

## 25

## CENTRAL LEGISLATION

*S. Sivakumar\**

## I INTRODUCTION

THE PRESENT Survey of Central Legislation covers the enactments either passed in 2021 or enforced in 2021 along with major legislative amendments. The important enactments during the survey period are the Surrogacy (Regulation) Act, 2021 which regulates surrogacy in India by establishing rules and procedures for surrogacy arrangements and the Assisted Reproductive Technology (Regulation) Act, 2021 which aims to regulate the use of assisted reproductive technologies (ART) such as in vitro fertilization (IVF) and surrogacy. Further, the Essential Defence Services Act, 2021 empowers the government to prohibit strikes, lockouts, and other forms of protests by employees of essential defence services, including those working in ordnance factories, the armed forces, and other defence-related organizations.

The National Bank for Financing Infrastructure and Development Act provides for the establishment of the National Bank for Financing Infrastructure and Development (NBFID), which is a development finance institution that aims to support infrastructure projects in the country. The National Commission for Allied and Healthcare Professions Act, 2021 establishes a new regulatory body, the National Commission for Allied and Healthcare Professions (NCAHP), to oversee and regulate the education and practice of allied and healthcare professionals in India.

## II DEFENCE, ENVIRONMENT, AND INFRASTRUCTURE

**The Essential Defence Services Act, 2021**

The Essential Defence Services Act, 2021 passed on June 30, 2021 aims to ensure the smooth functioning of essential defence services in the country. The law empowers the government to prohibit strikes, lockouts, and other forms of protests by employees of essential defence services, including those working in ordnance factories, the armed forces, and other defence-related organizations.

The law was passed as an attempt to tackle issues related to the impact of strikes and protests on the country's defence and national security preparedness. The government contended that such activities by workers in vital defence services would jeopardise the country's capability to defend itself in times of emergency or conflict.

\* Senior Professor, Indian Law Institute, New Delhi/ Former Member Law Commission of India/ President, Commonwealth Legal Education Association.

*Essential Services:* Under the Act, essential defence services are defined as services that are essential to the security of India or any part thereof, and include services provided by the armed forces, defence production units, and other establishments engaged in the production of defence equipment or goods.

*Establishment of a Committee:* The Act provides for the establishment of a committee to decide on the categories of employees who will be covered under the Act. The committee will comprise of representatives of the Indian government, the armed forces, and other stakeholders.

*Grievance Redressal Mechanism:* The Act also provides for the establishment of a grievance redressal mechanism, which will be responsible for addressing grievances of employees covered under the Act. The mechanism will be headed by an officer not below the rank of Joint Secretary to the Indian government.

*Punishment for Strike, Illegal lockouts, and Layoff:* Employers who violate the prohibition order by unlawful lockouts or layoffs face up to a year in prison or Rs 10,000 fine, or both.

- i. For illegal strikes: Individuals who initiate or participate in illegal strikes face up to a year in prison or a Rs. 10,000 fine, or both.<sup>1</sup>
- ii. Those who instigate, incite, or take measures towards sustaining illegal strikes, or who knowingly contribute money for such objectives, face up to two years in prison or a Rs. 15,000 fine or both.<sup>2</sup>
- iii. In addition, such an employee will be subject to disciplinary action, including termination, in accordance with the terms and circumstances of his employment.

- In such instances, the responsible authority may terminate or remove the employee without conducting an investigation if such an investigation is not reasonably practicable.

- iv. All crimes punishable by the Ordinance will be cognisable and non-bailable.<sup>3</sup>

Overall, the Essential Defence Services Act, 2021 is an important legislation that seeks to ensure the smooth functioning of essential defence services in India. The Act provides for the prohibition of strikes and lockouts in essential defence services, which are critical for the security of the nation. The establishment of a grievance redressal mechanism is expected to address the concerns of employees covered under the Act and to promote harmony in the defence sector.

### **The Commission for Air Quality Management in National Capital Region and Adjoining Areas Act, 2021**

The Commission for Air Quality Management in National Capital Region and Adjoining Areas Act, 2021 is passed on March 25, 2021 with the aim of tackling air pollution in the National Capital Region (NCR) and adjoining areas.

1 The Essential Defence Services Act, 2021, s. 6.

2 *Id.*, s. 7.

3 *Id.*, s. 13.

