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THE FUTURE OF SURROGACY LAW: CAN EXISTING FRAMEWORKS ADAPT TO THE CHALLENGES OF ARTIFICIAL INTELLIGENCE?

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ABSTRACT

The advent of artificial intelligence (AI) in healthcare presents significant opportunities and challenges for surrogacy law. This paper examines how existing legal frameworks can adapt to the integration of AI in surrogacy, addressing potential legal, ethical, and practical implications. Current surrogacy laws, often rigid and jurisdiction-specific, may be ill-equipped to manage the complexities introduced by AI technologies, such as enhanced matching processes, surrogate health monitoring, and predictive analytics for pregnancy outcomes. Key challenges include privacy concerns, data security, and algorithmic bias, which necessitate robust legal and ethical oversight. The rights and responsibilities of intended parents, surrogates, and offspring must be re-evaluated in light of AI's role in the surrogacy process. This paper proposes a flexible, technology-neutral regulatory framework to ensure surrogacy laws remain relevant and effective amidst rapid AI advancements. The framework emphasizes transparency, accountability, and ethical standards in AI deployment, aiming to protect all parties involved. By exploring the intersection of AI and surrogacy law, this study contributes to the broader discourse on legal adaptation to emerging technologies, highlighting the need for dynamic legal systems capable of evolving with technological progress.

Keywords: Artificial intelligence, Future Challenges, Legal Framework, Surrogacy etc.

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1. INTRODUCTION

Surrogacy is a form of assisted reproduction in which a woman, referred to as the surrogate, consents to bear and give birth to a child on behalf of an intended parent or parents.[1] Surrogacy can be classified into two main types: traditional surrogacy and gestational surrogacy. In traditional surrogacy, the surrogate's egg is fertilized by the intended father's or a donor's sperm, making the surrogate the biological mother. In gestational surrogacy, the surrogate has no genetic link to the child; instead, an embryo created via in vitro fertilization (IVF) is implanted in her uterus. Surrogacy arrangements

[1] Hitesh Nayana Patel "et al.", *Insight into different aspects of surrogacy practices*, 11 Journal of human reproductive sciences, 212-218 (2018).

are typically governed by legal agreements outlining the rights and responsibilities of the surrogate and the intended parents. These agreements cover various aspects, including medical procedures, compensation, and parental rights.

Surrogacy laws vary significantly across jurisdictions, reflecting diverse cultural, ethical, and legal perspectives on the practice. In some countries, surrogacy is fully legal and regulated, while in others, it is restricted or outright banned. State-by-state variations exist in surrogacy legislation in the United States having comprehensive legal frameworks supporting both commercial and altruistic surrogacy, while others have restrictive or ambiguous laws.[2] In the United Kingdom, altruistic surrogacy is legal, but commercial surrogacy is prohibited, requiring intended parents to apply for a parental order to become the legal parents of the child.[3] India, once a popular destination for international surrogacy, now allows only altruistic surrogacy for Indian citizens, with strict eligibility criteria. Australia has state-based surrogacy regulations, with the majority of jurisdictions allowing altruistic surrogacy and banning commercial surrogacy, transferring legal parenthood through a court process.[4] In Canada, altruistic surrogacy is permitted, but commercial surrogacy is banned under the Assisted Human Reproduction Act.[5] These examples illustrate the diverse legal landscape of surrogacy, highlighting the need for harmonized regulations to address cross-border surrogacy arrangements and protect the rights of all parties involved.

Artificial intelligence (AI) technologies are increasingly being integrated into various aspects of reproductive medicine, transforming traditional practices and presenting new opportunities and challenges for surrogacy. AI algorithms enhance IVF processes by selecting the most viable embryos for implantation, with machine learning models analyzing vast amounts of data to predict embryo quality, thereby improving success rates and reducing the time and cost of IVF cycles.[6] AI-driven legal tech tools streamline the drafting and management of surrogacy agreements, ensuring compliance with legal requirements, identifying potential risks, and facilitating communication between intended parents, surrogates, and legal professionals. Additionally, decision-making algorithms are employed to match intended parents with suitable surrogates, considering factors such as health, medical history, and personal preferences to optimize the compatibility and success of surrogacy arrangements.

