestic law and international human rights frameworks.

Psychological Impact of Surrogacy and ART

The psychological dimensions of surrogacy are as significant as the physical risks, yet they remain inadequately addressed within the legal framework. Surrogate mothers often experience complex emotional responses throughout the reproductive process. The gestational bond formed during pregnancy may conflict with contractual obligations to relinquish the child after birth, leading to emotional distress, grief, or feelings of loss. Social stigma associated with surrogacy—particularly in conservative communities—can further isolate surrogate mothers, affecting their mental health and social standing.

The intended parents also face considerable psychological strain. Infertility itself is associated with emotional vulnerability, and the prolonged, uncertain nature of ART procedures can intensify anxiety, depression, and stress. Financial pressures resulting from repeated treatment cycles and legal compliance further compound these emotional burdens. The lack of predictable outcomes and fear of medical failure often places intended parents in a state of prolonged psychological uncertainty.

The children born through surrogacy and ART may encounter identity-related questions, particularly in socio-legal environments that stigmatize non-traditional family structures. Issues surrounding genetic origins, gestational relationships, and social acceptance can influence a child's sense of self, especially in contexts where legal recognition of diverse family forms remains limited. The absence of clear legal narratives around disclosure and identity rights can leave families navigating these challenges without institutional support.

Need for Ethical Counseling and Psychosocial Support

The cumulative psychological impact on all stakeholders underscores the necessity of integrating ethical counseling and psychosocial support into surrogacy and ART practices. Pre-procedure counseling can ensure informed decision-making,

clarify expectations, and address emotional preparedness. Ongoing psychological support during pregnancy and post-delivery is crucial for surrogate mothers to process emotional transitions and mitigate mental health risks. Similarly, intended parents benefit from counseling that addresses stress management, coping mechanisms, and realistic expectations regarding treatment outcomes.

Despite these recognized needs, existing legislation does not mandate comprehensive psychological assessment or counseling as a prerequisite or continuing obligation in surrogacy arrangements. This omission reflects a narrow regulatory focus on medical and contractual compliance, overlooking the holistic well-being of individuals involved. Incorporating mandatory counseling protocols within ART and surrogacy regulations would align legal practice with ethical medical standards and constitutional commitments to mental health as an integral component of the right to life and dignity.

Drug-Related Concerns in ART Procedures

Assisted reproductive technologies (ART) rely heavily on pharmacological interventions to stimulate ovulation, regulate hormonal cycles, and enhance the probability of successful fertilization and implantation. Fertility drugs—particularly gonadotropins, clomiphene citrate, and gonadotropin-releasing hormone (GnRH) analogues—play a central role in ART protocols. While these medications have enabled significant advancements in reproductive medicine, their administration carries substantial medical risks if not carefully individualized, monitored, and regulated. The increasing commercialization of ART services has intensified concerns regarding over-medication, inadequate disclosure of risks, and insufficient accountability mechanisms.

Medical Risks Associated with Fertility Drugs

One of the most serious complications arising from fertility drug usage is ovarian hyperstimulation syndrome (OHSS), a potentially life-threatening condition characterized by ovarian enlargement, fluid accumulation in the abdomen and chest, thromboembolic events, and organ dysfunction in severe cases. OHSS is particularly associated with aggressive ovarian stimulation protocols aimed at retrieving multiple oocytes in a single cycle. In the absence of stringent monitoring, patients—especially young women and surrogate mothers—may be exposed to preventable health risks.

Beyond OHSS, prolonged or repeated exposure to fertility drugs can result in hormonal imbalances, manifesting as menstrual irregularities, endocrine disruption, mood disorders, and metabolic complications. These effects may persist beyond the treatment period, affecting long-term reproductive and general health. Medical studies have also raised concerns regarding potential associations between repeated ART cycles and long-term reproductive health consequences, although conclusive evidence remains an area of ongoing research. Nevertheless, the uncertainty itself necessitates a precautionary regulatory approach.

Surrogate mothers and egg donors are particularly vulnerable to drug-related risks due to repeated stimulation cycles, often undertaken within short intervals. In economically driven arrangements, the pressure to comply with medical protocols may discourage individuals from questioning treatment intensity or reporting adverse symptoms. These dynamic underscores the ethical responsibility of clinics and regulatory authorities to prioritize patient welfare over procedural efficiency or commercial success rates.

Informed Consent and Disclosure of Drug-Related Risks

From a legal standpoint, the administration of fertility drugs engages fundamental principles of informed consent and bodily autonomy. Consent in ART procedures must encompass detailed disclosure of drug-related risks, alternative treatment options, success probabilities, and potential long-term effects. However, standardized consent forms frequently fail to convey the complexity and severity of these risks in an accessible manner, reducing consent to a formalistic exercise.

The absence of transparent risk communication disproportionately affects individuals with limited medical literacy, reinforcing inequalities within reproductive healthcare. Inadequate disclosure may amount to medical negligence or violation of constitutional rights under Article 21, which encompasses the right to health and informed decision-making. Courts have increasingly recognized that consent obtained without meaningful understanding cannot be considered legally valid, particularly in high-risk medical interventions.

Regulatory Role of Medical Boards and ART Authorities

The Assisted Reproductive Technology (Regulation) Act, 2021 establishes National and State ART Boards tasked with overseeing the functioning of ART clinics and banks. However, the Act provides limited specificity regarding drug administration protocols,

adverse event reporting, and long-term patient monitoring. This regulatory ambiguity risks inconsistent medical practices across clinics and undermines patient safety.