*Commission for Air Quality Management:* The law established a Commission for Air Quality Management, which is responsible with formulating and executing a comprehensive strategy to enhance air quality in the NCR and surrounding areas. The commission has the authority to direct states, federal agencies, and other parties to execute policies that minimise air pollution.<sup>4</sup>

*Composition of Commission:* The Commission's membership will include a chairperson, a member-secretary, and a chief coordinating officer with the rank of Joint Secretary. In addition, a serving or former Joint Secretary from the Central Government will be appointed. Furthermore, the Commission will benefit from the knowledge of three independent technical experts specialising in air pollution, as well as three non-governmental organisation representatives. The Commission will also have *ex-officio* members from the national and state governments, as well as expert representatives from the national Pollution Control Board, Indian Space Research Organisation and NITI Aayog.

*Function and Power of the Commission:* The Commission is empowered by the Act to conduct research studies and capacity-building efforts to enhance air quality in the NCR as well as surrounding areas. The Commission will also have the authority to levy penalties on persons, organisations and government entities discovered to be guilty of air pollution.

*Establishment of a Fund:* Furthermore, the Act establishes a fund to promote research and development of technology to minimise air pollution, as well as the Commission's other operations. The fund will be contributed by the Indian government, the State Governments of Delhi, Haryana, Punjab, Rajasthan, and Uttar Pradesh, as well as from various other sources.

The Commission for Air Quality Management in the National Capital Region and Adjoining Areas Act, 2021 is a big milestone towards tackling the grave issue of air pollution in the NCR and surrounding regions, but it needs to be seen how efficient it will be in accomplishing its objectives.

### **The Dam Safety Act, 2021**

On July 26, 2021, Dam Safety Act of 2021 was introduced in the Lok Sabha. The Act seeks to regulate the monitoring, evaluation, functioning, and maintenance of dams in the country.

The proposed legislation would create a National Dam Safety Authority, as well as state-level dam safety authorities, to oversee dam safety across the country. The authorities will be in responsible for conducting regular dam inspections and assessments, as well as upholding safety standards and laws.<sup>5</sup>The law also calls for the creation of an emergency action plan to address the fallout from a dam failure and a fund to support those who would be impacted by such events.<sup>6</sup>

4 The Commission for Air Quality Management in National Capital Region and Adjoining Areas Act, 2021, s. 3.

5 The Dam Safety Act, 2021, s. 5.

6 *Id.*, s. 36.

*Institutional mechanism*

**Two national level bodies:** The National Committee on Dam Safety (NCDS), which creates policies and passes regulations pertaining to dam security standards.<sup>7</sup> The National Dam Safety Authority (NDSA) is in charge of enforcing NCDS laws, providing technical assistance to State Dam Safety Organisations (SDSOs), and settling SDSO issues.<sup>8</sup> The Act also expressly states that any decision made by the National Dam Safety Authority (NDSA) is obligatory on all parties.

The State Dam Safety Committee (SDSC) regulates state dam rehabilitation projects, investigates SDSO activities, and tracks development on dam security precautions, among other things.<sup>9</sup> The SDSOs will constantly monitor, study, and examine the dams.<sup>10</sup>

**Offences and penalties:** If someone obstructs anyone else from fulfilling their obligations under the Act or fails to comply with the directives, they might face up to a year in prison. In the instance of a death, the individual may face up to two years in prison.

**Responsibility of dam owner:** Dam owners must carry out routine safety checks and provide safety evaluations to the NDSA or SDSCs in accordance with the Act. The NDSA or SDSCs will have the authority to give safety instructions to dam owners and to impose sanctions on those who break the safety instructions. This is an important legislation with the objective of improving dam safety in India.

**The Tribunals Reforms Act, 2021**

In 2021, the Indian Parliament passed the Tribunals Reforms Act. The Act seeks to improve the administration and effectiveness of various tribunals in India.<sup>11</sup> The Appellate Tribunal for Electricity, the Competition Appellate Tribunal, and the Film Certification Appellate Tribunal are just a few of the tribunals that the Act calls for being abolished. These tribunals' functions and obligations will be transferred to other established tribunals or the high courts.

In addition, the Act establishes the National Tribunals Commission, which would be in charge of choosing and appointing members to different tribunals. The Commission will be headed over by a former Supreme Court judge or former chief justice of a high court. The legislation also establishes the qualifications and periods of service for tribunal members, as well as their dismissal in the event of misconduct or incapacity.

Thus, Tribunals Reforms Act, 2021 attempts to improve the operations of the different tribunals in India by simplifying operations, boosting flexibility, efficacy and ensuring that tribunal members are qualified and selected in an open manner. It aims at resulting in a better and more effective Indian justice system.

7 *Id.*, s. 5.