1.1. OBJECTIVE OF THE STUDY

This paper aims to explore the future of surrogacy law in the context of advancing AI technologies. The primary objectives are to examine the legal and ethical challenges posed by AI to existing legal frameworks, assess the adaptability of these frameworks,
Also, what role can international law and cooperation play in harmonizing surrogacy regulations and propose recommendations for future legal and policy developments.

2. RESEARCH METHODOLOGY

Research methodology is the procedure to conduct the research in an aligned way by providing guidance to the researcher. This research work is based on the doctrinal method of research. It analyses the already published works including reports of different institutions and international documents available on the present subject matter. The outcomes of research work are based on the empirical work.

3. THE INTERSECTION OF AI AND SURROGACY

AI advancements in reproductive technology are revolutionizing the field of surrogacy by enhancing the precision and efficiency of various processes.[7] One significant application is in embryo selection during IVF. Machine learning algorithms analyze vast datasets, including genetic information and developmental milestones, to predict the viability of embryos. This increases the chances of successful implantation and reduces the number of IVF cycles needed. AI is used in genetic screening to identify potential genetic disorders before implantation, ensuring healthier outcomes for the

[2] Victoria R. Guzman, *A comparison of surrogacy laws of the US to other countries: should there be a uniform federal law permitting commercial surrogacy*, 38 Hous. J. Int'l L., 619 (2016).
[3] Amel Alghrani,, & Danielle Griffiths, *The regulation of surrogacy in the United Kingdom: the case for reform*, 29 Child and family law quarterly,165-186 (2017).
[4] Ifeoma Blessing Okoye,, & Chioma O. Nwabachili, *Rethinking a Legal Framework for Assisted Reproductive Technology*, 30 IJOLACLE 4 (2023).
[5] Hammond, Alexandria. Canadian Surrogacy as an Ideological Struggle. McGill University (Canada), 2023.
[6] Patil N. Sujata, S. M. Madiwalar, and V. M. Aparanji. "Machine learning techniques to improve the success rate in in-vitro fertilization (IVF) procedure." IOP Conference Series: Materials Science and Engineering. Vol. 925. No. 1. IOP Publishing, 2020.
[7] A. Shaji George, *Artificial womb technology: Analyzing the impact of lab-grown infants on global society,* 1.1 Partners Universal International Innovation Journal,106-120 (2023).

child. These advancements not only improve success rates but also lower the emotional and financial burden on intended parents and surrogates.

AI's impact extends to the matching processes between intended parents and surrogates. Traditionally, matching relied on manual assessments of compatibility based on health records, personal preferences, and logistical considerations. AI algorithms can streamline this process by rapidly analyzing and comparing data from both parties to find the best matches.[8] These algorithms consider medical history, genetic compatibility, psychological factors, and personal preferences to ensure a higher likelihood of a successful and harmonious surrogacy arrangement. This not only expedites the matching process but also increases the chances of a positive experience for all parties involved.

The integration of AI in surrogacy also raises several ethical considerations.[9] Bias in AI systems is a significant worry. The results of these algorithms may unjustly favour some groups over others if the data used to train them is biassed or non-representative. For instance, algorithms could inadvertently prioritize certain genetic traits or socioeconomic backgrounds, leading to ethical dilemmas regarding fairness and equality. Privacy is another significant issue. The use of AI requires the collection and analysis of extensive personal and medical data from both surrogates and intended parents. Ensuring that this data is securely stored and used in compliance with privacy laws is crucial to protect individuals' rights.[10] Transparency in how AI decisions are made is also essential to maintain trust in the surrogacy process.

While AI offers substantial benefits to reproductive technology and surrogacy, such as improved success rates and streamlined matching processes, it also necessitates careful consideration of ethical issues like bias and privacy. It is imperative that these issues are resolved in order to fully utilise AI in surrogacy while maintaining moral and just procedures.

4. CURRENT LEGAL FRAMEWORKS FOR SURROGACY

4.1. COMPARATIVE ANALYSIS OF SURROGACY LAWS IN DIFFERENT JURISDICTIONS

Surrogacy laws vary widely across different jurisdictions, reflecting diverse cultural, ethical, and legal viewpoints.[11] This section provides a comparative analysis of surrogacy regulations in key countries.