Medical Boards overseeing ART facilities should play a proactive role in developing and enforcing standardized, evidence-based protocols for fertility drug usage. Such protocols should include:

- Individualized treatment planning based on patient risk profiles;
- Mandatory monitoring and documentation of drug dosage and response;
- Clear thresholds for intervention or cycle cancellation to prevent OHSS;
- Compulsory reporting of adverse drug reactions and complications;
- Periodic audits and compliance reviews of ART clinics.

Integrating pharmacovigilance mechanisms within the ART regulatory framework would align reproductive medicine with broader public health standards. Additionally, interdisciplinary oversight involving gynecologists, endocrinologists, mental health professionals, and legal experts can ensure that medical decisions reflect ethical and constitutional considerations.

Need for Rights-Based Drug Regulation in ART

The regulation of fertility drugs within ART procedures must be grounded in a rights-based framework that recognizes reproductive autonomy while safeguarding health and dignity. Over-medicalization of reproduction risks transforming patients into subjects of experimentation rather than autonomous decision-makers. A legal regime that fails to adequately regulate drug usage effectively shifts the burden of risk onto individuals, particularly women, thereby perpetuating gendered health inequalities.

By strengthening drug-related oversight through Medical Boards and ART authorities would not only reduce preventable harm but also reinforce public trust in reproductive technologies. By prioritizing patient safety, informed consent, and accountability, India's ART regulatory framework can better reconcile medical innovation with constitutional commitments to dignity, health, and bodily integrity.

Recommendations

- **Legal Inclusivity Reform:** Amend Surrogacy and ART Acts to include transgender persons, queer couples, and single individuals, aligning with constitutional principles of equality and non-discrimination.
- **Medical Board Oversight:** Empower independent *Medical Boards* with authority to audit clinics, monitor drug usage protocols, and ensure evidence-based treatments.
- **Psychological Support Requirements:** Mandate pre- and post-treatment counseling for surrogates and intended parents, addressing emotional risks and informed consent.
- **Streamlined Complaint Mechanisms:** Allow individuals to file complaints directly with appropriate authorities rather than relying solely on ART Boards to initiate actions.
- **National Guidelines for Drug Regimens:** Create standardized protocols for fertility drug usage to minimize health risks and promote safety.
- **Data Protection and Confidentiality:** Strengthen confidentiality safeguards while ensuring transparency in ART registry data.

Conclusion

India's reproductive legal framework stands at a decisive crossroads, reflecting both the promise of scientific advancement and the persistent tensions between regulation, autonomy, and social justice. The enactment of the Surrogacy (Regulation) Act, 2021 and the Assisted Reproductive Technology (Regulation) Act, 2021 signifies a deliberate legislative effort to bring ethical order and accountability to a domain historically marked by exploitation, commercial excess, and regulatory vacuum. These statutes seek to safeguard surrogate mothers, regulate fertility clinics, and ensure the welfare of children born through assisted reproduction. However, as this study demonstrates, the regulatory response, while well-intentioned, remains incomplete and, in several respects, constitutionally problematic.

A central concern arising from the current legislative framework is its exclusionary character. By narrowly defining eligibility for ART and surrogacy, the law effectively denies reproductive choice to transgender persons, LGBTQIA+ individuals, unmarried partners, and single men. Such exclusions are increasingly untenable in light of India's constitutional jurisprudence, which has firmly recognized reproductive autonomy, bodily integrity, gender identity, and decisional privacy as integral to the right to life and dignity under Article 21. The persistence of heteronormative assumptions within reproductive law reflects a disjunction between legislative policy and constitutional morality, raising serious questions of equality, non-discrimination, and substantive justice.

Equally significant are the medical and ethical challenges identified in this study. ART and surrogacy involve intensive pharmacological interventions, invasive medical procedures, and prolonged physical and emotional commitment. The risks associated with fertility drugs, repeated hormonal stimulation, and inadequate monitoring underscore the urgent need for robust medical oversight and standardized treatment protocols. The absence of comprehensive pharmacovigilance, long-term health monitoring, and enforceable accountability mechanisms exposes women—particularly surrogate mothers and egg donors—to preventable harm, undermining their right to health and informed consent.

The psychological dimensions of assisted reproduction further complicate the legal landscape. Surrogate mothers may experience emotional distress, social stigma, and post-delivery trauma, while intended parents often endure prolonged anxiety, uncertainty, and financial strain. Children born through these technologies may encounter identity-related challenges within socio-legal contexts that inadequately recognize non-traditional families. Yet, existing legislation remains largely silent on mental health safeguards, reducing reproductive care to a procedural and contractual exercise rather than a holistic human experience. This omission reveals a regulatory paradigm that prioritizes control over care.

Judicial interventions in cases involving coercion, unethical medical practices, and denial of reproductive rights indicate a growing recognition of these shortcomings. Courts have increasingly emphasized consent, dignity, and bodily autonomy as non-negotiable constitutional values in medical decision-making. However, judicial correction alone cannot substitute for comprehensive legislative reform. A fragmented approach risks perpetuating uncertainty and uneven protection across jurisdictions.

This study argues that the future of reproductive regulation in India must be guided by a rights-based and inclusive framework that harmonizes medical innovation with constitutional guarantees. Such an approach requires expanding legal recognition of diverse family forms, strengthening the role of medical and regulatory boards, mandating psychological counseling and informed consent protocols, and ensuring effective grievance redressal mechanisms. Reproductive technologies should be regulated not merely to prevent misuse but to empower individuals to exercise informed, autonomous, and dignified reproductive choices.

Ultimately, surrogacy and ART are not merely questions of medical possibility or legislative control; they are reflections of how a constitutional democracy values autonomy, equality, and human dignity. A legal framework that acknowledges this reality can ensure that reproductive technologies serve as instruments of empowerment rather than exclusion—facilitating, rather than restricting, the diverse aspirations of all individuals seeking parenthood in contemporary India.

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