8 *Id.*, s. 8.

9 *Id.*, s. 11.

10 *Id.*, s. 14.

11 The Tribunal Act, 2021.

## III FINANCIAL AND EDUCATIONAL INSTITUTIONS

**The National Bank for Financing Infrastructure and Development Act, 2021**

The National Bank for Financing Infrastructure and Development Act, 2021 is enacted by the Parliament on March 23, 2021. The Act establishes the National Bank for Financing Infrastructure and Development (NBFID), a development finance institution tasked with assisting the nation's development initiatives.<sup>12</sup>

The NBFID would be a government-controlled agency that will facilitate long-term financing for construction endeavours and act as a catalyst for the growth of India's infrastructure sector. The central government would invest Rs. 1 lakh Crore towards the bank's capital base.<sup>13</sup>

*The functions of NBFID:* The Act outlines the goals and duties of the NBFID, among which are funding infrastructure projects, fostering research in the industry and offering central and state governments advisory services on issues pertaining to infrastructure development.<sup>14</sup>

*Management of NBFID:* The Board of Directors will be in charge of the whole operation and strategy of the NBFID. The board will be chosen by the Central Government and will include professionals in finance, economics, and infrastructure development.<sup>15</sup>

*Source of funds:* The NBFID has the authority to raise funds through loans or other means in Indian rupees or foreign currencies and may also secure funds through the issuance and sale of financial instruments, such as bonds and debentures. In order to borrow money, the NBFID may approach various entities, including the Central Government, the Reserve Bank of India (RBI), scheduled commercial banks, mutual funds, and multilateral institutions such as the World Bank and Asian Development Bank.<sup>16</sup>

*Support from the Central Government:* By the end of the initial fiscal year, NBFID will be granted Rs 5,000 crore by the Central Government. Moreover, the government will provide a guarantee for borrowing from multilateral institutions, sovereign wealth funds, and foreign funds at a concessional rate of up to 0.1%. Additionally, the government may reimburse the expenses incurred in guarding against fluctuations in foreign exchange, relating to borrowing in foreign currency, partly or fully.

*Prior Sanction for Investigation and Prosecution:* To initiate an investigation against NBFID employees, prior sanction is required from (a) the Central Government for the chairperson or other directors, and (ii) the Managing Director for other employees. Courts also need prior sanction before taking cognizance of offenses related to NBFID employees.<sup>17</sup>

12 National Bank for Financing Infrastructure and Development Act, 2021, s. 3.

13 *Id.*, s. 5.

14 *Id.*, s. 4.

15 *Id.*, s. 6.

16 *Id.*, s. 5.

17 *Id.*, s. 35.

The National Bank for Financing Infrastructure and Development Act, 2021 is expected to provide a significant boost to the infrastructure sector in India by providing long-term finance for infrastructure projects and promoting the development of the sector. The establishment of the NBFID is also expected to attract private sector investment in the infrastructure sector, which will further contribute to the growth and development of the sector.

### **The National Institutes of Food Technology, Entrepreneurship and Management Act, 2021**

The National Institutes of Food Technology, Entrepreneurship and Management Act, 2021 is a bill passed by the Indian Parliament in 2021.<sup>18</sup> The Act establishes two new institutes: the National Institute of Food Technology Entrepreneurship and Management (NIFTEM) in Haryana and the Indian Institute of Food Processing Technology (IIFPT) in Tamil Nadu to promote research and education in the areas of food technology, entrepreneurship, and management.

NIFTEM and IIFPT will be in charge of creating and providing instruction and advice in food technology, entrepreneurship, and administration. They will also undertake research and offer technical assistance to food processing businesses, as well as take part in entrepreneurial development and incubator operations.

*National Board:* The Act also creates a National Board of Accreditation for Food Technology, Entrepreneurship, and Administration, that will be in responsible for developing guidelines for certifying the schools' programmes and curriculum. Food technology, entrepreneurial, and management experts, as well as government authorities and corporate executives, will serve on the board.<sup>19</sup>

*Board of Governors:* The Act calls for establishment a Board of Governors as the institute's primary executive body. The Institute's affairs will be overseen, directed, and controlled by the Board of Directors. The Board of Governors consists of 16 members, including the director, dean, registrar, and faculty members, as well as the chairman who has expertise in food science, technology, management, or another related industry. The Board will also comprise officials from the federal and state governments, FSSAI, the Indian Council of Agricultural Research (ICAR) and the food processing sector.<sup>20</sup>

*Council:* The Act also establishes a Council that will regulate the institutes' operations and promote partnership to boost efficiency. Among its responsibilities, the Council will establish rules for the institutes' functioning and assess their progress achieving policy objectives. The Council will consist of thirteen members, with the Minister of Food Processing Industries serving as Chairperson.<sup>21</sup>

*National Food Processing Fund:* Furthermore, the Act establishes a National Food Processing Fund, which will be utilised to assist research and in the growth of food

18 National Institutes of Food Technology, Entrepreneurship and Management Act, 2021,

19 *Id.*, s. 10.

