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**SURROGACY IN INDIA: LEGAL FRAMEWORK, INCLUSIVITY
CHALLENGES, AND COMPARATIVE ANALYSIS**- Akshitha B¹**Abstract:**

With the advancements that are happening in the field of medicine, in particular gynecology, surrogacy is becoming a preferred alternative to couple who want to have children. But one should also pay attention to many of the legal restrictions that has been imposed by implementing the Surrogacy Act of 2021. There are specific provisions given as to who are all the eligible couple to undertake surrogacy which further questions as to whether the LGBTQ community be regarded as couple and can avail surrogacy and there are specific provisions as to who are eligible to be surrogate mothers. Apart from this, there are questions as to whether the act is discriminatory towards men for not permitting them to be a parent through surrogacy and also questions as to whether the qualifications provided for even single women to avail surrogacy is perhaps narrow minded. The article attempts to dissect the eligibility criteria and other legal aspects that are involved. The article attempts to understand whether altruistic surrogacy is benefiting the society at large without causing any discrimination to different classes of the society. The article also attempts to compare the surrogacy law of India with that of the laws of other countries. Overall, the article attempts to understand the reasoning for implementing the act and as well as also understanding the opposing view points as well.

Introduction

Surrogacy refers to the practice where a woman carries and delivers the child for another person or a couple. It is a reproductive process whereby a woman, who is known as the surrogate, agrees to carry and give birth to a child on behalf of another person or a couple. It has often been seen as a procedure where individuals or couples prefer this procedure when they are unable to get conceived or carry the pregnancy to term due to any kind of medical, biological, or even personal reasons.

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Before analyzing the Surrogacy Act of 2021, it is necessary to understand a few terms relating to surrogacy.

1. Traditional surrogacy: traditional surrogacy refers to the process where the surrogate mother is artificially inseminated with the sperm of either the intended father or the donor of the sperm. In the case of traditional surrogacy, the egg of the surrogate mother is used, which would make her the biological mother.
2. Gestational surrogacy: In gestational surrogacy, an embryo is created with the procedure of IVF, which is being implemented in the surrogate mother. The egg and the sperm can come from the intended parents or the donors.
3. Commercial surrogacy: in commercial surrogacy, the surrogate mother receives monetary compensation, apart from reimbursement for medical expenses and other pregnancy-related expenses. The money is being provided for the service of carrying the child and delivering the child to the intended couple or parent.
4. Altruistic surrogacy: In altruistic surrogacy, the surrogate mothers receive no financial compensation for the service of carrying the child. But it needs to be remembered that in altruistic surrogacy, the reimbursement for medical expenses and other reasonable costs would be taken care of by the intending parents.

In India, we follow only the gestational and altruistic types of surrogacy. In other words, only gestational and altruistic forms of surrogacy are permitted as legal surrogacy operations in India.

Violation of fundamental rights

Surrogacy in India is marked by the legal frameworks that narrow down the path of parenthood for many individuals. There are stringent provisions as to who can avail of surrogacy, which places a huge restriction on heterosexual couples and even on legally recognized married couples as well. It is quite surprising to note that there are restrictions placed even on single women who would like to avail themselves of surrogacy. It is needless to say that single men are denied access to surrogacy.

Based on this, it could be concluded that the Surrogacy Act of 2021 is violative of Articles 14, 15, and 21 of the Indian Constitution. Fundamental rights are very important because they are considered to be the backbone of a country. They are essential to safeguarding people's interests. According to Article 13 of the Indian Constitution, all laws that violate fundamental rights are considered void. Creating an illegibility for single men and also for the intended LGBTQ+ community couple on the basis of sex is a

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violation of one's right to life as well as the right to privacy, clearly indicating the violation of Articles 14, 15, and 21 of the Indian Constitution.