- **UNITED STATES**: The U.S. has a patchwork of state-specific surrogacy laws. States like California and Illinois have comprehensive legal frameworks supporting both commercial and altruistic surrogacy.[12] Intended parents in these states can obtain pre-birth orders to establish legal parentage. In contrast, states like Michigan prohibit compensated surrogacy and impose penalties for participation in such arrangements. This inconsistency creates complexity for intended parents and surrogates, especially in cross-state surrogacy arrangements.
- **UNITED KINGDOM**: The UK permits only altruistic surrogacy. The Surrogacy Arrangements Act 1985 and the Human Fertilisation and Embryology Act 2008 govern surrogacy practices.[13] Commercial surrogacy is illegal, and intended parents must apply for a parental order post-birth to be recognized as the legal parents. The legal process involves court scrutiny to ensure the surrogate's consent and the best interests of the child.
- **INDIA**: India has undergone significant changes in surrogacy laws. Previously a popular destination for international surrogacy, India now restricts surrogacy to altruistic arrangements for Indian citizens only, as per the Surrogacy (Regulation) Bill, 2020.[14] The law imposes strict eligibility criteria for intended parents and surrogates, aiming to prevent exploitation and ensure ethical practices.

[8] Susan L. Crockin "et al." , *Legal principles and essential surrogacy cases every practitioner should know,* 113 Fertility and Sterility, 908-915 (2020).
[9] Columbus N. Ogbujah "et al.", *Surrogacy and parenting in a Hyper-Technological world: Ethical considerations*, 11 Philosophy and Praxis, (2021).
[10] Chandra Thapa ,,& Seyit Camtepe, *Precision health data: Requirements, challenges and existing techniques for data security and privacy*, 129 Computers in biology and medicine, 104130 (2021).
[11] Raywat Deonandan, *Thoughts on the ethics of gestational surrogacy: perspectives from religions, Western liberalism, and comparisons with adoption*, 37 Journal of assisted reproduction and genetics, 269-279 (2020).
[12] Ibid.
[13] Kirsty Horsey, "et al.", *UK surrogates' characteristics, experiences, and views on surrogacy law reform*, 36 International Journal of law, policy and the family, ebac030 (2022).
[14] Virginie Rozée, "et al.", *The social paradoxes of commercial surrogacy in developing countries: India before the new law of 2018*, 20 BMC women's health,1-14 (2020).

- **AUSTRALIA**: Surrogacy laws in Australia are state-based, with most states allowing altruistic surrogacy and prohibiting commercial surrogacy.[15] For instance, in New South Wales, the Surrogacy Act 2010 outlines the legal framework, requiring a court process to transfer legal parenthood from the surrogate to the intended parents. Interstate surrogacy arrangements can be legally complex due to differing state regulations.
- **CANADA**: In Canada, altruistic surrogacy is permitted but commercial surrogacy is prohibited under the Assisted Human Reproduction Act.[16] Surrogacy agreements are not legally enforceable, meaning surrogates can change their minds about relinquishing the child. Intended parents must go through a legal process to be recognized as the child's parents, often involving post-birth adoption or declarations of parentage.

4.2. LEGAL CHALLENGES AND GAPS IN CURRENT FRAMEWORKS

Current surrogacy laws present several legal challenges and gaps. Inconsistencies in regulations across jurisdictions lead to legal uncertainty and complexity, particularly in international surrogacy arrangements.[17] Issues such as the enforceability of surrogacy agreements, the legal status of the child, and the rights and obligations of the parties involved are not uniformly addressed. For example, in some jurisdictions, surrogacy agreements are not legally binding, which can result in disputes if the surrogate or intended parents change their minds.[18] Additionally, the lack of clear legal frameworks for cross-border surrogacy can leave children born through these arrangements in legal limbo regarding citizenship and parentage.

