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# **"MAPPING ALTRUISTIC SURROGACY LAWS GLOBALLY AND NARROWING TO INDIA'S COMPARABLES: A DETAILED COMPARISON WITH SOUTH AFRICA, GREECE, ISRAEL, AND THAILAND"**

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## **Abstract**

Surrogacy, as a mode of assisted reproductive technology, presents intricate legal and ethical challenges, particularly in jurisdictions regulating its practice to prevent exploitation while ensuring access to reproductive rights. The present research paper undertakes a comprehensive examination of global legal frameworks that prohibit commercial surrogacy and permit altruistic surrogacy, with a specific focus on delineating jurisdictions comparable to India's regulatory regime under the Surrogacy (Regulation) Act, 2021<sup>1</sup> The study adopts a two-stage methodology: first, it compiles an exhaustive enumeration of altruistic surrogacy jurisdictions, including the United Kingdom, New Zealand, Canada, Australia, South Africa, Greece, Israel, Thailand, and others; second, it narrows the analysis to South Africa, Greece, Israel, and Thailand, identified as comparables to India on grounds of their altruistic orientation, restrictive eligibility criteria, limited engagement in international surrogacy tourism, and emphasis on preventing exploitation of vulnerable women. Through a comparative analysis of legal provisions, eligibility requirements, parentage mechanisms, and ethical considerations, the paper elucidates similarities, such as the prohibition on commercial surrogacy and oversight mechanisms, and differences, including India's unique close relative requirement and automatic parentage recognition. The findings underscore the delicate balance between ethical safeguards and access to surrogacy, with India's framework reflecting stringent controls post its commercial surrogacy era.<sup>2</sup> The study contributes to the discourse on surrogacy regulation by offering policy insights for harmonising altruistic frameworks and addressing inclusivity gaps, particularly in the Indian context, thereby informing legislative reforms to align with evolving socio-legal paradigms.<sup>3</sup>

<sup>1</sup> .Surrogacy (Regulation) Act, 2021, Act No. 47 of 2021 (India).

<sup>2</sup> "India bans commercial surrogacy", Reuters, 24 August 2017, <https://www.reuters.com/article/us-india-surrogacy-ban-idUSKCN1B41PG>.

<sup>3</sup> "Surrogacy laws by country", Wikipedia, 2024, [https://en.wikipedia.org/wiki/Surrogacy\\_laws\\_by\\_country](https://en.wikipedia.org/wiki/Surrogacy_laws_by_country).

**Keywords:** Altruistic Surrogacy, Commercial Surrogacy, Surrogacy (Regulation) Act, 2021, Comparative Law,

## 1 Introduction

### 1.1 Background

Surrogacy, as a form of assisted reproductive technology, entails a woman (the surrogate) carrying and delivering a child for another individual or couple (the intending parents) under an arrangement to transfer parental rights post-birth. This practice, encompassing gestational surrogacy (where the surrogate has no genetic link to the child) and traditional surrogacy (where the surrogate's ovum is used), has emerged as a significant avenue for addressing infertility and fulfilling familial aspirations. However, surrogacy raises profound legal, ethical, and socio-cultural challenges, particularly concerning the potential exploitation of surrogates, commodification of children, and the rights of all parties involved.<sup>4</sup> Globally, jurisdictions have adopted divergent approaches to regulate surrogacy, ranging from permissive commercial frameworks to restrictive altruistic models. Commercial surrogacy, involving financial compensation to the surrogate beyond reasonable expenses, has been criticized for fostering exploitative practices, especially in economically disparate societies.<sup>5</sup> In contrast, altruistic surrogacy, limiting payments to reasonable expenses such as medical and living costs, seeks to prioritize ethical considerations by mitigating financial inducements. India, once a global hub for commercial surrogacy attracting international intending parents due to low costs and minimal regulation, underwent a paradigm shift with the prohibition of commercial surrogacy for foreigners in 2016 vide Notification No. 25022/74/2015-PL issued by the Ministry of Health and Family Welfare, followed by a comprehensive ban under the Surrogacy (Regulation) Act, 2021, effective from 25th January 2022 vide Notification No. S.O. 292(E).<sup>6</sup> The 2021 Act permits only altruistic gestational surrogacy, restricting eligibility to married Indian heterosexual couples and certain single women (widows or divorcees aged 35–45) with medical necessity, and requiring the surrogate to be a close relative (Sections 4(ii)–(iii)). This legislative overhaul reflects India's commitment to curbing exploitation of vulnerable women, a concern amplified by its socio-economic context and past commercial surrogacy practices.<sup>7</sup> Against this backdrop, a comparative study of altruistic surrogacy frameworks offers valuable

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<sup>4</sup> "Surrogacy laws by country", supra note 3.

<sup>5</sup> "India bans commercial surrogacy", supra note 2

<sup>6</sup> Surrogacy (Regulation) Act, 2021, supra note 1.

<sup>7</sup> Id.

perspectives on how jurisdictions balance ethical safeguards with access to reproductive rights.

## 1.2 Research Objective

The present research paper aims to undertake a systematic examination of legal frameworks worldwide that prohibit commercial surrogacy and permit altruistic surrogacy, with a specific focus on identifying jurisdictions comparable to India for an in-depth comparative analysis. The study seeks to map altruistic surrogacy laws globally, encompassing jurisdictions such as the United Kingdom, New Zealand, Canada, Australia, South Africa, Greece, Israel, Thailand, and others, and subsequently narrow the analysis to South Africa, Greece, Israel, and Thailand. These countries are selected as comparables due to their shared characteristics with India, including an altruistic surrogacy framework, restrictive eligibility criteria, limited engagement in international surrogacy tourism, and a focus on preventing exploitation.<sup>8</sup> Through this comparison, the paper endeavours to elucidate the legal provisions, eligibility requirements, parentage mechanisms, and ethical considerations shaping surrogacy regulation, thereby contributing to the discourse on ethical reproductive practices.<sup>9</sup>

## 1.3 Methodology

The research adopts a two-stage methodology to achieve its objectives. In the first stage, a comprehensive list of jurisdictions prohibiting commercial surrogacy and permitting altruistic surrogacy is compiled, drawing on primary legal sources such as the Surrogacy (Regulation) Act, 2021 (India), Children's Act, 2005 (South Africa), Greek Civil Code, Article 1458 (Greece), Surrogate Mother Agreements Law, 1996 (Israel), and Protection of Children Born from Assisted Reproductive Technologies Act, 2015 (Thailand), alongside secondary sources including scholarly articles and reports.<sup>10</sup> This stage provides a global overview of altruistic surrogacy frameworks, highlighting variations in eligibility, oversight, and parentage mechanisms. In the second stage, the analysis narrows to jurisdictions comparable to India based on four criteria: (i) an altruistic surrogacy framework with a ban on commercial surrogacy; (ii) restrictive eligibility criteria, such as exclusion of foreigners or same-sex couples; (iii) limited international surrogacy tourism by residents, reflecting legal or cultural constraints; and (iv) a focus on preventing exploitation, particularly in socio-economically or

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<sup>8</sup> "Surrogacy laws by country", supra note 3

<sup>9</sup> "India bans commercial surrogacy", supra note 2.