Violation Of Article 14 Of the Indian Constitution:

Under Article 14 of the Indian Constitution, it contains a test of reasonable classification. The test of reasonable classification identifies that society has a different class of people, and nature also differs in every society. The act believes that there is a necessity for the constitution that the laws be applied based on a reasonable classification to maintain equality without causing any discrimination. It strictly prohibits class legislation. Class legislation makes improper discrimination by conferring particular privileges upon a class of persons.

In *State of West Bengal v. Anwar Ali Sarkar*², it has been stated that to pass the permissible classification two conditions must be fulfilled:

1. The classification must be founded on an intelligible differentia which distinguishes those that are grouped from others are left out of the group.
2. The differentia must have a rational relation to the object sought to be achieved by the Act.

The differentia, which is the basis of classification, and the object of the Act are distinct, and what is necessary here is that there must be a nexus between the two. It is to be noted that in *Navtej Singh Johar v. Union of India*³ by the Supreme Court held that there was no intelligible differentia between "who supposedly engage in 'natural' intercourse and those who engage in 'carnal intercourse against the order of nature'". In other words the court rationalized that the Section 377 is vague and does not create intelligible differentia between what is "natural" people and what is "unnatural".

The object of the act is being understood as to prohibit the commercial surrogacy. there are provisions in this act which are not in the nexus with the object of the surrogacy regulation act 2021.

1. Firstly, in section 2(h) "couple" means the legally married Indian man and woman above the age of 21 years and 18 years respectively. The object of the act being to protect the surrogate mothers, is not in nexus with the object of the act. The act only identifies the couple as the legally married man

² State of West Bengal v. Anwar Ali Sarkar (1952) SCR 284

³ Navtej Singh Johar v. Union of India AIR 2018 SC 4321

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and the woman. The act fails to identify the LGBTQ+ community within the purview of the word 'couple'.

2. Secondly, in section 2(r) "intending couple" means a couple who have a medical indication necessitating gestational surrogacy and who intend to become parents through surrogacy. The act here restricts the surrogacy only to the couple who are having a medical indication and not allowing the procedure of surrogacy to the couple who do not have any medical conditions. In this regard, there is no nexus between the object and the provision of the act.

3. Thirdly, in section 2 (s) "intending woman" means an Indian woman who is a widow or divorcee between the age of 35 to 45 years and who intends to avail the surrogacy. This section is being done in the patriarchal view. Allowing the surrogacy to single woman alone who is either a divorcee or a widow is in no way an upliftment to the women and it could also be noted that there is no nexus between provisions of the act and the object of the act.

In *Joseph shine V. Union of India*⁴In 2017, Joseph Shine, an Indian citizen living in Italy, filed a petition in the public interest under Article 32 challenging the constitutional validity of Section 497 of the Indian Penal Code, 1860 (IPC), which dealt with the criminal offense of adultery, and Section 198(2) of the Code of Criminal Procedure 1973 (CrPC), which provided that no person other than the husband of a person accused of adultery would be deemed to be aggrieved by the commission of an offense under Section 497 or Section 498 of the IPC. The Supreme Court struck down Section 497 of the IPC on the grounds that it violated Articles 14, 15, and 21 of the Constitution. The five judges unanimously held that the law was archaic, arbitrary, and paternalistic and infringed upon a woman's autonomy, dignity, and privacy. In the surrogacy regulation act of 2021, there is an unreasonable classification that permits the procedure of surrogacy only for single women and denies the same opportunity to single men. In light of the case mentioned, it is being implied that there is discrimination based on gender stereotypes, which has contravened the non-discrimination under Section 15, which favors women over men, which is in no way an uplift to the women as it has been done in a patriarchal view.

4. Fourthly, in section 4(c) (I) an eligibility certificate for intending couple is issued separately by the appropriate authority on fulfilment of the following conditions, namely:— (I) the intending couple are married and between the age of 23 to 50 years in case of female and between 26 to 55 years in case of male on the day of certification. The object of the act being to protect the rights of the surrogate mother is

⁴ Joseph shine V. Union of India (2019) 3 SCC 39, AIR 2018 SC 4898

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not in nexus with this provision which makes strict restriction of surrogacy only to the couple who have been married at least for a period of 5 years. This section also puts a restriction for the old age couples.