CASE STUDY 1: BABY M CASE (USA)

In 1986, the Baby M case[19] became one of the most famous surrogacy legal disputes in the United States.[20] After giving delivery, Baby M's surrogate, Mary Beth Whitehead, made the decision to keep the kid, despite having signed a surrogacy contract with the intended parents, William and Elizabeth Stern. The New Jersey Supreme Court invalidated the surrogacy contract on grounds that it violated public policy, awarding custody to the Sterns but granting Whitehead visitation rights. This case highlighted the legal and ethical complexities surrounding surrogacy agreements and the rights of surrogates.

CASE STUDY 2: THE RE EVELYN CASE (AUSTRALIA)

In 1998, the Re Evelyn case[21] in Queensland, Australia, involved a dispute between a surrogate mother and the intended parents.[22] The surrogate, who was the child's biological aunt, decided to keep the child after birth. The court ruled in favor of the surrogate, citing the child's best interests, and emphasized the importance of clear legal agreements and the surrogate's rights. This case underscored the potential for conflict and the need for robust legal protections in surrogacy arrangements.

CASE STUDY 3: JAN BALAZ VS. ANAND MUNICIPALITY (INDIA)

In 2008, the Jan Balaz case[23] in India involved a German couple who commissioned a surrogacy arrangement with an Indian surrogate.[24] The twin children born from the arrangement faced legal limbo regarding citizenship, as India did not grant citizenship to children born through surrogacy to foreign nationals, and Germany did not recognize surrogacy. The Supreme Court of India ultimately granted Indian citizenship to the children. This case highlighted the legal complexities and the need for international cooperation in addressing cross-border surrogacy issues.

These cases illustrate the diverse legal challenges and gaps in surrogacy frameworks, emphasizing the need for clear, consistent, and ethical guidelines to safeguard the interests and rights of all parties engaged in surrogacy agreements.

[15] Ezra Kneebone, "et al.", *intended parents', and professionals' perspectives on ways to improve access to surrogacy in Australia*, 38 International Journal of Law, Policy and the Family, (2024).
[16] Sophia Fantus, *Two men and a surrogate: A qualitative study of surrogacy relationships in Canada,* 70 Family relations, 246-263 (2021).
[17] Sharon Shakargy, *Choice of law for surrogacy agreements: in the in-between of status and contract*, 16 Journal of Private International Law,138-162 (2020).
[18] Ibid.
[19] 109 N.J. 396 (1988)
[20] Semra Kahraman "et al.", *The birth of a baby with mosaicism resulting from a known mosaic embryo transfer: a case repor*t, 35 Human Reproduction, 727-733 (2020).
[21] (1998) 145 FLR 90
[22] Bruce Baer Arnold,, & Erina Mikus Fletcher, *Whose constitution: Sovereign citizenship, rights talk, and rhetorics of constitutionalism in Australia,* 14 Jindal Global Law Review, 99-122 (2023).
[23] AIR 2010 Gul 21
[24] Aneesh V Pillai, *Surrogacy and its Regulation: An Overview of Legislative and Judicial Responses in India*, Health Laws in India,179-195 (2022).

5. CHALLENGES POSED BY AI TO EXISTING SURROGACY LAWS

5.1. LEGAL IMPLICATIONS OF AI IN SURROGATE SELECTION AND MATCHING

AI technologies significantly impact surrogate selection and matching processes, raising numerous legal implications.[25] AI algorithms analyze extensive datasets to match surrogates with intended parents based on factors such as medical history, genetic compatibility, and personal preferences. However, the lack of regulatory frameworks specifically addressing AI-driven selection processes can lead to legal ambiguities. For example, if an AI algorithm inadvertently discriminates against certain groups or individuals, it could result in legal challenges related to fairness and equality. Furthermore, the transparency and accountability of AI decision-making processes are crucial, as parties involved may question the basis of matches or decisions made by AI systems. Legal frameworks must evolve to ensure that AI-driven surrogate matching is fair, non-discriminatory, and transparent.

5.2. AI-DRIVEN GENETIC MODIFICATION AND ITS LEGAL RAMIFICATIONS

AI's role in genetic modification presents profound legal ramifications. Advanced AI technologies enable precise genetic screening and modifications to prevent hereditary diseases or enhance certain traits in embryos.[26] While these capabilities offer significant medical benefits, they also raise complex legal questions. Current surrogacy laws often do not address the ethical and legal boundaries of genetic modification. Issues such as the potential for eugenics, the rights of the unborn child, and the long-term societal impact of genetic alterations need careful consideration. Moreover, the legal responsibility and liability for unintended consequences of genetic modifications must be clearly defined.

