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SURROGACY & TRADEMARK - CAN A SURROGATE AGENCY BRAND A CHILD'S BIRTH STORY?

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ABSTRACT

The Surrogacy (Regulation) Act, 2021 aimed to curb commercial surrogacy in India and curb unethical practices that involve women's reproductive labour. The current provisions underline the modification of the reproductive arrangement towards an organized altruistic approach, along with the Assisted Reproductive Technology (Regulation) Act, 2021. In practice, though, despite this statutory prohibition on direct commercialisation, intermediaries and fertility clinics are avoiding direct commercialisation and, instead, are engaging in indirect commercialisation, using testimonial advertising, emotional narratives of “parenthood journey”, and digital fertility branding. These practices create a commercial value, without any formal contravention of the ban on Commercial Surrogacy.

This paper puts forward the argument that the current regulatory framework is concerned with medical procedures, institutional registration and has neglected to provide regulation over the commercial use of reproductive stories and identity. The paper focuses on how to understand the emergence of the grey area surrounding the regulatory process of fertility with the help of intended-parent testimonials, surrogate experiences and child related narratives for commercialization. It also claims that since there are no explicit guidelines on consent, privacy and informational use, it makes the prohibition on commercial surrogacy less effective in achieving the legislative objective.

INTRODUCTION

In the early 2000s, commercial surrogacy became a booming business in India because of affordable medical procedures and limited regulation. Intermediary agencies and fertility clinics increasingly provided reproductive services through packages and aimed at advertising to patients. The Surrogacy (Regulation) Act, 2021 was accompanied by the Assisted Reproductive Technology (Regulation) Act, 2021 to regulate the ART services and institutions and clinics.

Commercial surrogacy has been banned, but fertility promotion has not been eradicated. Using marketing content such as, especially “success stories,” intended-parent testimonials, emotionally-charged narratives of fertility, and reproductive “branding” through digital platforms, clinics turn to such reinforcements and appeals in order to bring in potential clients. These narratives do not function as ordinary advertisements, but they generate a commercial legitimization and consumer confidence by establishing an emotionally charged narrative. In such instances, even if there are limited methods of direct payments, reproductive experiences still produce commercial value.¹

This paper seeks to explore whether fertility branding and narrative-based promotion are harmful for the intent behind banning commercial surrogacy in India by the legislators. It suggests that the statutory regime governing medical procedures and the licensing of institutions is lacking with respect to the use of reproductive identity as a source of information, as well as for commercial reasons. The paper, particularly, offers a focus on the interplay between the Surrogacy (Regulation) Act, 2021,² the Assisted Reproductive Technology (Regulation) Act, 2021, and the issues of intellectual property and privacy relating to reproductive branding practices. This discussion is not meant to attempt to look at any constitutional or comparative discussion of surrogacy as a whole but is restricted to the commercial side of the debate.³

THE REGULATORY OBJECTIVE OF THE SURROGACY ACT AND ART ACT

A. Surrogacy (Regulation) Act, 2021

India’s shift from a relatively liberal reproductive market to a strict statutory framework based on altruistic surrogacy is evident in The Surrogacy (Regulation) Act, 2021. The law has been passed to primarily guard against exploitation and commercialisation in reproduction practices. Section 2(1)(b) defines altruistic surrogacy as surrogacy that involves no compensation or benefits for the surrogate mother other than approved financial support.⁴ While commercial surrogacy involves payments or benefits other than approved financial support.⁵

The underlying purpose of the Act is to prevent reproductive labour from becoming market-

¹ Baby Manji Yamada v. Union of India, (2008) 13 S.C.C. 518.

² Surrogacy (Regulation) Act, 2021, No. 47 of 2021, Sec. 4(ii), India Code (2021).

³ Assisted Reproductive Technology (Regulation) Act, 2021, No. 42 of 2021, India Code (2021).

⁴ Surrogacy (Regulation) Act Sec. 2(1)(b).