5. Fifthly, in section 4(c)(II) the intending couple have not had any surviving child biologically or through adoption or through surrogacy earlier: Provided that nothing contained in this item shall affect the intending couple who have a child and who is mentally or physically challenged or suffers from life threatening disorder or fatal illness with no permanent cure and approved by the appropriate authority with due medical certificate from a District Medical Board. Here again, it could be noted that the object of the act and the provision is not in nexus with each other.

In *National Legal Services Authority v. Union of India*⁵, the court primarily recognized members of the marginalized transgender community as the third gender and observed that any kind of discrimination on the basis of their gender and sexual orientation affects one's equality before the law and equal protection of the laws, thereby violating Article 14 of the Indian Constitution.

In the Act, it could be noticed that the denial of same-sex partners and persons with non-binary gender identities from having children through surrogacy is a violation of Article 14 of the Indian Constitution.

The act also forbids singles and heterosexual cisgender couples who are in a live-in relationship, which means that they are living together but are not legally married, from having children through the procedure of surrogacy.

In *Anuj Garg & ors v. Hotel Association of India and Ors*⁶, it has been held that in terms of Article 14, the classification, when undertaken by the state, must be done on the ground of rational criteria, prescribing a strict test to unveil protective discrimination in state action of the legislation. Hence, the interference of the state must be clearly justified in principle and proportionate in measure, with the burden of proof being on the state.

The court opined that the court's task is to determine whether the measures furthered by the state in the form of legislative mandate to augment the legitimate aim of protecting the interests of women are proportionate to the other bulk of well-settled gender norms such as autonomy, equality of opportunity, right to privacy, et al."

⁵ National legal services authority v. union of India AIR 2014 SC 1863

⁶ Anuj Garg & Ors v. Hotel Association of India and others AIR 2008 SC 663, (2008) 3 SCC 1

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It could be noticed here that the act had been formulated in order to protect the interests of the vulnerable surrogate mothers. But however, the act failed to protect the interests of single men and the rights of the LGBTQ+ community, thereby clearly violating the right to privacy and the equality of opportunity to have children through the process of surrogacy.

The act primarily requires the intending couple to be married for a period of five years. The age requirement for surrogacy for females is 25 to 50 years, and for males, it is 26 to 55 years. This also means that newly married couples are being denied the opportunity to have children through the process of surrogacy. This act also denies the opportunity for the intending couple who have an existing child but are intending to have another child through surrogacy, as they are unable to have children on their own. In accordance with the present case, the mode of surrogacy is being denied to unmarried men, divorced men, widowed men, unmarried but still cohabiting heterosexual couples, and the LGBTQ+ community.

Violation of Article 21 of the Indian Constitution:

Article 21 states that “no person shall be deprived of his life or personal liberty except according to a procedure established by law.” Some of the rights that are included under the ambit of Article 21 of the Indian Constitution include the right to live with dignity, the right to livelihood, the right to life, the right to a decent environment, including pollution-free water and air, protection against hazardous industries, and others, among which the right to privacy is of major importance. It could be inferred that the surrogacy (regulation) act of 2021 has clearly violated Article 21 of the Indian Constitution.

In *Maneka Gandhi v. Union of India (1978)*⁷, the Supreme Court ruled that a procedure established by law under the ambit of Article 21 should be “fair, just, and reasonable, not fanciful, oppressive, or arbitrary," otherwise it will not be considered a procedure at all, and the condition of Article 21 will not be fulfilled. The restriction on the basis of gender towards single men and the LGBTQ+ community is not fair and reasonable and is oppressive and arbitrary in nature, as it is affecting one’s personal liberty, right to life, and right to privacy.