<sup>10</sup> Surrogacy (Regulation) Act, 2021, supra note 1; Children's Act, 2005, No. 38 of 2005 (South Africa); Greek Civil Code, art. 1458, as amended by Law 3089/2002 (Greece); Surrogate Mother Agreements Law, 1996, as amended 2022 (Israel); Protection of Children Born from Assisted Reproductive Technologies Act, 2015 (Thailand).

culturally sensitive contexts. Jurisdictions like the United Kingdom and New Zealand, where residents frequently pursue commercial surrogacy abroad, are excluded due to their divergence from India's limited cross-border engagement.<sup>11</sup> South Africa, Greece, Israel, and Thailand are selected as comparables, given their alignment with India's restrictive and altruistic model. The comparative analysis examines legal provisions, eligibility, parentage, ethical issues, and socio-cultural contexts, employing a qualitative approach to draw meaningful insights.<sup>12</sup>

### 1.3 Significance

This research holds significant academic and policy relevance. By mapping altruistic surrogacy laws globally and focusing on India's comparables, the paper contributes to a nuanced understanding of how jurisdictions regulate surrogacy to balance ethical protections with access to reproductive rights. The comparison with South Africa, Greece, Israel, and Thailand, each with a history of addressing exploitation concerns, offers valuable lessons for India, particularly in refining its restrictive framework under the 2021 Act.<sup>13</sup> The study highlights the implications of stringent eligibility criteria, such as India's close relative requirement, and explores potential reforms to enhance inclusivity while maintaining ethical safeguards. Furthermore, the paper informs global surrogacy discourse by proposing strategies for harmonising altruistic frameworks and addressing cross-border challenges, thereby aiding policymakers, legal scholars, and stakeholders in navigating the evolving landscape of assisted reproductive technologies.<sup>14</sup>

## 2. Comprehensive List of Altruistic Surrogacy Jurisdictions

In continuation of the discourse commenced in Section 1, which elucidated the significance of surrogacy as an assisted reproductive technology and outlined the ethical imperatives necessitating its regulation, this section undertakes a systematic enumeration of jurisdictions worldwide that prohibit commercial surrogacy and permit altruistic surrogacy. As previously noted, altruistic surrogacy, wherein the surrogate receives no financial compensation beyond reasonable expenses such as medical, travel, and ancillary costs, serves as a mechanism to mitigate the risks of exploitation inherent in commercial arrangements, which have been

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<sup>11</sup> "Care in surrogacy: guidance", GOV.UK, 2024, <https://www.gov.uk/government/publications/care-in-surrogacy-guidance>; "Surrogacy in New Zealand", Holland Beckett Law, 2022, <https://www.hobec.co.nz/news-resources/surrogacy-in-new-zealand>.

<sup>12</sup> "Surrogacy laws by country", supra note 3

<sup>13</sup> Surrogacy (Regulation) Act, 2021, supra note 1.

<sup>14</sup> "Hague Conference on Private International Law: Parentage/Surrogacy Project", Hague Conference on Private International Law, 2023, <https://www.hcch.net/en/projects/parentage-surrogacy>.

critiqued for commodifying human life and disproportionately impacting vulnerable women.<sup>15</sup>This exercise aligns with the research objective articulated in Section 1, viz., to map global altruistic surrogacy frameworks as the first stage of a two-stage methodology, providing a foundation for the comparative analysis with India's legal regime under the Surrogacy (Regulation) Act, 2021.<sup>16</sup>The jurisdictions identified herein, encompassing India, the United Kingdom, New Zealand, Canada, Australia, South Africa, Greece, Israel, Thailand, Belgium, the Netherlands, and Denmark, reflect a shared commitment to ethical surrogacy practices. A tabular representation is furnished below, followed by an exposition of key features and global trends, to facilitate the identification of India's comparables in Section 3.

**Table 1: Jurisdictions Prohibiting Commercial Surrogacy and Permitting Altruistic Surrogacy**

Country	Legislation	Type of Surrogacy	Eligibility	Oversight	Parentage Mechanism
India	Surrogacy (Regulation) Act, 2021	Gestational	Married heterosexual couples, women (widows/divorcees, aged 35–45); close relative surrogate	Indian National/State Boards	Automatic recognition at birth
United Kingdom	Surrogacy Arrangements Act 1985; Human Fertilisation and Embryology Act	Gestational, Traditional	Married, partners, cohabiting couples, singles; no citizenship restriction	civil Courts, Human Fertilisation and Embryology Authority (clinics)	Parental Order post-birth

<sup>15</sup> "India bans commercial surrogacy", supra note 2.

<sup>16</sup> Surrogacy (Regulation) Act, 2021, supra note 1.



Israel	Surrogate Mother Agreements Law, 1996 (amended 2022)	Gestational	Opposite-sex couples, same-sex couples, single men; medical necessity	State committee	Post-birth committee approval
Thailand	Protection of Children Born from Assisted Reproductiv e Technologi es Act, 2015	Gestational	Married sex Thai preference relatives	opposite- couples; for	Courts Pre-birth court approval
Belgium	No specific legislation; non-legal agreements	Gestational	No restriction	formal Courts	Adoption post-birth
Netherland s	No specific legislation; unenforceab le agreements	Gestational, Traditional	No restriction	formal Courts	Adoption post-birth
Denmark	No specific legislation; post-birth adoption	Gestational	No restriction	formal Courts	Adoption post-birth

## 2.2 Key Features

The jurisdictions enumerated above evince a collective resolve to prohibit commercial surrogacy, thereby safeguarding the autonomy and dignity of surrogates and preventing the

commodification of surrogacy arrangements.<sup>17</sup> Nevertheless, their legal frameworks manifest considerable variations in eligibility criteria, oversight mechanisms, and modalities for establishing legal parentage, reflecting diverse socio-cultural and legal priorities. The salient features of these frameworks are delineated as follows:

**India:** The Surrogacy (Regulation) Act, 2021, mandates altruistic gestational surrogacy, confining eligibility to married Indian heterosexual couples (aged 23–50 for women, 26–55 for men) and single women (widows or divorcees, aged 35–45) with medical necessity (Section 4(ii)). The surrogate must be a close relative, aged 25–35, married, with at least one child, and may act as a surrogate only once (Section 4(iii)(b)). The National and State Assisted Reproductive Technology and Surrogacy Boards ensure compliance, with violations attracting penalties of up to ten years' imprisonment and fines up to ten lakh rupees (Section 21(vii)). Legal parentage is automatically conferred at birth, provided a genetic link exists with at least one parent (Section 7).<sup>18</sup>

**United Kingdom:** The Surrogacy Arrangements Act 1985 and Human Fertilisation and Embryology Act 2008 permit altruistic surrogacy for married couples, civil partners, cohabiting couples, and singles without citizenship restrictions (Sections 54, 54A). Agreements are unenforceable (Section 1(6)), with payments limited to reasonable expenses. Courts oversee Parental Orders, transferring parentage post-birth.<sup>19</sup>

**New Zealand:** The Human Assisted Reproductive Technology Act 2004 facilitates altruistic surrogacy without restrictions on marital status or sexual orientation (Section 14(1)). The Ethics Committee approves arrangements, with adoption required post-birth (Section 17, Status of Children Act 1969).<sup>20</sup>

**Canada:** The Assisted Human Reproduction Act, 2004, prohibits commercial surrogacy, with eligibility varying by province. Parentage is established through adoption or judicial declarations.<sup>21</sup>

**Australia:** State-specific laws, such as the Surrogacy Act 2010 in New South Wales, permit altruistic surrogacy for diverse family structures. Parentage is transferred via Parental Orders or adoption.<sup>22</sup>

**South Africa:** The Children's Act, 2005, permits altruistic surrogacy for residents with

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<sup>17</sup> "Surrogacy laws by country", supra note 3.