⁵ Id. Sec. 2(1)(g).

driven. The statute thus bans commercial surrogacy and makes certain commercial activities involving fertility intermediaries.⁶ It also lays down conditions for registration of surrogacy clinics and eligibility requirements for surrogate mothers and the institutions must be supervised.⁷

In general, though, law-makers have taken a narrow view of direct commercial arrangements, and most of the law concentrates on procedural and medical control. It fails to look at indirect commercialisation of fertility, such as through emotional adverts, narrative promotion or fertility branding. This allows commercial value to continue without explicit violation of statutory prohibitions on commercial surrogacy.

B. Assisted Reproductive Technology (Regulation) Act, 2021

The Assisted Reproductive Technology (Regulation) Act, 2021 is a complementary legislation and it regulates fertility institutions, fertility banks and assisted reproductive technologies. The Act requires registration of reproductive institutions, and the establishment of National and State Boards for supervision and oversight.⁸ The main goal of the Act is not prohibition, but institutional regulation. To enhance accountability and standardization in a reproductive medical care system and also, to prevent unethical practices. The Act also limits misleading advertisements of fertility clinics.⁹ Despite the law, however, there's no clear plan in place for the advertising of testimonials, fertility branding or digital reproductive storytelling. Clinics continue to retain significant flexibility when it comes to commercializing reproductive success stories and emotionally charged experiences of parenthood.

C. Regulatory Gap

The essence of both Surrogacy (Regulation) Act, 2021 and Assisted Reproductive Technology (Regulation) Act, 2021 is medical procedures, institutional registration and formal surrogacy agreements. There are no laws in place that regulate the commercial use of surrogate identity, child-related narratives, digital storytelling or fertility branding practices to a great extent. This leaves an important gap in regulation. Commercial surrogacy is banned but fertility institutions may still use emotional promotional activities to commercialize their reproductive activities. The current system also lacks clarity in terms of consent, confidentiality and control over reproductive experiences that are represented and are part of commercial goods.

⁶ Id. Sec. 35–38.

⁷ Id. Sec. 4–14.

⁸ Assisted Reproductive Technology (Regulation) Act Sec. 3–22.

⁹ Id. Sec. 26.

As a result, the regulatory framework remains largely procedural, instead of an informational one. While the legislation deals with the nature of these reproductive arrangements, it does not provide adequate protection for the continuation of such "enjoyments" as commercialised "branding" in the fertility industry.

INDIRECT COMMERCIALISATION THROUGH REPRODUCTIVE BRANDING

The Surrogacy (Regulation) Act, 2021 was intended to remove profit-driven reproductive arrangements and to curb the presence of numerous reproductive intermediaries in reproductive services.¹⁰ However, the law merely prohibits direct commercial surrogacy arrangements, does not inhibit fertility institutions to create commercial value from the surrogacy by other marketing activities and forms,¹¹ and numerous reproductive intermediaries have been increasingly attracted to promoting themselves through narrative-based marketing.

An obvious evolution since the ban on commercial surrogacy has been the widespread use of "success stories", "parenthood testimonials" and curated fertility stories by clinics to gain credibility and secure prospective clients.¹² These ad campaigns work differently than the typical commercial advertising because it operates on emotional legitimacy and the personal narrative. Intended-parent experiences are tools that can build trust within the marketplace and further engage consumers and boost clinic reputation.

Even if there is no clear and open offering of surrogacy compensation, these stories still have commercial value. Storytelling around fertility is therefore a branding tool, as a reproductive market exists, and consumers' decision to choose will be influenced by both their reputation and emotional assurance.¹³ Business isn't just in the medical act, but in promoting reproductive identity and emotions.

Digital reproductive branding is often more than simply standard institutional branding. Photos, treatment stories, emotional videos and intended-parent testimonials proliferate on social media, clinic websites, and other commercial visibility campaigns touted by fertility

¹⁰ Surrogacy (Regulation) Act, 2021, No. 47 of 2021, Sec. 4(ii), India Code (2021).

¹¹ Id. Sec. 35–38.