Denying the right to have children through the procedure of surrogacy to single and unmarried men, to the old age couple, and to the LGBTQ+ community is violating Article 21 in terms of

1. Right to life
2. Right to privacy

⁷ *Maneka Gandhi v. Union of India* 1978 SCR (2) 621

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Right to Life

The right to life, the right to privacy, and the right to life are being read within the purview of the right to motherhood and the right to reproduction.

The right to life is by far the most important fundamental right guaranteed in the Indian Constitution. As stated in the landmark judgment of *Francis Coralie Mullin v. The Administrator*⁸, it embodies a constitutional value of supreme importance in a democratic society. It is undeniable that right to life has every aspect of right to reproduction is inseparable from it and same is also inclusive of the right to motherhood.

In *Devika Biswas v. Union of India*⁹, it has been seen that the right to reproduction is described as an essential facet of the 'right to life' under Article 21. The right to reproduction includes the right to carry the baby to full term, give birth, and raise children. Thus, when the act restricts the surrogacy only to heterosexual couples, as well as allowing the same only to a specific age group and denying the same to the LGBTQ+ community, imposing restrictions on single women as they are required to be either divorcees or widows, single and unmarried men, and also older couples is a clear violation of Articles 21 and 14 of the Indian Constitution.

*Hema Vijay Menon v. State of Maharashtra*¹⁰ it has been held that right to life includes the right to motherhood. Thus, an individual's right of reproduction gets the constitutional protection. There is a wide scope included under the right to reproduction which includes the right to have children, right to contraception and the right to go for abortion.

In conclusion, the right to motherhood should also extend to members of the LGBTQ+ community.

Right To Privacy

Privacy is a fundamental human right provided for in numerous international treaties and conventions. It is important for protection of human dignity and is one of the essential pillars for a democratic nation. It supports one's own rights and others' rights as well.

⁸ Francis Coralie Mullin v. The Administrator 1981 AIR 746, 1981 SCR (2) 516

⁹ Devika Biswas v. Union of India AIR 2016 SC 4405, 2016 (4) RCR 461 (Civil), 2016 (8) SCALE 707, 2016 (10) SCC 726

¹⁰ Hema Vijay Menon v. state of Maharashtra 2015 (5) ABR 370, AIR 2015 Bom 231, 2015 LabIC 3470

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It has been held by the court in *Kharak Singh v. State of UP*¹¹ that the right to privacy is a part of right to protection of life and personal liberty. Here, the court had equated privacy to the personal liberty of an individual liberty.

In *Gobind v. State of M.P*¹² as well as in the case of *Kharak Singh v. State of U.P.*, it has been viewed that the right to privacy has been identified as a constitutionally protected right, which is a major right under Article 21 of the Indian Constitution. The decision of a parent to have a child through surrogacy is the right to reproductive autonomy, which could be viewed in terms of an individual's right to privacy, which is guaranteed under Article 21 of the Indian Constitution. It is an individual's right to privacy to have a child through surrogacy without any unwarranted governmental intrusion. Thereby, an individual's decision to bear or beget a child through surrogacy cannot be taken away by any law. Hence, an individual's right to commission surrogacy, to have a family, and to procreate is a personal decision that should not require any kind of governmental intervention.

In *Justice K.S. Puttaswamy & Anr. V. Union of India and Others*¹³, the Supreme Court has upheld an individual's right to privacy as intrinsic to Article 21, recognizing further that privacy is relatable to the constitutional right to make reproductive choices. Therefore, it is abundantly clear that the Constitution protects and safeguards reproductive choices as part of the individual's inalienable right to personal liberty. In this context, the austere eligibility criteria set out in the bill appear to encroach upon the private lives of both surrogates and intended parents and strip them of reproductive autonomy. The Supreme Court further held that "sexual orientation is an essential attribute of privacy, and any discrimination against an individual based on sexual orientation is deeply offensive to the dignity and self-worth of the individual." The Court had further propounded that protection of an individual's rights to privacy and sexual orientation lay at the heart of the fundamental rights guaranteed by Articles 14, 15, and 21 of the Constitution.