20 *Id.*, s. 11.

21 *Id.*, s. 30.

processing industry. The Fund will be managed by a National Food Processing Council, which will be appointed by the Indian Government.

The National Institutes of Food Technology, Entrepreneurship and Management Act, 2021 hence aims to promote innovation, entrepreneurship, and research in the food processing industry, which is an important sector of the Indian economy. The establishment of these institutes is expected to improve the quality of education and research in food technology and management, and to contribute to the growth of the food processing industry in India.

#### IV MARINE, PORTS AND TRANSPORTATION

##### **The Marine Aids to Navigation Act, 2021**

In July 2021, the ‘Marine Aids to Navigation’ Act, has been enacted by replacing an almost nine-decade-old lighthouse statute with a comprehensive regulations for providing and overseeing marine traffic services. The Act also alters the term ‘maritime navigational aids.’

The government’s objective in bringing the Act is to incorporate international standard practises, developments in technology, and India’s international obligations in the area of marine aids to navigation in order to accomplish the government’s objective, render the regulatory structure user-friendly, and encourage ease of doing business. The Act also governs the installation and maintenance of navigational aids (ATON) in the country’s territorial seas and exclusive economic zone (EEZ). The Act also proposes that India’s regulatory standards be matched with the International Association of Marine Aids to Navigation and Lighthouse Authorities’ Maritime Buoyage System. The association includes India as a member. The Act also addresses the administration and safety of this technology.

Under the Act, a National Authority for Aids to Navigation (NAAN) will be established to oversee the planning, development, maintenance, and operation of marine aids to navigation such as lighthouses, buoys, and beacons, to ensure safe navigation for ships and other vessels in India. The authority will be in responsible for putting cutting-edge technologies into use to increase navigational safety. The Act also establishes state-level bodies to regulate the use of ATON in Indian rivers. The law also establishes a fund to promote the development and management of ATON, as well as fines for interfering with navigational aids without permission.

*Director General of Aids to Navigation:* According to the Act, the Central Government is competent for selecting the following positions: (i) a Director General, (ii) Deputy Director Generals, and (iii) District Directors (as established by the Central Government). The Director General will advise the Central Government on navigational aids and other pertinent topics.<sup>22</sup>

*Central Advisory Committee:* The Act authorises the Central Government to form a Central Advisory Committee (CAC) comprised of experts with experience or expertise in the field. The CAC may be consulted by the government on matters such as the

22 Marine Aids to Navigation Act, 2021, s. 4.

formation of navigational aids, revisions to existing aids, associated expenditures, and the appointment of subcommittees. Additionally, the CAC may appoint subcommittees to provide further advice on these matters.<sup>23</sup>

*Training and certification:* According to the Act, individuals are prohibited from operating any aid to navigation or vessel traffic service without a valid training certificate, including ancillary activities.<sup>24</sup> The Central Government will accredit training institutions to provide training or assess individuals in the operation of aids to navigation and vessel traffic services.<sup>25</sup>

*Levy of marine aids to navigation charges:* According to the Act, marine aids to navigation charges will be imposed and gathered for every ship arriving or departing from any Indian port, at the rates prescribed by the central government periodically. Specific vessels may be exempted from these dues either wholly or partially by the central government, such as government ships not carrying cargo or passengers for freight or fares, or certain types of ships performing specific voyages.<sup>26</sup>

The Act contains a number of offences and punishments. For example, intentionally impeding, decreasing, or restricting the efficiency of any navigational aid or vessel traffic service may lead to imprisonment up to six months or a fine up to one lakh rupees, or both. In addition, wilfully injuring or destroying any aid to navigation or vessel traffic service may lead to imprisonment for up to a year or a fine of up to five lakh rupees, or both.

#### **The Inland Vessels Act, 2021**

The Inland Vessels Act, 2021<sup>27</sup> seeks to replace the Inland Vessels Act of 1917 which provides for the regulation of inland vessel navigation by states including the registration of vessels, and safe carriage of goods and passengers. The Act enlarges the definition of 'inland waters', by including tidal water limit and national waterways declared by the Central Government.