¹² Assisted Reproductive Technology (Regulation) Act, 2021, No. 42 of 2021, Sec. 26, India Code (2021).

¹³ See generally Law Commission of India, Report No. 228, Need for Legislation to Regulate Assisted Reproductive Technology Clinics as well as Rights and Obligations of Parties to a Surrogacy (2009).

consultants, all while providing information and inspiration.¹⁴ The role of awareness creation in communication and commercial reproductive promotion is then ever further blurred. The move from “product-oriented” promotion to “brand-oriented” promotion also is an adaptation to regulatory constraints. In many ways, pre- and post-legal ban on commercial surrogacy, the fertility markets shifted into less visible types of commercialisation, such as package-based arrangements, and/or intermediary compensation.¹⁵ Now, commercial gains are the target of the clinics for the reason of narrative legitimacy and emotional connection instead of direct surrogacy transactions.

This is an issue greater when reproductive branding employs surrogate experiences or child-related identity. Often, fertility promotion is dependent on very intimate information, like narratives of pregnancy, difficulties and parenthood. Identifiable photos, and events at birth, become part of long-term digital promotion in some cases resulting in ethical and legal issues about dignity, privacy and informational autonomy.¹⁶ While the Surrogacy (Regulation) Act, 2021 does seek to prevent commercialisation of reproductive labour, indirect branding practices may continue to have a negative impact on this intent.¹⁷ The commercialisation is then not on the body, but on the story of reproduction. Emotional reproductive identity can elicit institutional reputation, market visibility and consumer trust in the fertility industry.

There are also problems with consent and informational control, due to the lack of clear legal standards. The current laws are also inadequate when it comes to whether it is the surrogates or the intended parents or the children that retain ongoing control over promotion of reproductive stories and identity issues in the future, nor on how long the images or promotional materials circulate online or whether they are the primary or secondary market.¹⁸

Therefore, the ban on commercial surrogacy does not completely stop commercialisation in the fertility market, as can be seen by indirect reproductive branding. Instead, commercial value can increasingly be obtained in the form of an emotional narrative, the visibility of testimonials and a story-laden institutional branding. Currently, the legal regime regulates procedures linked to reproductive regulation, but does not adequately address the commercialization of

¹⁴ Id. at 20–24.

¹⁵ *Baby Manji Yamada v. Union of India*, (2008) 13 S.C.C. 518.

¹⁶ *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 S.C.C. 1.

¹⁷ Surrogacy (Regulation) Act Sec. 2(1)(g).

¹⁸ *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 S.C.C. 1.

reproductive identity and digital fertility narratives.

IPR, PRIVACY, AND REPRODUCTIVE IDENTITY

The rise of reproductive narratives in the context of promoting fertility prompts a significant overlap of concerns on reproductive regulation, privacy, and IP. While Indian legislation is trying to prohibit commercial surrogacy, it does not significantly affect the use of reproductions as an instrument of brand in the fertility industry.¹⁹ This means that the reproductive experience grows into a commercial instrument of brand in the fertility industry. Marketing is a common method used by fertility clinics to stand out in a quickly growing reproductive market by using commercially recognised branding methods. These parenthood affirmations, 'success journey' campaigns, and emotionally charged fertility stories play a big part in the institutional brand and convincing consumers of the trustworthiness of the clinic.²⁰ They can be described as being very similar to normal commercial promotion but in relation to very personal information and experience in reproduction which relates to identity as well.

The problem gets legal interest, however, when reproductive stories become the subject to commercial interests without aligning easily to the intellectual property legal classifications. The birth-story of a child, or any "surrogate" birth-story cannot be exercised as traditional IP. But the concern is not merely the narrative, it is commerce of the reproductive identity and reproductive emotion.²¹

In this regard the indirect involvement of trademark law is evident: with the growing prevalence of fertility branding, the establishment and protection of reputation are key elements. Emotionally stirring examples or appeals that build trust and institutionally create a stronger identity of the organization's goodwill through repeated use, and commercial recognition through advertising.²²

In the absence of an explicit prohibition on surrogacy payments, then, reproductive experiences become a component of larger commercial strategies to establish identity. The existing legislation is inadequate in dealing with these concerns. Current laws do not contain any

¹⁹ Surrogacy (Regulation) Act, 2021, No. 47 of 2021, India Code (2021).