5.3. PRIVACY AND DATA PROTECTION ISSUES IN AI-BASED SURROGACY

AI-based surrogacy involves the collection and analysis of vast amounts of sensitive personal and medical data from both surrogates and intended parents.[27] This raises significant privacy and data protection concerns. Existing surrogacy laws may not adequately address the complexities of data security in AI applications. Ensuring that AI systems comply with data protection regulations, such as the General Data Protection Regulation (GDPR) in Europe, is essential. Data breaches, illegal access, and improper use of personal data are dangers that could result in legal ramifications and erode public confidence in AI-based surrogacy procedures. Legal frameworks must enforce stringent data protection standards and provide clear guidelines on data usage, storage, and sharing to safeguard individuals' privacy and personal information.

5.4. ETHICAL AND MORAL CHALLENGES

The integration of AI in surrogacy introduces various ethical and moral challenges that existing legal frameworks may struggle to address.[28] Bias in AI algorithms is a significant ethical concern, as biased data can lead to unfair or discriminatory outcomes in surrogate matching and genetic screening. The potential for AI to prioritize certain genetic traits raises moral questions about the extent of human intervention in natural processes. Additionally, the commercialization of AI-driven surrogacy services may exacerbate issues of exploitation and inequality, particularly if access to advanced technologies is limited to wealthy individuals or countries. Ethical frameworks must be developed alongside legal regulations to ensure that AI in surrogacy is used responsibly and equitably, respecting the dignity and rights of all parties involved.

While AI offers transformative potential for surrogacy practices, it poses significant challenges to existing legal frameworks. These include ensuring fairness and transparency in surrogate matching, regulating AI-driven genetic modifications, protecting privacy and personal data, and addressing ethical and moral concerns. Ensuring the rights and interests of intended parents, children, surrogates, and surrogates while utilising AI in surrogacy requires the creation of extensive legal and ethical frameworks.

[25] Susan L Crockin "et al." , *Legal principles and essential surrogacy cases every practitioner should know*, 113 Fertility and Sterility, 908-915 (2020).
[26] Sivan Tamir, *Artificial intelligence in human reproduction: charting the ethical debate over AI in IVF*, 3 AI and Ethics, 947-961 (2023).
[27] Kris Vera Hartmann "et al.", *Lost in translation? Conceptions of privacy and independence in the technical development of AI-based AAL*, 26 Medicine, Health Care and Philosophy, 99-110 (2023).
[28] Ido Alon "et al.", *Mapping international research output within ethical, legal, and social implications (ELSI) of assisted reproductive technologies*, 40 Journal of assisted reproduction and genetics, 2023-2043 (2023).

6. ADAPTING LEGAL FRAMEWORKS TO AI INNOVATIONS

To effectively integrate AI technologies into surrogacy practices, existing legal frameworks need comprehensive updates.[29] Firstly, laws should explicitly address the use of AI in surrogate selection and matching processes. This includes establishing standards for algorithm transparency, fairness, and accountability to prevent discrimination and ensure that matches are made based on objective and ethical criteria. Regular auditing of AI systems to identify and address biases should also be required by law. Second, AI-driven genetic modification and screening needs to be covered by rules. Clear guidelines are needed to define the permissible scope of genetic interventions, emphasizing the distinction between therapeutic and enhancement purposes. Thirdly, robust data protection laws specific to AI applications in surrogacy should be implemented.[30] These laws must ensure the confidentiality and security of sensitive personal and medical data collected during the surrogacy process.

International cooperation is crucial for regulating AI in surrogacy, given the global nature of surrogacy arrangements and the cross-border implications of AI technologies. International law and treaties can play a pivotal role in harmonizing regulations and ensuring consistent standards across countries.[31] One proposal is to develop an international treaty specifically addressing AI in reproductive technologies, including surrogacy. This treaty could establish global norms for AI use, genetic modification, and data protection. Furthermore, global organisations like the United Nations (UN) and the World Health Organisation (WHO) could facilitate the creation of guidelines and best practices for integrating AI into surrogacy, promoting ethical and equitable practices worldwide.[32] International law can help resolve jurisdictional conflicts in cross-border surrogacy arrangements. Agreements on mutual recognition of surrogacy contracts and the legal status of children born through surrogacy can prevent legal disputes and ensure the protection of all parties involved.