The Objective Behind Surrogacy Act, 2021

While one side of argument could be that the act is violative of Article 14 and 21 of the Indian constitution, there is also another side of understanding of the surrogacy act of 2021.

Article 14 of the Indian constitution reads as under,

¹¹ *Kharak Singh v. State of UP* [1964] 1 SCR 332, AIR 1963 SC 1295

¹² *Gobind v. State of M.P* AIR 1975 SC 1378, (1975) 2 SCC 148

¹³ *K.S. Puttaswamy & Anr. V. Union of India and Others* (2017) 10 SCC 1, AIR 2017 SC 4161

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“Equality before law: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.”

It has to be noted that the society has different classes of people and nature also differs in every society. Hence, the varying needs of the classes of people require different treatments. A legislature is entitled to make a reasonable classification for purpose of legislation and treat all in one class on an equal footing. There should be equality of treatment under equal circumstances. Article 14 does not mean that all laws must be general in character or that the same laws should apply to all persons or that every law must have universal application. This is because all persons are not, by nature placed in the same positions. Based on this, it could be understood that the state can treat different persons indifferently if the circumstances justify such treatment.

In state of *West Bengal v. Anwar Ali Sarkar*¹⁴, it has been stated that to pass the permissible classification two conditions must be fulfilled:

1. The classification must be founded on an intelligible differentia which distinguishes those that are grouped from others are left out of the group.
2. The difference must have a rational relation to the object sought to be achieved by the Act.

As per Surrogacy Regulation Act of 2021, there has been a necessary differentiation made on 2 broad aspects:

1. In section 2(h) “couple” means the legally married Indian man and woman above the age of 21 years and 18 years respectively. The act restricts the surrogacy only to the heterosexual couple and does not allow the same to the homosexual couples. The reasoning behind the same being the non-recognition of the same sex marriage in India. It has to be noted that the reason for the non-recognition of the same sex marriage being the lack of identity as the family unit and the sudden recognition of the same sex marriage under the special marriage act would only cause havoc as it recognizes only the marriage between the men and women as the legitimate marriage. There is no recognition of the same sex marriage on the grounds of non-acceptance of same sex marriages either in personal laws or the codified statutory laws.

¹⁴ *West Bengal v. Anwar Ali Sarkar* (1952) SCR 284

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In *Dr. Kavita Arora and Anr. V. Union of India and Anr*¹⁵, a couple was seeking registration of their marriage under the Special Marriage Act, 1954 after a government official denied solemnizing their marriage due to their sexual orientation. The homosexual couples cannot claim a fundamental right to same sex partners is not equivalent to the Indian family unit notion of a husband, wife and children. The centre had also contended that registering the homosexual couples' marriages would also violate the existing personal and codified legal rules.

In *Abhijeet Iyer Mitra v. Union of India*¹⁶, the legal validity of same-sex marriage in India was brought to light. The Centre argued that the decriminalization of Section 377 does not necessarily grant same-sex couples the right to marry. Decriminalization of consensual homosexual intercourse is intended to provide same-sex couples with the right to lead a dignified life and companionship as long as such a companionship does not violate others' fundamental rights in society and is consensual. The ruling was to allow the right to privacy in a private domain to individuals and not to constitute a public right and legalize a certain form of human conduct in society by granting recognition to same-sex marriages. Furthermore, the Centre also stated that there is no acceptance of homosexual marriages or the union of same-sex couples either in the personal laws or the codified statutory laws. And since a society like India was majorly dependent on personal laws, societal and moral values to decide on matters relating to marriage, divorce, adoption, etc. legalizing same-sex marriage would result in legal ramifications and violate the existing personal and codified laws that consider marriage to be a union of a man and woman with the purpose to procreate which biologically would not be possible in same-sex marriages. It would also violate the sanctity associated with the institution of marriage in the society due to which the Government disapproved of granting legal sanction to same-sex marriages in the country.