²⁰ Assisted Reproductive Technology (Regulation) Act, 2021, No. 42 of 2021, Sec. 26, India Code (2021).

²¹ See generally Law Commission of India, Report No. 228, Need for Legislation to Regulate Assisted Reproductive Technology Clinics as well as Rights and Obligations of Parties to a Surrogacy (2009).

²² Trade Marks Act, 1999, No. 47 of 1999, India Code (1999).

specific requirements addressing the promotion of reproductive experiences, photographs or stories about children.²³

The reproductive branding characteristic of privacy is just as significant. The inherent aspects of decisional and bodily privacy involve choice of reproduction and medical information, which was recognised by the Supreme Court in Justice K.S. Puttaswamy v. Union of India as a constitutionally protected right of every individual.²⁴ Fertility stories often share very personal statistics and details about fail to conceive, pregnancy, reproductive interventions, and family life. There are consequently constitutional issues to consider when using such material for commercial purposes, as now considered, in relation to dignity and informational control.

It becomes more complicated when child identity is involved. Digital reproductive promotion may include photographs, birth announcements, or identifiable personal narratives concerning children born through ART or surrogacy arrangements.²⁵ Children are incapable of rationally consenting to commercial circulation of information related to their identity for longer periods of time, as is their case with adults. However, existing laws lack tight regulations to govern future use of child reproduction narratives in fertility advertisements.

But even the current system suffers from a lack of adequate consent control. The law does not explicitly explain how much or how long allowed commercial use is. Participation in testimonial or promotional activity may formally appear voluntary, but may operate under implicit pressure. In practice, those most emotionally charged to participate in certain fertility procedures might permit it to be advertised without realising what the informational implications will be in the future as this information passes between the clinics and intermediaries.²⁶ Those with a high emotional commitment to such fertility procedures, might be involved without understanding the informational implications of such promotional use in the future as it circulates between the clinics and intermediates.

The above concerns illustrate how reproductive commercialisation is not limited to cash transactions. Even in jurisdictions that ban the traditional type of commercial surrogacy, the contribution of reproductive identity and emotional stories is still creating value for the

²³ Surrogacy (Regulation) Act Sec. 4–14; Assisted Reproductive Technology (Regulation) Act Sec. 15–22.

²⁴ Justice K.S. Puttaswamy v. Union of India, (2017) 10 S.C.C. 1.

²⁵ Suchita Srivastava v. Chandigarh Administration, (2009) 9 S.C.C. 1.

²⁶ Id.

reproductive market - via branding and digital marketing. The current system of rules and regulations focuses on reproductive procedures and lacks adequate regulation of the commercial utilization of reproductive information and identity.

NEED FOR A LIMITED REGULATORY FRAMEWORK

The current reproductive regulatory regime in India has been founded on medical supervision, institutional registration and commercial reproductive branding and information exploitation remains a matter of doubt. As a digital age narrative emphasizing emotion and branding, neither Act explicitly elucidates how reproductive narratives and information about reproduction and identity can be monetized by the fertility institution or the intermediaries.²⁷

It may not be necessary to undertake a full-fledged overhaul of the Indian surrogacy law to resolve these concerns. Rather it would be more useful and coherent with the present statutory structure to have a limited and targeted regulatory basis, specific to the use of reproductive narratives in promotion. It should not be as if all communication and awareness creation about fertility were banned, but how the fertility identity and sensitive messages are used commercially should be regulated. It is a key reform to require fertility clinics and ART institutions to secure specific written permission prior to publishing photos, videos, parenthood narratives, surrogate narratives, and/or treatment narratives through the use of commercial advertising or promotion.²⁸ This should be separate to medical consent forms and clearly worded outlining the extent and duration of the promotional use. The existing regulation does not clearly differentiate between consent to medical treatment and commercial visibility. These differences matter because those who are involved in the fertility process often feel helpless and may not fully understand the implications of digital promotion circulation on a long-term basis.²⁹