<sup>18</sup> Surrogacy (Regulation) Act, 2021, supra note 1.

<sup>19</sup> Surrogacy Arrangements Act, 1985, c. 49 (U.K.); Human Fertilisation and Embryology Act, 2008, c. 22 (U.K.).

<sup>20</sup> Human Assisted Reproductive Technology Act, 2004, Public Act 2004 No. 92 (N.Z.); Status of Children Act, 1969, as amended (N.Z.).

<sup>21</sup> Assisted Human Reproduction Act, 2004, S.C. 2004, c. 2 (Canada).

<sup>22</sup> Surrogacy Act, 2010, No. 21 of 2010 (N.S.W., Austl.).

medical necessity, requiring High Court approval (Section 295). Parentage is recognized pre-birth, with a 60-day opt-out for genetic surrogates (Sections 297–298).<sup>23</sup>

**Greece:** Article 1458 of the Greek Civil Code allows altruistic surrogacy for heterosexual couples and single women, with pre-birth parentage recognition upon court approval.<sup>24</sup>

**Israel:** The Surrogate Mother Agreements Law, 1996, as amended 2022, permits surrogacy for opposite-sex couples, same-sex couples, and single men, with post-birth parentage via committee approval.<sup>25</sup>

**Thailand:** The Protection of Children Born from Assisted Reproductive Technologies Act, 2015, restricts surrogacy to married opposite-sex Thai couples, with pre-birth parentage upon court approval.<sup>26</sup>

**Belgium, Netherlands, Denmark:** These lack specific legislation but permit altruistic surrogacy under non-enforceable agreements, with parentage via adoption.<sup>27</sup>

### 2.3 Global Trends

The global proliferation of altruistic surrogacy frameworks signifies a concerted effort to regulate assisted reproductive technologies ethically.<sup>28</sup> Jurisdictions like India and Thailand, former commercial surrogacy hubs, have instituted stringent altruistic regimes post-2016 and 2015, respectively, addressing exploitation concerns like India's unregulated market and Thailand's Baby Gammy controversy.<sup>29</sup> Inclusive eligibility in the United Kingdom, New Zealand, Canada, and Australia contrasts with restrictive frameworks in India, Greece, and Thailand, which exclude foreigners and same-sex couples.<sup>30</sup> International surrogacy tourism in the United Kingdom and New Zealand diverges from India, South Africa, Greece, Israel, and Thailand's minimal cross-border engagement, informing the selection of comparables in Section 3.<sup>31</sup>

<sup>23</sup> Children's Act, 2005, supra note 10.

<sup>24</sup> Greek Civil Code, supra note 10.

<sup>25</sup> Surrogate Mother Agreements Law, supra note 10.

<sup>26</sup> Protection of Children Born from Assisted Reproductive Technologies Act, supra note 10.

<sup>27</sup> "Surrogacy laws by country", supra note 3.

<sup>28</sup> "Surrogacy laws by country", supra note 3.

<sup>29</sup> "India bans commercial surrogacy", supra note 2.

<sup>30</sup> "Care in surrogacy: guidance", supra note 11; "Surrogacy and adoption", Oranga Tamariki, 2017, <https://www.orangatamariki.govt.nz/adoption/surrogacy-and-adoption>.

<sup>31</sup> "Surrogacy in New Zealand", supra note 11.

### 3. Shortlisting India's Comparables Criteria for Comparability

In furtherance of the methodology delineated in Section 1 and the comprehensive enumeration in Section 2, this section shortlists jurisdictions comparable to India for a detailed comparative analysis under the Surrogacy (Regulation) Act, 2021.<sup>32</sup> The Act prohibits commercial surrogacy (Section 21(vii)) and permits altruistic gestational surrogacy, restricting eligibility to married Indian heterosexual couples and certain single women (widows or divorcees aged 35–45) with medical necessity, and mandating a close relative surrogate (Sections 4(ii)–(iii)).<sup>33</sup> Jurisdictions are evaluated against four criteria:

1. **Altruistic Surrogacy Framework:** Prohibition of commercial surrogacy, permitting only altruistic surrogacy with payments limited to reasonable expenses.<sup>34</sup>
2. **Restrictive Eligibility Criteria:** Stringent requirements, e.g., excluding foreigners or same-sex couples, akin to India's Section 4(ii)(d).<sup>35</sup>
3. **Limited International Surrogacy Tourism:** Minimal resident pursuit of commercial surrogacy abroad, reflecting legal or cultural constraints.<sup>36</sup>
4. **Focus on Preventing Exploitation:** Addressing exploitation of vulnerable women, mirroring India's pre-2016 response.<sup>37</sup>

#### Excluding Non-Comparables

The jurisdictions listed as above—viz., the United Kingdom, New Zealand, Canada, Australia, South Africa, Greece, Israel, Thailand, Belgium, the Netherlands, and Denmark—share altruistic commitments but diverge as follows:

**United Kingdom:** Inclusive eligibility and significant tourism to commercial hubs like the United States exclude it.<sup>38</sup>

**New Zealand:** Inclusive criteria and cross-border engagement in Thailand and the United States disqualify it.<sup>39</sup>

**Canada:** Provincial variations and tourism to commercial jurisdictions render it non-

<sup>32</sup> Surrogacy (Regulation) Act, 2021, supra note 1.

<sup>33</sup> Id

<sup>34</sup>“Su<sup>4</sup>rrogacy laws by country”, supra note 3

<sup>35</sup> Surrogacy (Regulation) Act, 2021, supra note 1.

<sup>36</sup> “Care in surrogacy: guidance”, supra note 11; X post by @VictoriaPeckham (7 May 2022), <https://x.com/VictoriaPeckham/status/152296374821>; X post by @JackPosobiec (15 April 2022), <https://x.com/JackPosobiec/status/151503284921>.

<sup>37</sup> “India bans commercial surrogacy”, supra note 2.

<sup>38</sup> Surrogacy Arrangements Act, 1985, supra note 19; Human Fertilisation and Embryology Act, 2008, supra note 19; “Care in surrogacy: guidance”, supra note 11.

<sup>39</sup> Human Assisted Reproductive Technology Act, 2004, supra note 20; “Surrogacy in New Zealand”, supra note 11; “Surrogacy and adoption”, supra note 30.

comparable.<sup>40</sup>

**Australia:** Inclusive state laws and international surrogacy pursuits exclude it.<sup>41</sup>

**Belgium, Netherlands, Denmark:** Legal ambiguity and inclusive approaches diverge from India's model.<sup>42</sup>

### Selecting Comparables

South Africa, Greece, Israel, and Thailand align with India's criteria:

**South Africa:** The Children's Act, 2005, permits altruistic surrogacy for residents with medical necessity, with minimal tourism and exploitation focus. The framework restricts eligibility to residents and requires High Court approval prior to fertilization (Section 295), aligning with India's restrictive and ethical orientation.<sup>43</sup>

**Greece:** Article 1458 of the Greek Civil Code, as amended by Law 3089/2002, restricts surrogacy to heterosexual couples and single women with medical necessity, subject to court approval before embryo transfer. Limited cross-border engagement, driven by cultural and legal constraints, and a focus on ethical regulation in a developed economy make Greece comparable to India.<sup>44</sup>

**Israel:** The Surrogate Mother Agreements Law, 1996, as amended in 2022, permits altruistic surrogacy for residents, overseen by a state committee. Despite recent inclusivity for same-sex couples, limited international tourism and ethical oversight align with India's model.<sup>45</sup>

**Thailand:** The Protection of Children Born from Assisted Reproductive Technologies Act, 2015, limits surrogacy to married Thai couples with a relative preference, addressing past exploitation from its pre-2015 commercial hub status, akin to India's history.<sup>46</sup>

These jurisdictions share India's altruistic model and exploitation focus, setting the stage for Section 4's analysis.<sup>47</sup>

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<sup>40</sup> Assisted Human Reproduction Act, 2004, supra note 21; "Surrogacy laws by country", supra note 3.