Balancing the benefits of AI innovations with ethical and legal safeguards is essential to ensure responsible and equitable use of technology in surrogacy. Policymakers should adopt a proactive approach, continuously monitoring and assessing the impact of AI on surrogacy practices. Ethical frameworks must be developed alongside legal regulations to address the moral challenges posed by AI. Public and stakeholder engagement is vital in this process, allowing diverse perspectives to inform the ethical considerations. Legal safeguards should include robust oversight mechanisms to regulate AI applications in surrogacy. Independent regulatory bodies can be established to oversee compliance with laws and ethical standards, conduct regular audits of AI systems, and address any violations or ethical breaches. Fostering transparency and accountability in AI use is crucial. AI developers and surrogacy service providers should be required to disclose information about the algorithms used, the data they process, and the decision-making processes. This transparency can help build trust among surrogates, intended parents, and the public.

7. SURROGACY ACT, 2021

The rapid advancement of artificial intelligence (AI) is revolutionizing various sectors, including healthcare and reproductive technologies. This technological evolution introduces new possibilities and challenges, particularly in the realm of surrogacy. India's surrogacy laws, primarily governed by the Surrogacy (Regulation) Act, 2021[33], must be evaluated to determine their adaptability to these emerging AI-driven challenges. This comprehensive analysis explores the key provisions of the Surrogacy Act, the challenges posed by AI, and the potential adaptations needed to ensure the law remains relevant and effective in addressing these new developments.

[29] Marinelli, Susanna, "et al.", *The legally charged issue of cross-border surrogacy: Current regulatory challenges and future prospects*, European Journal of Obstetrics & Gynecology and Reproductive Biology, (2024).
[30] Ibid.
[31] Sharon Shakargy, *Choice of law for surrogacy agreements: in the in-between of status and contract*, 16 Journal of Private International Law, 138-162 (2020).
[32] Ido Alon, "et al.", *Mapping international research output within ethical, legal, and social implications (ELSI) of assisted reproductive technologies*, 40 Journal of assisted reproduction and genetics, 2023-2043 (2023).
[33] The Surrogacy (Regulation) Act, 2021, No. 47 , Acts of Parliament, 2021 (India).

KEY PROVISIONS OF THE SURROGACY (REGULATION) ACT, 2021

1. PROHIBITION OF COMMERCIAL SURROGACY Section 4 of the Act strictly prohibits commercial surrogacy, allowing only altruistic surrogacy. This measure aims to prevent the exploitation of surrogate mothers and ensure that surrogacy is carried out for compassionate reasons rather than financial gain.

2. ELIGIBILITY CRITERIA FOR INTENDING PARENTS AND SURROGATES Sections 4(iii)(b)(I) and 4(iii)(b)(II) outline the eligibility criteria for intending parents and surrogates. Intending parents must be Indian citizens, legally married, and within specific age ranges (23-50 for women and 26-55 for men). They must not have any surviving biological or adopted children, with certain exceptions. The surrogate must be a close relative, married, have at least one child of her own, be aged between 25-35, and can act as a surrogate only once in her lifetime.

3. ESTABLISHMENT OF REGULATORY BODIES Sections 15 and 16 mandate the establishment of national and state surrogacy boards to regulate and monitor surrogacy practices, ensuring compliance with the Act and addressing grievances. These regulatory bodies play a crucial role in overseeing the surrogacy process and ensuring that ethical standards are maintained.