Withdrawal of consent for future promotion of reproductive narratives should be guaranteed in the law as well. Currently, there is no legislation or guidance governing the removal or discontinuation of published promotional content.³⁰ With this rise of social media circulation and archiving of these disruptive narratives, reproductive narratives may remain publicly

²⁷ Surrogacy (Regulation) Act, 2021, No. 47 of 2021, India Code (2021); Assisted Reproductive Technology (Regulation) Act, 2021, No. 42 of 2021, India Code (2021).

²⁸ Assisted Reproductive Technology (Regulation) Act Sec. 26.

²⁹ Suchita Srivastava v. Chandigarh Administration, (2009) 9 S.C.C. 1.

³⁰ Justice K.S. Puttaswamy v. Union of India, (2017) 10 S.C.C. 1.

accessible for long periods after publication. Persons should therefore be able to withdraw their consent for the promotion after a reasonable time. Especially in cases of children born using ART or surrogacy, there should be additional safeguards. Children are unable to make meaningful consent when the reproductive imagery of their bodies or their names is used in fertility promotion, whereas the critical issue of consent is more complicated when adults are participating in these practices.³¹ The issue of consent is more complicated quite generally when adults are involved in fertility promotion practices, but for children it is even more complicated. Without protection, this highly-personalised story of birth can be taken up and permanently integrated in the commercial digital domain before the child has achieved other forms of autonomy.

This is why the law should be more restrictive when it comes to the use of identifiable material relating to children in relation to the promotion of fertility. It is important that identifiable photographs or anecdotes of children and/or their personal history are not used in commercial advertising by clinics and reproductive intermediaries, with the exception of limited anonymised markings of successful reproductive outcomes.³² This restriction would continue the trend in the legislation to curb commodification with respect to reproductive arrangements. There is a need for increased institutional regulation with regards to fertility advertising. Presently, the Assisted Reproductive Technology (Regulation) Act, 2021, sets only limited restrictions that are included in the context of misleading advertisements and does not set out any requirements on the emotional branding / testimonial marketing of fertility services.³³ The fertility institutions are therefore still working in a relatively less regulated promotional space. National and State ART Boards, therefore, must be given the authority to create advertising guidelines that are exclusive to the promotion of digital reproductive materials, the use of testimonials and marketing practices related to identity.

These regulations must distinguish between awareness and information, reproductive awareness and commercial exploitation. Discussions of fertility procedures and medical services should be allowed, as long as they are of a general educational nature. But narratives of emotions, of highly personal reproductive experience, or of children-related identity for market visibility, in the form of emotional manipulation campaigns, should be targeted more

³¹ Assisted Reproductive Technology (Regulation) Act Sec. 26.

³² Id.

³³ Justice K.S. Puttaswamy, (2017) 10 S.C.C. at 497.

sharply. This kind of regulation would neither bar all communication around fertility, nor would it restrict any commercialisation based on indirect emotional use, but rather would specify a threshold below which this form of commercialisation should not occur. The other changes that should be noted are the anonymisation obligations for reproductive promotion pieces. This would better ensure informational privacy whilst allowing for an educational communication in respect of reproductive procedures where there is clear and ongoing consent.³⁴ Anonymisation principles will also continue being consistent with the constitutional privacy principles expounded in *Justice K.S. Puttaswamy v. Union of India*.³⁵

Importantly, these reforms should be limited in scope and narrowly targeted. Rigid limits can have unexpected side effects for partnering with patients in a way that is reproductive and medically helpful. Thus, the aim is not to criminalise all reproductive promotion but to deter commercial reproductive exploitation not reflective of the legislative intent that led to the ban on commercial surrogacy in India. Currently the law largely captures a stance of legislators that do not wish to see the commercialisation of reproductive labour, although commercialisation is becoming more indirect in storytelling branding and emotional commercialising of the fertility.³⁶ Insensitive informational protection can allow reproductive experiences to persist as 'commercial productive assets' despite the intent of the laws.