It is to be understood that the concept of marriage is being associated with several other aspects such as divorce, inheritance, custody and etc. When not even a legally recognized marriage between the members of the LGBTQ+ community are recognized, child's rights would also be affected mainly with regard to the custody of the child. It is to be understood that for the Surrogacy Regulation 2021 to permit the procedure of surrogacy to the LGBTQ+ community, there must be a legal recognition of the same sex marriages. Due to the reason of non-recognition of the marriage of the LGBTQ+ community, there has been an essential requirement for the classification of the heterogenous and the homosexual couple under the Surrogacy Regulation Act 2021. It is to also be noted that such differentia is also in relation to the object of the act, which is to protect the rights of the surrogate mothers and as well as matters connected

¹⁵Dr. Kavita Arora and Anr. V. Union of India and Anr [AIR 2018 SC. 1676]

¹⁶ Abhijeet Iyer Mitra v. Union of India W.P. (C) 6371/2020

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therewith and incidental thereto. The obvious matters that are being connected with the surrogacy is the child born out through the process of surrogacy and the rights of the child.

2. In section 2 (s) “intending woman” means an Indian woman who is a widow or divorcee between the age of 35 to 45 years and who intends to avail the surrogacy.

The Surrogacy Regulation Act, 2021 permits only the single women and not men to have children through the procedure of the surrogacy. Hence there is a classification between the single men and the women under section 2(s). This forms as a basis for the classification based on the intelligible differentia. The basic presumption behind the exclusion of the single men from surrogacy is to protect the female children from the sexual exploitation.

Under the Indian constitution, these are the following rules that are followed with regard to the adoption by single men:

1. The refusal to permit single men to have surrogacy could be supported in terms of adoption. Under Section 11(iii) of the Hindu Adoption and Maintenance Act 1956, if a single man wants to adopt a girl child, then he should be a minimum of 21 years older than the adoptive daughter. The reasoning that has been given behind the same is to prevent sexual exploitation of the girl child.
2. Under the Juvenile Justice Act, single men are not allowed to adopt a female child.
3. Under the Central Adoption Resource Agency (CARA) Guideline, in 2015 guidelines issued by the Ministry of Women and Child Development, the single men are eligible to adopt a female child.

The basic presumption behind the exclusion of single men from adoption is to protect female children from sexual exploitation by the adoptive father. Under the adoption, at least the gender of the child could be identified before the adoption is done. It could be implied that the identification of the gender of the child is not possible before the child is born, as it is restricted under Section 38(1)(g) of the Act, which states that “conduct sex selection in any form for surrogacy” shall be an offense punishable with imprisonment for a term that may extend to ten years along with a fine that may extend to ten lakh rupees. In this way, it is being understood that there exists a nexus between the object intended under the act and its overall provisions.

ARTICLE 21:

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Article 21 states No person shall be deprived of his life or personal liberty except according to a procedure established by law.

In the case *A.K Gopalan V. Union Of India*¹⁷ the Supreme Court defined the procedure established by law under Article 21 as merely following the procedure mentioned in the statute and nothing more. As a result, a person's 'life' or 'personal liberty' might be taken away if a law has been passed as per the procedure.

The right to privacy is not an absolute right, and it is subjected to reasonable restrictions. Thereby, it is a right that can be violated with due procedure established by law, and such procedure must be just and reasonable and not arbitrary, fanciful, or oppressive. It cannot be denied that the right to privacy is an integral part of the right to personal liberty. But however, the non-recognition of the marriage due to the reasons of no acceptance of homosexual marriages or the union of same-sex couples either in the personal laws or the codified statutory laws, etc., and prevention of the sexual exploitation of the female child born out of the surrogacy by the single men is being done with the intention of the greater good of the public.