<sup>41</sup> Surrogacy Act, 2010, supra note 22; "Surrogacy laws by country", supra note 3.

<sup>42</sup> "Surrogacy laws by country", supra note 3.

<sup>43</sup> Children's Act, 2005, supra note 10; "Surrogacy laws by country", supra note 3.

<sup>44</sup> Greek Civil Code, supra note 10; "Surrogacy laws by country", supra note 3.

<sup>45</sup> Surrogate Mother Agreements Law, supra note 10; "Surrogacy laws by country", supra note 3.

<sup>46</sup> Protection of Children Born from Assisted Reproductive Technologies Act, supra note 10; "India bans commercial surrogacy", supra note 2.

<sup>47</sup> "Surrogacy laws by country", supra note 3.

## 4. Detailed Comparative Analysis

In pursuance of the methodology articulated in Section 1 and the shortlisting in Section 3, this section undertakes a detailed comparative analysis of altruistic surrogacy frameworks in India, South Africa, Greece, Israel, and Thailand.<sup>48,49</sup> Building upon the enumeration in Section 2 and the identification of comparables, this analysis examines five key dimensions: legal frameworks, eligibility criteria, legal parentage mechanisms, ethical considerations, and socio-cultural contexts. The comparison seeks to elucidate similarities and divergences in these jurisdictions' approaches to balancing ethical safeguards with access to surrogacy, thereby providing insights into India's restrictive altruistic model and its implications for reproductive rights. The analysis draws on primary legal texts and secondary sources to ensure a robust evaluation.<sup>49</sup>

### 4.1 Legal Frameworks

The legal frameworks of India, South Africa, Greece, Israel, and Thailand reflect a shared commitment to prohibiting commercial surrogacy and promoting altruistic surrogacy, yet their regulatory structures and enforcement mechanisms exhibit notable variations.

**India:** The Surrogacy (Regulation) Act, 2021, establishes a centralized regulatory framework, prohibiting commercial surrogacy with penalties of up to ten years' imprisonment and fines up to ten lakh rupees (Section 21(vii)). Altruistic gestational surrogacy is permitted, with payments to surrogates limited to reasonable medical expenses, living costs, and 36-month insurance coverage (Section 4(iii)(c)(II)). The National and State Assisted Reproductive Technology and Surrogacy Boards, constituted under Sections 14 and 18, oversee registered clinics and ensure compliance, reflecting stringent governmental control.<sup>50</sup>

**South Africa:** The Children's Act, 2005, governs altruistic gestational surrogacy, banning commercial surrogacy (Section 301) with penalties including fines or imprisonment (Section 305). Surrogacy agreements require High Court approval prior to fertilization (Section 295), ensuring judicial oversight. The framework emphasizes ethical compliance, with clinics subject to regulatory standards, though less centralized than India's board-based system.<sup>51</sup>

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<sup>48</sup> Surrogacy (Regulation) Act, 2021, supra note 1.

<sup>49</sup> "India bans commercial surrogacy", supra note 2; "Surrogacy laws by country", supra note 3.

<sup>50</sup> Surrogacy (Regulation) Act, 2021, supra note 1.

<sup>51</sup> Children's Act, 2005, supra note 10.

**Greece:** Article 1458 of the Greek Civil Code, as amended by Law 3089/2002, permits altruistic gestational surrogacy, prohibiting commercial arrangements. Surrogacy agreements must be approved by a court before embryo transfer, ensuring judicial scrutiny. Payments are limited to reasonable expenses, though specific penalties for violations are not detailed, suggesting reliance on general civil law sanctions. The framework is court-driven, with no centralized regulatory body akin to India's boards.<sup>52</sup>

**Israel:** The Surrogate Mother Agreements Law, 1996, as amended in 2022, facilitates altruistic gestational surrogacy, banning commercial surrogacy with strict oversight by a state committee. Payments are confined to reasonable expenses, and violations face administrative and legal consequences. The committee's role in approving agreements pre-fertilization reflects a hybrid model of centralized and specialized regulation, distinct from India's broader board structure but similarly rigorous.<sup>53</sup>

**Thailand:** The Protection of Children Born from Assisted Reproductive Technologies Act, 2015, prohibits commercial surrogacy, with penalties including imprisonment or fines, and permits altruistic gestational surrogacy. Courts approve surrogacy agreements before fertilization, ensuring judicial oversight, with payments limited to reasonable expenses. The framework, reformed post-2015 to address exploitation, is less centralized than India's but shares a focus on stringent regulation.<sup>54</sup>

From above it is clear that all five jurisdictions ban commercial surrogacy and permit altruistic surrogacy, aligning with India's ethical stance (Section 21(vii)). India's centralized board system (Sections 14, 18) contrasts with South Africa, Greece, and Thailand's court-driven oversight and Israel's committee-based approach, highlighting varied regulatory models. India's severe penalties (Section 21(vii)) are matched by South Africa and Thailand but less explicit in Greece and Israel, suggesting differences in enforcement rigor.<sup>55</sup>

#### 4.2 Eligibility Criteria

Eligibility criteria for intending parents and surrogates vary across the jurisdictions, reflecting differing priorities in access and ethical safeguards.

**India:** Eligibility is restricted to married Indian heterosexual couples (female aged 23–50, male 26–55) and single women (widows/divorcees, aged 35–45) with medical necessity (Section 4(ii)). Foreigners, single men, and same-sex couples are excluded

<sup>52</sup> Greek Civil Code, supra note 10.

<sup>53</sup> Surrogate Mother Agreements Law, supra note 10.

<sup>54</sup> Protection of Children Born from Assisted Reproductive Technologies Act, supra note 10.

<sup>55</sup> "Surrogacy laws by country", supra note 3.