A limited regulatory framework, instead, with limited duty on the subject of consent, privacy, the protection of children, and the accountabilities of promoters would strengthen the existing legislative provisions without a need to reconstruct the legislation in this field. This would be in tandem with the goal of anti-commercialisation of ARTs and surrogacy embedded in the current regulation of surrogacy and ARTs in India.

Another issue in the existing regulatory landscape is the increasing influence of digital platforms on reproductive markets. However, like any treatment, the word of mouth effect of fertility promotion is no longer limited to the clinic websites and formal advertising. Services that heighten the emotional message of the fertility company, but do not obviously dovetail commercial marketing, are increasingly becoming informal reproductive marketing spaces, such as social media, collaboration with influencers, online parenting forums and video-based

³⁴ Id.

³⁵ *Justice K.S. Puttaswamy*, (2017) 10 S.C.C. at 497.

³⁶ Surrogacy (Regulation) Act sec 2(1)(g).

testimonial campaigns.³⁷ Thus, the visibility of commercial reproduction frequently operates in an obscure, nuanced way other than advertising. The way this turn is also important because the digital reproductive branding has a long-term and growing nature. The informational consequences go beyond immediate promotion, however, since pregnancy stories and photographs, or narratives about children, can be reposted, algorithmically circulated, and secondarily shared online.³⁸ The experience of reproduction capable of recognising surrogate mother, intended parents or children can persist long after the reproduction has ceased once it has finished.

The regulatory business as it stands as of today is unsuccessful at tackling this digital permanence. Implied obligations do not exist in either the Surrogacy (Regulation) Act, 2021 nor Assisted Reproductive Technology (Regulation) Act, 2021 to facilitate delete access to the record and to delete access to reproductive promotional content, once that content is created.³⁹ When deciding to either incorporate or exclude data and information on reproduction, it is important to realize that the latter is one of the most sensitive areas of information or personal data. Commercialisation of such information without meaningful ongoing control can transform deeply private experiences into marketable digital content.⁴⁰

This subject is also related to the general problem of information asymmetries in reproductive services. Intended parents or participants in surrogate pregnancy or fertility clinics often lack the institutional, legal, and technological expertise of these institutions and intermediaries to the extent that they agree for the clinic to promote their participation.⁴¹ Advice such agreements may be given by intended parents/surrogate participant without a full understanding of the practical use of digital circulation. Emotional fragility relating to issues of infertility and uncertainty over parenthood adds to the compromising of such consent.

The other challenge is to decipher those messages from merely awareness generating and those that are being used to emotionally market through the commercial prism. Fertility clinics can lawfully convey educational information related to medical success chances, ART methods and

³⁷ Assisted Reproductive Technology (Regulation) Act, 2021, No. 42 of 2021, Sec. 26, India Code (2021).

³⁸ Justice K.S. Puttaswamy v. Union of India, (2017) 10 S.C.C. 1.

³⁹ Surrogacy (Regulation) Act, 2021, No. 47 of 2021, India Code (2021).

⁴⁰ Suchita Srivastava v. Chandigarh Administration, (2009) 9 S.C.C. 1.

⁴¹ Law Commission of India, Report No. 228, Need for Legislation to Regulate Assisted Reproductive Technology Clinics as well as Rights and Obligations of Parties to a Surrogacy 20–24 (2009).

do the best to treat infertility. But when a promotion is too based on emotional appeals, recognisable potential reproductive stories, or campaigns of child branding, it moves less and less into the realm of normal medical awareness and more and more into the conversation of indirect promotion.⁴² The existing law does not currently offer a viable rule to assess this boundary.