7.1. CHALLENGES POSED BY AI IN SURROGACY

AI can significantly enhance genetic screening by predicting potential genetic disorders and characteristics of embryos. While this technological capability holds promise for improving reproductive outcomes, it also raises ethical concerns regarding "designer babies" and the potential for discrimination based on genetic traits. The current legal framework does not adequately address these ethical implications, necessitating clear guidelines to prevent misuse and ensure that AI technologies align with ethical standards. Surrogacy AI algorithms gather and examine enormous volumes of private and sensitive genetic data. To safeguard the interests of all parties concerned, it is essential to ensure the privacy and security of this data. The Surrogacy (Regulation) Act, 2021, does not specifically address data protection concerns related to AI. Therefore, it is essential to integrate provisions from India's Personal Data Protection Bill, 2019, to safeguard against data breaches and misuse. AI can improve the matching process between intending parents and surrogates and monitor the surrogate's health during pregnancy. However, this requires robust regulatory frameworks to prevent exploitation and ensure ethical practices. The existing surrogacy boards established under the Act should be expanded to include oversight of AI technologies, setting standards for AI applications in surrogacy, monitoring compliance, and ensuring transparency in AI-driven processes.

7.2. ADAPTABILITY OF EXISTING LAWS

The adaptability of existing laws is crucial to addressing the ethical and regulatory challenges posed by advancements in AI, particularly in the context of surrogacy. The Surrogacy (Regulation) Act, 2021, emphasizes ethical practices and the well-being of surrogate mothers by prohibiting commercial surrogacy. However, the Act requires amendments to incorporate ethical guidelines for AI in genetic selection, preventing misuse and ensuring alignment with ethical standards to avoid issues like genetic discrimination. Additionally, India's Personal Data Protection Bill, 2019, provides a framework for data privacy, but specific provisions are needed within surrogacy laws to protect AI-driven data handling. Enhancing the Act with data protection measures will safeguard sensitive genetic and personal information. The regulatory framework should also expand to include oversight of AI technologies, setting standards, monitoring compliance, and ensuring transparency in AI-driven processes. Landmark cases like Baby Manji Yamada vs. Union of India and Jan Balaz vs. Anand Municipality highlight the complexities and evolving challenges in surrogacy, underscoring the need for clear legal frameworks and protection of all parties involved. By integrating ethical guidelines, robust data protection, and a comprehensive regulatory framework, India can ensure that surrogacy laws remain relevant and effective amidst technological advancements, upholding ethical standards and protecting stakeholders' interests.

8. CONCLUSION AND SUGGESTIONS

As we advance into an era where AI increasingly intersects with reproductive technologies, the future of surrogacy law faces both transformative opportunities and significant challenges. The integration of AI presents promising enhancements in surrogate matching, genetic modification, and operational efficiency; however, it also raises complex legal, ethical, and privacy concerns. Existing legal frameworks, while foundational, often lack the specificity needed to address the nuances of AI's role in surrogacy. Adapting these frameworks to effectively incorporate AI requires a concerted effort to establish comprehensive regulations that ensure transparency, accountability, and protection of all parties involved. This involves not only updating legal standards but also fostering international cooperation to create

consistent global policies. As we look forward, the adaptability of existing laws will be crucial in balancing innovation with ethical safeguards, ensuring that the benefits of AI are harnessed responsibly while mitigating potential risks. The evolution of surrogacy law must be proactive and responsive, integrating AI advancements with a robust legal framework that safeguards rights and promotes ethical practices in this new frontier of reproductive technology.

To address the integration of AI in surrogacy law, policymakers should consider several strategies. First, they should develop and implement comprehensive regulations that specifically address the use of AI in surrogacy, focusing on transparency, accountability, and data protection. This includes establishing clear guidelines for the validation and oversight of AI algorithms to ensure they are reliable and free from bias. Best practices for ensuring the ethical use of AI in reproductive technologies include enforcing rigorous standards for informed consent, where all parties are fully aware of how AI systems will impact their surrogacy arrangements. Additionally, ethical guidelines should mandate regular audits of AI systems to detect and address potential biases and inaccuracies. To foster international cooperation and standard-setting, policymakers should advocate for the creation of global frameworks and treaties that harmonize regulations across borders, facilitating consistency in the application of AI technologies in surrogacy and protecting the rights of surrogates, intended parents, and children worldwide. Collaboration between countries, industry leaders, and ethicists is crucial to developing these standards and ensuring the responsible integration of AI into reproductive technologies.

CONFLICT OF INTERESTS

None.

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