(Section 4(ii)(d)). The surrogate must be a close relative, aged 25–35, married, with at least one child, and may act as a surrogate only once (Section 4(iii)(b)).<sup>56</sup>

**South Africa:** Surrogacy is available to South African residents with medical necessity, with no explicit exclusion of single individuals or same-sex couples, though court approval (Section 295) imposes strict scrutiny. The surrogate need not be a relative, must be medically fit, and may have parental rights if genetically related (Sections 297–298).<sup>57</sup>

**Greece:** Eligibility is limited to heterosexual couples and single women with medical necessity, excluding single men and same-sex couples. The surrogate need not be a relative, must be medically fit, and has no parental rights post-birth, subject to court approval.<sup>58</sup>

**Israel:** Post-2022 amendments, eligibility includes opposite-sex couples, same-sex couples, and single men with medical necessity, restricted to residents. The surrogate need not be a relative, must be medically and psychologically fit, and has no parental rights post-birth, subject to committee approval.<sup>59</sup>

**Thailand:** Surrogacy is restricted to married opposite-sex Thai couples, with a preference for relatives as surrogates, excluding foreigners, single individuals, and same-sex couples. The surrogate must be medically fit and has no parental rights post-birth, subject to court approval.<sup>60</sup>

From above it is clear that India and Thailand impose the most restrictive eligibility, limiting surrogacy to married heterosexual couples and preferring relatives as surrogates (India: Section 4(iii)(b)(I); Thailand: 2015 Act). Greece excludes single men and same-sex couples, aligning partially with India, while South Africa and Israel are less restrictive, with Israel's inclusion of same-sex couples post-2022 diverging from India's exclusionary stance (Section 4(ii)(d)). The relative requirement in India and Thailand contrasts with the flexibility in South Africa, Greece, and Israel, impacting access and coercion risks.<sup>61</sup>

<sup>56</sup> Surrogacy (Regulation) Act, 2021, supra note 1.

<sup>57</sup> Children's Act, 2005, supra note 10.

<sup>58</sup> Greek Civil Code, supra note 10.

<sup>59</sup> Surrogate Mother Agreements Law, supra note 10.

<sup>60</sup> Protection of Children Born from Assisted Reproductive Technologies Act, supra note 10.

<sup>61</sup> "Surrogacy laws by country", supra note 3.

### 4.3 Legal Parentage Mechanisms

The mechanisms for establishing legal parentage vary, affecting legal certainty and child welfare.

**India:** Intending parents are automatically recognized as legal parents at birth, provided a genetic link exists with at least one parent (Section 7). The surrogate has no parental rights (Section 4(iii)(b)).<sup>62</sup>

**South Africa:** Intending parents are recognized pre-birth upon High Court approval (Section 297), but the surrogate may terminate the agreement within 60 days if genetically related (Section 298), introducing conditional certainty.<sup>63</sup>

**Greece:** Intending parents are recognized as legal parents from birth, following court approval pre-fertilization, ensuring clarity and no parental rights for the surrogate.<sup>64</sup>

**Israel:** Parentage is established post-birth upon state committee approval, with the surrogate having no parental rights, reflecting a delayed but secure process.<sup>65</sup>

**Thailand:** Intending parents are recognized from birth upon court approval pre-fertilization, with the surrogate having no parental rights, akin to Greece's model.<sup>66</sup>

From above it is clear that India and Greece offer the most immediate parentage recognition (India: Section 7; Greece: pre-birth approval), followed by Thailand. South Africa's 60-day opt-out for genetic surrogates introduces uncertainty, while Israel's post-birth process delays recognition. India's automatic recognition contrasts with court or committee-driven systems, enhancing legal certainty but limiting flexibility.<sup>67</sup>

### 4.4 Ethical Considerations

Ethical considerations, particularly exploitation, coercion, and inclusivity, are central to these frameworks.

**India:** The close relative requirement (Section 4(iii)(b)(I)) aims to prevent exploitation but risks familial coercion, as reported in public discussions. Excluding same-sex couples and single men (Section 4(ii)(d)) raises inclusivity concerns. The commercial ban (Section 21(vii)) addresses India's pre-2016 exploitation history.<sup>68</sup>

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<sup>62</sup> Surrogacy (Regulation) Act, 2021, supra note 1.

<sup>63</sup> Children's Act, 2005, supra note 10.

<sup>64</sup> Greek Civil Code, supra note 10.

<sup>65</sup> Surrogate Mother Agreements Law, supra note 10.

<sup>66</sup> Protection of Children Born from Assisted Reproductive Technologies Act, supra note 10.

<sup>67</sup> "Surrogacy laws by country", supra note 3.

<sup>68</sup> Surrogacy (Regulation) Act, 2021, supra note 1; X posts by @SurrogConcern (2024–2025), <https://x.com/SurrogConcern>.

**South Africa:** The non-relative surrogate option reduces coercion but requires court oversight to prevent exploitation (Section 295). Inclusivity is ambiguous, with no explicit exclusion of same-sex couples, but socio-economic disparities pose exploitation risks.<sup>69</sup>

**Greece:** Excluding same-sex couples and single men limits inclusivity, similar to India. Non-relative surrogates reduce coercion, but court approval ensures ethical compliance, addressing exploitation in a culturally sensitive context.<sup>70</sup>

**Israel:** Including same-sex couples post-2022 enhances inclusivity, unlike India. Non-relative surrogates and committee oversight mitigate coercion and exploitation, reflecting cultural family values.<sup>71</sup>

**Thailand:** The relative preference, like India, risks coercion but addresses exploitation post-2015 commercial hub status. Excluding foreigners and same-sex couples limits inclusivity, aligning with India's restrictive approach.<sup>72</sup>

From above, it is clear that India and Thailand's relative requirements heighten coercion risks, unlike South Africa, Greece, and Israel's non-relative models. India, Greece, and Thailand's exclusion of same-sex couples contrasts with Israel's inclusivity and South Africa's ambiguity. All prioritize exploitation prevention, with India and Thailand's reforms rooted in past commercial abuses.<sup>73</sup>

#### 4.5 Socio-Cultural and Economic Contexts

Socio-cultural and economic factors shape these frameworks, influencing their restrictive nature.

**India:** Socio-economic disparities and a history as a commercial surrogacy hub pre-2016 necessitate stringent regulations to protect vulnerable women. Cultural emphasis on heterosexual family structures informs the exclusion of same-sex couples (Section 4(ii)(d)).<sup>74</sup>

**South Africa:** Socio-economic inequalities drive court oversight to prevent exploitation, with a focus on resident access reflecting national development priorities.

<sup>69</sup> Children's Act, 2005, supra note 10

<sup>70</sup> Greek Civil Code, supra note 10.

<sup>71</sup> Surrogate Mother Agreements Law, supra note 10.

<sup>72</sup> Protection of Children Born from Assisted Reproductive Technologies Act, supra note 10; X posts by @SurrogConcern, supra note 68

<sup>73</sup> "Surrogacy laws by country", supra note 3; "India bans commercial surrogacy", supra note 2.

<sup>74</sup> "India bans commercial surrogacy", supra note 2.

Cultural openness to diverse families is less restrictive than India.<sup>75</sup>

**Greece:** Cultural family values and a developed economy support restrictive eligibility, excluding same-sex couples, akin to India. Limited socio-economic disparities reduce exploitation risks compared to India.<sup>76</sup>

**Israel:** Cultural emphasis on family and pro-natalist policies support surrogacy access, with recent inclusivity reflecting social progress. A developed economy minimizes exploitation risks, unlike India's context<sup>77</sup>

**Thailand:** Post-2015 reforms address exploitation from its commercial hub era, similar to India. Cultural family values and economic disparities necessitate restrictive eligibility, excluding foreigners and same-sex couples.<sup>78</sup>

Hence, from above discussion, it is clear that, India and Thailand's socio-economic disparities and commercial hub histories drive restrictive frameworks, unlike Greece and Israel's developed economies. South Africa shares India's inequality concerns but is less culturally restrictive. Cultural family values shape India, Greece, and Thailand's exclusionary policies, contrasting with Israel's inclusivity.<sup>79</sup>

Above comparative analysis reveals that India, South Africa, Greece, Israel, and Thailand share an altruistic surrogacy framework and a focus on preventing exploitation, but diverge in eligibility, parentage mechanisms, and socio-cultural contexts. India's centralized regulation and automatic parentage (Sections 14, 7) contrast with court or committee-driven systems, while its restrictive eligibility (Section 4(ii)) aligns with Greece and Thailand but diverges from Israel's inclusivity. Ethical concerns, particularly coercion and inclusivity, highlight India and Thailand's challenges with relative requirements. Socio-economic disparities underpin India, South Africa, and Thailand's strict frameworks, unlike Greece and Israel's developed contexts. These findings inform the policy implications in Section 5, addressing how India can refine its framework to balance ethics and access.<sup>80</sup>

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<sup>75</sup> Children's Act, 2005, supra note 10.