While on one side it could be argued that the actions that have been taken by the state violated one's right to privacy, but it cannot be disregarded that such actions were taken in the presence of valid personal laws and codified statutory laws and keeping in mind the greater interest of the public, especially in terms of protecting the female children from sexual exploitation and to protect the rights of the children born out of surrogacy.

It also observed in the case *Justice K.S.Puttuswamy v. Union of India*¹⁸, "none of the legal rights may be absolute, and therefore, the fundamental right to privacy cannot be absolute and is subject to certain limitations depending upon the nature of the right." Thus, any violation of the right to privacy done in the context of protecting the rights of children born out of surrogacy and protecting female children from sexual exploitation is just, fair, and not arbitrary, fanciful, or oppressive in nature.

In *Javed v. State of Haryana*¹⁹, the constitutional validity of the Haryana Panchayati Raj Act, 1994, was being challenged as the act had prohibited anyone with more than two children from holding certain offices in the Panchayati Raj system in Haryana. The act was being questioned on the grounds of affecting the fundamental right to personal life and personal liberty. The court held the law to be constitutionally valid. The court found out that the law was not arbitrary as the groups who have two

¹⁷ A.K Gopalan v. Union of India AIR 1950 SC 27; 1950 SCR 88; (1950) 51 Cri LJ 1383

¹⁸ K.S.Puttuswamy v. Union of India Writ Petition (Civil) No 494 of 2012; (2017) 10 SCC 1; AIR 2017 SC 4161

¹⁹ Javed v. State of Haryana Writ petition (civil) 302

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children or who have more than two living children are well-defined in the act, and the classification is done on the basis of intelligible differentia as per the objective of the act (i.e., to promote the family planning program). The court observed that contesting an election is not a fundamental right but rather a statutory right, and therefore restrictions can be imposed on such types of rights by statute. The court also emphasized that controlling the population was very necessary in order to fulfill the dream of sustainable development in the country. In this case, it can be understood that there is a classification done on the basis of the intelligible differentia of the homosexual and the heterosexual couple due to the non-recognition of marriage and between single men and single men.

In *Dobbs v. Jackson Women's Health Organization*²⁰, the supreme court reversed *Roe v. Wade*²¹ and *Planned Parenthood of Southern Pennsylvania v. Casey*²², the decisions that originally asserted the fundamental right to an abortion prior to the viability of the fetus. The state appellant in *Dobbs v. Jackson Women's Health Organization*, claimed that laws banning pre-viability abortion are not necessarily unconstitutional. States may "prohibit elective abortions before viability," the state argued, "because nothing in constitutional text, structure, history, or tradition supports a right to abortion."

Latest Amendment:

MoHFW notifies the Surrogacy (Regulation) Amendment Rules, 2024, allowing one donor gamete in certain circumstances.

The Ministry of Health and Family Welfare has issued revised Surrogacy (Regulation) Amendment Rules for 2024, introducing a provision permitting the use of one donor gamete under specific circumstances. Previously, surrogacy required both gametes to come from the intending couple, with no allowance for donor gametes. With the amendment, if the District Medical Board confirms that one member of the intending couple has a medical condition, one donor gamete may be used. However, it remains mandatory for the child to be born with at least one gamete from the intending couple.

Conclusion:

The Surrogacy (Regulation) Act of 2021, though well-intentioned in its aim to protect surrogate mothers and uphold ethical practices, imposes overly restrictive and discriminatory criteria that infringe upon constitutional rights. By excluding single men, LGBTQ+ individuals, and people from specific age

²⁰*Dobbs v. Jackson Women's Health Organization* No. 19-1392, 597 U.S. ____ (2022)

²¹*Roe v. Wade* 410 U.S. 113 (1973)

²²*Planned Parenthood of Southern Pennsylvania v. Casey* 505 U.S. 833 (1992)

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groups from accessing surrogacy options, the Act fails to align with its core objectives and inadvertently perpetuates inequality.



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