Ethical advertising principles which are relevant to a reproductive institution might then be a part of a narrowly drawn regulatory structure.⁴³ Information is also needed regarding commercial partnerships and promotional arrangements to which fertility hospitals are tied to any fertilisation marketing campaign and regulation authorities could require fertility clinics to be transparent on this subject. More important, robust informational protection measures would not harm reproductive autonomy or proper fertility awareness. Instead, it would make sure reproductive experiences are not made into a commercial commodity which is not the spirit of Indian surrogacy law, which aims at eliminating commercial transactions. If there are no protection, the ban on commercial surrogacy may careen into limbo while the arms of indirect reproductive commodification keep spinning in the form of digital branding and emotional-to-the-max marketing with the story.

CONCLUSION

To combat the exploitation and commercialisation aspect of reproductive arrangements, the Surrogacy (Regulation) Act, 2021 and the Assisted Reproductive Technology (Regulation) Act, 2021 were introduced. These acts were not only legislation meant to manage medical practices, but also to discourage converting reproductive labour into a market-based process that brings financial profit. The present regime tries to encourage a regulated and ethically supervised fertility system by banning commercial surrogacy and regulating institutions that provide such services.

Nevertheless, direct reproductive commercialisation is not possible by law, but indirect commercialisation in the form of 'fertility branding', testimonial marketing' or 'emotional narratives' persist. Increasingly, the fertility clinic and its intermediaries make use of 'success stories of becoming parents, Parenthood testimonies, digital storytelling and emotionally

⁴² Assisted Reproductive Technology (Regulation) Act sec. 26.

⁴³ Justice K.S. Puttaswamy, (2017) 10 S.C.C. at 497.

persuasive branding strategies to win prospective parents for their services, or to consolidate their institutional image. Such practices do not necessarily breach the text-based prohibition as is apparent in the Surrogacy (Regulation) Act, 2021, but are rather responsible for generating commercial value from reproductive experiences and identities. The current regulatory system still has medical emphasis, a focus on institutional registration and a supervision focus. It doesn't meaningfully control use of reproductive narratives, identity of the child, fake experiences, or virtual fertility promotion on the commercial market. Consequently, reproductive experiences are becoming more and more valuable commercially as a certificate of branding in the fertility industry. It'll move from the position of direct deals towards emotional stories and message-driven selling via digital visibility and institutional goodwill, and the commercialisation will adhere to this new game plan.

The paper also shows that this problem is not just an issue of advertising, but also informational privacy, consent, and identity protection. Reproductive discourses usually include highly sensitive data when it comes to fertility and pregnancy, surgeries, relationships with parents and siblings, relationships with others, and so on. Circulating such material in a commercial way is equivalent to raising significant issues about dignity, informational autonomy, and the length of time such material is exposed in the digital realm. Concern becomes more serious when children born as a result of ART or surrogacy arrangements are concerned, as the existing laws fall short on regulating future use of child-related narratives or identifiable promotional material. A further point of great concern is the lack of a clear legal framework for the "promotional" consent. Legislation to cover the circulation, withdrawal and scope and length of reproductive narratives currently used for fertility promotion is currently not comprehensive. People who undergo reproductive processes can express their consent for promotion without being aware of all the long-term ramifications and commercial availability of the dissemination of those images electronically. This way the anti commercialisation goal of India's current surrogacy laws would be defeated.

The paper argues in favor of a limited and targeted regulatory regime for this reason; Informed consent norms, limits on commercial use of child identity, anonymisation commitments and better control of testimonial advertising and digital fertility branding are all areas that should be regulated. The goal must not be to eliminate communication and/or educational awareness about fertility, but to stop its commercial use of reproductive identity and emotionally sensitive stories. To truly be effective, the ban on commercial surrogacy should not allow indirect

promotional practices that sustain the generation of commercial value of a reproductive experience. While the current legal system is effective in regulating formal reproductive procedures, it does not adequately deal with the increased commercialization of reproductive identity and emotional fertility branding. A more focused and information/privacy-oriented regulation would thus be able to reinforce the existing anti-commercialisation principles in the modern concepts of surrogacy and ART in India.