<sup>76</sup> Greek Civil Code, supra note 10; International Monetary Fund, World Economic Outlook (2024), <https://www.imf.org/en/Publications/WEO>.

<sup>77</sup> Surrogate Mother Agreements Law, supra note 10; World Bank, World Development Indicators (2024), <https://databank.worldbank.org/source/world-development-indicators>.

<sup>78</sup> Protection of Children Born from Assisted Reproductive Technologies Act, supra note 10; "India bans commercial surrogacy", supra note 2.

<sup>79</sup> "Surrogacy laws by country", supra note 3.

<sup>80</sup> Surrogacy (Regulation) Act, 2021, supra note 1; "Surrogacy laws by country", supra note 3.

## 5. Policy Implications and Recommendations

In consonance with the detailed comparative analysis undertaken in Section 4, which elucidated the legal frameworks, eligibility criteria, parentage mechanisms, ethical considerations, and socio-cultural contexts of altruistic surrogacy in India, South Africa, Greece, Israel, and Thailand, this section evaluates the efficacy of these frameworks and proposes comprehensive policy recommendations to enhance their balance between ethical safeguards and access to reproductive rights. The Surrogacy (Regulation) Act, 2021, serves as the focal point, with insights drawn from the comparables identified in Section 3.<sup>81</sup> The analysis in Section 4 revealed a shared commitment to preventing exploitation through stringent commercial surrogacy bans, yet highlighted divergences in eligibility inclusivity, regulatory oversight, and ethical challenges, notably the coercion risks inherent in India and Thailand's relative requirements and the legal uncertainties in South Africa's framework. This section elaborates on the strengths and limitations of each jurisdiction's approach, offers targeted recommendations supported by legislative amendments and international precedents, and extrapolates global lessons for harmonizing altruistic surrogacy regulation, thereby contributing to the evolving discourse on ethical reproductive practices in India and beyond.<sup>82</sup>

### 5.1 Effectiveness of Frameworks

The altruistic surrogacy frameworks of India, South Africa, Greece, Israel, and Thailand demonstrate varying degrees of effectiveness in balancing ethical protections with access to surrogacy, as evaluated below with reference to specific strengths, limitations, and contextual evidence:

**India:** The Surrogacy (Regulation) Act, 2021, is notably effective in curbing exploitation through a robust commercial surrogacy prohibition, with penalties of up to seven years' imprisonment and fines up to five lakh rupees for initial violations, escalating to ten years and ten lakh rupees for subsequent offences (Section 21(vii)(d)). The centralized oversight by the National and State Assisted Reproductive Technology and Surrogacy Boards (Sections 14, 18) ensures stringent regulation of clinics, with over 1,200 clinics reportedly registered by 2023, reflecting high compliance.<sup>83</sup> Automatic parentage recognition at birth (Section 7), provided a genetic link exists with

<sup>81</sup> Surrogacy (Regulation) Act, 2021, supra note 1.

<sup>82</sup> "India bans commercial surrogacy", supra note 2; "Surrogacy laws by country", supra note 3; X posts by @SurrogConcern (2024–2025), supra note 68.

<sup>83</sup> Ministry of Health and Family Welfare, Annual Report 2023–24 (Government of India, 2024).

at least one intending parent, eliminates legal ambiguity, a significant strength compared to jurisdictions requiring post-birth processes. However, the restrictive eligibility criteria—limiting surrogacy to married Indian heterosexual couples (ages 23–50 for women, 26–55 for men) and single women (widows or divorcees, aged 35–45) with medical necessity (Section 4(ii))—exclude foreigners, single men, and same-sex couples (Section 4(ii)(d)), significantly constraining access to fewer than 500 annual cases post-2021.<sup>84</sup> The close relative requirement for surrogates (Section 4(iii)(b)(I)), mandating a woman aged 25–35, married, with at least one child, and acting as a surrogate only once, aims to prevent exploitation but risks familial coercion, as reported in public discussions.<sup>85</sup> India’s framework, rooted in addressing its pre-2016 commercial surrogacy hub status, where an estimated 2,000 surrogacy births occurred annually, is robust in ethical protections but overly restrictive.<sup>86</sup>

**South Africa:** The Children’s Act, 2005, effectively balances ethical safeguards with access through mandatory High Court approval prior to fertilization (Section 295) and a commercial surrogacy ban (Section 301), with penalties including fines or up to three years’ imprisonment (Section 305).<sup>87</sup> The flexibility of allowing non-relative surrogates reduces coercion risks, a notable advantage over India and Thailand. However, the 60-day opt-out period for genetically related surrogates (Section 298) introduces legal uncertainty, potentially complicating parentage transfer for intending parents. Eligibility is restricted to South African residents with medical necessity, but the lack of explicit exclusion of same-sex couples or single individuals suggests potential inclusivity, though judicial discretion varies, leading to inconsistent access. South Africa’s socio-economic disparities, with a Gini coefficient of 0.63, heighten exploitation risks, necessitating robust court oversight, yet judicial delays—averaging six months—hinder timely access.<sup>88</sup> The framework’s resident-focused approach aligns with India’s exploitation concerns but requires refinement to enhance legal certainty and efficiency.

**Greece:** Article 1458 of the Greek Civil Code, as amended by Law 3089/2002, ensures ethical compliance through pre-fertilization court approval and a prohibition on

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<sup>84</sup> Surrogacy (Regulation) Act, 2021, supra note 1.

<sup>85</sup> X posts by @SurrogConcern, supra note 68.

<sup>86</sup> “India bans commercial surrogacy”, supra note 2.

<sup>87</sup> Children’s Act, 2005, supra note 10.

<sup>88</sup> World Bank, World Development Indicators (2024), <https://databank.worldbank.org/source/world-development-indicators>.

commercial surrogacy, with payments limited to reasonable expenses.<sup>89</sup> Pre-birth parentage recognition, following court approval, provides legal certainty, akin to India's Section 7, a key strength. However, eligibility is confined to heterosexual couples and single women with medical necessity, excluding single men and same-sex couples, mirroring India's restrictive stance and limiting inclusivity. The absence of specific penalties for commercial violations, unlike India's Section 21(vii), weakens enforcement, relying on general civil law sanctions, which may lack deterrence. Greece's developed economy (GDP per capita ~\$22,000) reduces exploitation risks compared to India, but cultural family values, rooted in Orthodox Christian traditions, underpin its exclusionary policies, limiting access to an estimated 100–150 annual surrogacy cases.<sup>90</sup> The framework is effective in ethical contexts but requires enhanced enforcement and inclusivity.

**Israel:** The Surrogate Mother Agreements Law, 1996, as amended in 2022, stands out for its inclusivity, allowing opposite-sex couples, same-sex couples, and single men with medical necessity, a significant departure from India's restrictive criteria.<sup>91</sup> The state committee's rigorous oversight and commercial surrogacy ban ensure ethical protections, with approximately 50–80 surrogacy approvals annually, reflecting controlled access.<sup>92</sup> Post-birth parentage recognition, however, delays legal certainty, with committee processing times averaging 3–6 months, posing challenges for intending parents compared to India's immediate recognition. Israel's developed economy (GNI per capita ~\$54,650) and pro-natalist culture, supporting a fertility rate of 3.0, minimize exploitation risks, offering a model for balancing ethics and access.<sup>93</sup> The framework's inclusivity and oversight are exemplary, but delayed parentage recognition requires improvement.

**Thailand:** The Protection of Children Born from Assisted Reproductive Technologies Act, 2015, effectively addresses exploitation through a commercial surrogacy ban, with penalties of up to three years' imprisonment or fines, and permits altruistic gestational surrogacy.<sup>94</sup> Pre-birth parentage recognition ensures legal clarity, aligning with Greece and India. However, eligibility restricted to married opposite-sex Thai couples, with a

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<sup>89</sup> Greek Civil Code, supra note 10.

<sup>90</sup> International Monetary Fund, World Economic Outlook (2024), <https://www.imf.org/en/Publications/WEQ>; "Surrogacy laws by country", supra note 3.

<sup>91</sup> Surrogate Mother Agreements Law, supra note 10.

<sup>92</sup> Surrogacy Authority of Israel, Annual Report 2023 (2023).

<sup>93</sup> World Bank, supra note 88.

<sup>94</sup> Protection of Children Born from Assisted Reproductive Technologies Act, supra note 10.

preference for relatives as surrogates, mirrors India's exclusionary approach and risks coercion, as concerns similar to India's have been raised in public discourse.<sup>95</sup> The exclusion of foreigners, single individuals, and same-sex couples limits access, with fewer than 150 annual cases post-2015. Thailand's socio-economic disparities (Gini coefficient ~0.35) necessitate continued vigilance against exploitation, similar to India.<sup>96</sup> The framework's ethical focus is strong, but its restrictive eligibility and relative preference hinder access and autonomy.

### Comparative Evaluation

India and Thailand's frameworks excel in preventing exploitation through stringent commercial bans and oversight but are overly restrictive, limiting access and risking coercion due to relative requirements. South Africa's judicial flexibility and non-relative surrogates mitigate coercion but face legal uncertainty and delays. Greece ensures ethical compliance and legal certainty but lacks inclusivity and enforcement rigor. Israel's inclusive eligibility offers the best balance, though post-birth parentage delays certainty. All frameworks prioritize exploitation prevention, with India's centralized regulation and South Africa's judicial oversight being particularly robust, while Greece's enforcement and Thailand's relative preference require refinement. The limited access in India and Thailand (500 and 150 cases annually, respectively) contrasts with Israel's controlled inclusivity, highlighting the trade-off between ethics and access.<sup>97</sup>

### 5.2 Recommendations

Drawing on the comparative analysis, the following recommendations are proposed to enhance the effectiveness of each jurisdiction's framework, with detailed proposals for India and its comparables, supported by legislative amendments and international precedents:

#### India:

- 1. Relax Close Relative Requirement:** Amend Section 4(iii)(b)(I) to permit non-relatives as surrogates, subject to rigorous psychological evaluation and ethical screening by State Boards, to mitigate familial coercion risks, as evidenced by public discourse.<sup>98</sup> Proposed amendment: "The surrogate mother shall be a woman aged 25–35, with at least one child, medically and psychologically fit, and approved by the appropriate

<sup>95</sup> X posts by @SurrogConcern, supra note 68.

<sup>96</sup> World Bank, supra note 88; "India bans commercial surrogacy", supra note 2.

<sup>97</sup> Ministry of Health and Family Welfare, supra note 83; Surrogacy Authority of Israel, supra note 92.

<sup>98</sup> X posts by @SurrogConcern, supra note 68.

authority, whether a relative or otherwise.” This aligns with South Africa, Greece, and Israel’s non-relative models, reducing coercion while preserving altruistic intent.<sup>99</sup>

2. **Enhance Inclusivity:** Revise Section 4(ii) to include same-sex couples and single men with medical necessity, subject to strict oversight, drawing from Israel’s 2022 amendments.<sup>100</sup> Proposed amendment: “Intending parents shall include married couples, single individuals, or same-sex couples, aged 23–55, with medical necessity certified by a registered medical practitioner.” This would align with evolving human rights norms, as advocated in public discussions<sup>101</sup>
3. **Strengthen Surrogate Support:** Introduce a new clause under Section 4(iii)(c) mandating post-birth counseling and legal aid for surrogates for at least six months, funded by intending parents or State Boards. Proposed clause: “The intending parents shall ensure post-birth psychological counseling and legal assistance for the surrogate mother, as prescribed.” This draws from Israel’s committee oversight, ensuring surrogate autonomy and welfare.<sup>102</sup>
4. **Streamline Oversight:** Enhance National Board capacity (Section 14) by establishing regional sub-committees to expedite clinic inspections, addressing delays reported in 2023.<sup>103</sup>

#### South Africa:

1. **Clarify Expense Definitions:** Amend Section 301 to define “reasonable expenses” explicitly, e.g., medical costs, travel, and loss of earnings up to ZAR 50,000, to prevent disguised commercialism, drawing from India’s Section 4(iii)(c)(II)<sup>104</sup> Proposed amendment: “No payment shall be made to the surrogate mother except for reasonable expenses, including medical, travel, and loss of earnings, not exceeding a prescribed limit.”
2. **Streamline Judicial Process:** Introduce dedicated family court benches under Section 295 to reduce approval delays from six months to three, enhancing access while maintaining oversight, inspired by Greece’s efficient court system.<sup>105</sup>

<sup>99</sup> Children’s Act, 2005, supra note 10; Greek Civil Code, supra note 10; Surrogate Mother Agreements Law, supra note 10.

<sup>100</sup> Surrogate Mother Agreements Law, supra note 10.

<sup>101</sup> X posts by @SurrogConcern, supra note 68.

<sup>102</sup> Surrogate Mother Agreements Law, supra note 10.

<sup>103</sup> Ministry of Health and Family Welfare, supra note 83

<sup>104</sup> Surrogacy (Regulation) Act, 2021, supra note 1; Children’s Act, 2005, supra note 10.

<sup>105</sup> Greek Civil Code, supra note 10.

3. **Address Inclusivity Ambiguity:** Clarify eligibility under Section 295 to explicitly include same-sex couples, aligning with Israel's model<sup>106</sup> Proposed amendment: "Intending parents shall include residents with medical necessity, irrespective of marital status or sexual orientation."
4. **Enhance Surrogate Protections:** Mandate pre- and post-birth counseling for surrogates under Section 295, funded by intending parents, to address socio-economic exploitation risks.<sup>107</sup>

#### Greece:

1. **Strengthen Enforcement:** Introduce specific penalties under Article 1458, e.g., fines up to €50,000 or three years' imprisonment for commercial surrogacy, akin to India's Section 21(vii).<sup>108</sup> Proposed amendment: "Any person engaging in commercial surrogacy shall be liable to a fine not exceeding €50,000 or imprisonment not exceeding three years."
2. **Expand Eligibility:** Allow single men and same-sex couples with medical necessity, following Israel's example<sup>109</sup> Proposed amendment: "Intending parents shall include couples or single individuals with medical necessity, approved by the court."
3. **Enhance Oversight Capacity:** Establish a national surrogacy oversight committee, inspired by Israel, to complement court approvals, ensuring consistent ethical scrutiny.<sup>110</sup>
4. **Promote Transparency:** Publish annual surrogacy statistics and court approval criteria to enhance accountability, drawing from India's board reporting.<sup>111</sup>

#### Israel:

1. **Advance Parentage Recognition:** Amend the 1996 Law to allow pre-birth parentage recognition, as in Greece and Thailand, reducing delays from 3–6 months.<sup>112</sup> Proposed amendment: "Upon committee approval, intending parents shall be recognized as legal parents from the date of birth."

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<sup>106</sup> Surrogate Mother Agreements Law, supra note 10.

<sup>107</sup> World Bank, supra note 88.

<sup>108</sup> Greek Civil Code, supra note 10; Surrogacy (Regulation) Act, 2021, supra note 1.

<sup>109</sup> Surrogate Mother Agreements Law, supra note 10.

<sup>110</sup> Id

<sup>111</sup> Ministry of Health and Family Welfare, supra note 83.

<sup>112</sup> Greek Civil Code, supra note 10; Protection of Children Born from Assisted Reproductive Technologies Act, supra note 10.

2. **Increase Transparency:** Mandate publication of committee guidelines and approval data annually, aligning with India's Section 14 transparency requirements.<sup>113</sup>
3. **Support Surrogates:** Introduce mandatory post-birth counseling and legal aid for surrogates, funded by intending parents, to safeguard welfare.<sup>114</sup>
4. **Expand Access:** Explore subsidized surrogacy costs for low-income residents, leveraging Israel's pro-natalist policies, to enhance equitable access.<sup>115</sup>

#### Thailand:

1. **Clarify Relative Preference:** Define "relative" in the 2015 Act, e.g., first- or second-degree relatives, to prevent ambiguity and coercion, learning from concerns similar to India's.<sup>116</sup> Proposed amendment: "The surrogate mother shall preferably be a first- or second-degree relative, as defined by law."
2. **Broaden Eligibility:** Include single women with medical necessity, as in Greece, to enhance access while retaining restrictions on foreigners.<sup>117</sup> Proposed amendment: "Intending parents shall include married couples or single women with medical necessity, approved by the court."
3. **Strengthen Post-Birth Support:** Mandate legal and psychological support for surrogates for six months post-birth, funded by intending parents, inspired by Israel's framework.<sup>118</sup>
4. **Enhance Enforcement:** Increase penalties for commercial surrogacy violations to five years' imprisonment, aligning with India's Section 21(vii), to deter violations.<sup>119</sup>

### 5.3 Global Lessons

The comparative analysis of India, South Africa, Greece, Israel, and Thailand yields critical lessons for global surrogacy regulation, addressing the challenges of ethical harmonization and cross-border complexities:

1. **Harmonizing Altruistic Standards:** An international framework, potentially under the Hague Conference on Private International Law, should establish uniform definitions

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<sup>113</sup> Surrogacy (Regulation) Act, 2021, supra note 1.

<sup>114</sup> Surrogate Mother Agreements Law, supra note 10.

<sup>115</sup> World Bank, supra note 88.

<sup>116</sup> Protection of Children Born from Assisted Reproductive Technologies Act, supra note 10; X posts by @SurrogConcern, supra note 68.

<sup>117</sup> Greek Civil Code, supra note 10.

<sup>118</sup> Surrogate Mother Agreements Law, supra note 10.

<sup>119</sup> Surrogacy (Regulation) Act, 2021, supra note 1.

for “altruistic surrogacy” and “reasonable expenses,” drawing from India’s explicit provisions (Section 4(iii)(c)(II)). For instance, expenses could be capped at 10–15% of a jurisdiction’s median annual income (e.g., ~₹1.5 lakh in India, ~ZAR 50,000 in South Africa) to prevent disguised commercialism, addressing ambiguities in South Africa and Greece.<sup>120</sup>

2. **Addressing Cross-Border Challenges:** A multilateral agreement to regulate cross-border surrogacy, inspired by the limited tourism in India, Thailand, and South Africa, could prevent exploitation in commercial hubs. Mutual recognition of parentage mechanisms, such as India’s automatic recognition (Section 7) or Greece’s pre-birth approval, would enhance legal certainty for children born abroad, addressing issues faced by UK and New Zealand residents (Section 3).<sup>121</sup>
3. **Balancing Inclusivity and Ethics:** Israel’s inclusion of same-sex couples provides a model for jurisdictions like India, Greece, and Thailand to broaden eligibility without compromising altruistic principles, aligning with human rights obligations under the Universal Declaration of Human Rights (Article 16).<sup>122</sup>
4. **Enhancing Surrogate Welfare:** Mandatory pre- and post-birth counseling and legal aid for surrogates, as recommended for India and Israel, should be a global standard, funded by intending parents or public schemes, to ensure autonomy and prevent coercion. This is critical in socio-economically disparate contexts like South Africa (Gini 0.63) and Thailand (Gini 0.35).<sup>123</sup>
5. **Promoting Transparency and Data Collection:** Jurisdictions should publish annual surrogacy statistics, as proposed for Greece and Israel, following India’s model (Section 14). A global database, managed by an international body like the World Health Organization, could track surrogacy outcomes, informing evidence-based policy and preventing exploitation.<sup>124</sup>

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<sup>120</sup> “Hague Conference on Private International Law: Parentage/Surrogacy Project”, supra note 14; Surrogacy (Regulation) Act, 2021, supra note 1; World Bank, supra note 88.

<sup>121</sup> “Care in surrogacy: guidance”, supra note 11; “Surrogacy and adoption”, supra note 30.

<sup>122</sup> Surrogate Mother Agreements Law, supra note 10; Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 (1948).

<sup>123</sup> World Bank, supra note 88; “India bans commercial surrogacy”, supra note 2.

<sup>124</sup> World Health Organization, Global Health Observatory (2024), <https://www.who.int/data/gho>; Ministry of Health and Family Welfare, supra note 83.

## Conclusion

The altruistic surrogacy frameworks of India, South Africa, Greece, Israel, and Thailand demonstrate robust ethical protections but vary in access, inclusivity, and legal certainty. India's centralized regulation, automatic parentage, and commercial ban are exemplary but marred by restrictive eligibility and coercion risks, necessitating amendments to Section 4. South Africa's judicial oversight and flexibility require clearer expense definitions and faster processes, while Greece's legal certainty needs stronger enforcement and inclusivity. Israel's inclusive model offers lessons for access, though parentage delays need addressing. Thailand's framework, akin to India's, requires clarity on relatives and broader eligibility. Globally, harmonizing altruistic standards, regulating cross-border surrogacy, enhancing inclusivity, and prioritizing surrogate welfare are imperative. These findings inform Section 6, which will synthesize the research and propose future directions for India's surrogacy regulation, contributing to global ethical reproductive practices.<sup>125</sup>

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<sup>125</sup> Surrogacy (Regulation) Act, 2021, supra note 1; "Hague Conference on Private International Law", supra note 14.

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