According to the Act, vessels that are propelled by mechanical means must register themselves, and even vessels that are not mechanically propelled must register themselves at the district, taluk, panchayat, or village level.

*Establishment of National Authority and routes:* The Act establishes a National Inland Waterways Authority (NIWA), which is responsible for the development, maintenance, and regulation of inland waterways in India.<sup>28</sup> The NIWA will also be responsible for the registration of inland vessels, setting standards for their construction and operation, and issuing licenses and certificates for vessel operators.

The Act provides for the establishment of Inland Water Transport (IWT) routes, which would be identified and classified as national waterways by the Central government.

23 *Id.*, s. 6.

24 *Id.*, s. 19.

25 *Id.*, s. 20.

26 *Id.*, s. 24.

27 Act No. 24 Of 2021.

28 The Inland Vessels Act, 2021, s. 6.



The NIWA will build and operate these national waterways, which will aid in the flow of cargo and passengers around the nation.

*Certificate of Registration:* According to the Act, the certificate of registration granted under it will be deemed legal/ valid in all states and union territories, and it will not be required to seek separate states authorizations.<sup>29</sup>

*Manning Requirements:* The number of people required on board vessels for various occupations will be determined by the central government. Breaching these regulations may result in a punishment of up to Rs 10,000 for the first offence and Rs 25,000 for subsequent offences.<sup>30</sup>

*Database on Inland Vessels and Development fund:* The Inland Vessels Act of 2021 mandates the development of an integrated database, an electronic centralised repository of data on inland vessels, encompassing all information on vessel registration, crew, and issue permits. The Act also calls for the establishment of a development fund, which will be utilised for a range of purposes, such as emergency preparedness, pollution management and strengthening inland water traffic.

The centre will also establish standards for training, assessment, and the awarding of certifications of competency, which check a person's competence in carrying out the activities assigned.<sup>31</sup> The certificates will be granted by the governments of the different states.<sup>32</sup> The Act would require ships to follow laws for navigational equipment and signals, notably those relating to responding to distress messages. In addition, vessels must be insured against liability for death, injury, or damages resulting from vessel operation, notably accidental pollution. It mandates that any mishaps onboard on such vessels has to be notified to the head officer of the nearest police station and the state government-appointed bodies.

### **The Major Port Authorities Act, 2021**

The Major Port Authorities Act, 2021 supersedes the previous Major Port Trusts Act, 1963. The Act establishes a new structure for port authority administration, enabling for the supervision, functioning, and development of major ports in India. The Act aims to increase the efficacy and competitiveness of India's primary ports by granting port authorities greater autonomy in administration and decision-making. The proposed Act would provide the central government the right to establish a board of significant port authority for each port, which would be in charge of deciding on the port's administration, development, and management.

The Act additionally provides for the establishment of a port user's council in order to promote port user engagement in decision-making processes. This council will be able to provide port-related advice to the major port authority's board of directors. The Major Port Authorities Act of 2021 also requires the establishment of an Adjudicatory Board to resolve issues or concerns regarding port operations. The

29 *Id.*, s. 17.

30 Inland Vessels Act, 2021, s. 87.

31 *Id.*, s. 34.

32 *Id.*, s. 37.

board will have the authority to resolve issues between ports or between ports and other parties. The Act is expected to make significant changes in the oversight and operation of India's major ports, with the purpose of boosting their efficacy and capacity in order to compete in the global market.

#### V MEDICAL HEALTHCARE AND INSTITUTION

##### **The Assisted Reproductive Technology (Regulation) Act, 2021**

The Assisted Reproductive Technology (Regulation) Act of 2021 tries to regulate the use of ART or assisted reproductive technology, such as in vitro fertilisation (IVF) and surrogacy. On September 14, 2020, the Act was passed by the lower house of the Parliament. The law aims to provide a legal and ethical framework for ART practices and ensure the rights and welfare of all parties involved, including the intended parents, surrogate mothers, and children born through ART.

*Regulation of ART clinics:* The Act requires all ART clinics to be registered with the National Registry of ART Clinics and Banks of India.<sup>33</sup> The clinics must adhere to certain standards and guidelines regarding the facilities, equipment, and personnel. This Registry, comprised of scientific and technical personnel, would serve as a central database for all centres offering ART treatments in India. Agencies that facilitate the registering procedure must be appointed by state governments. ART procedures may not be performed by anyone, hospital, or bank provided they have been registered with the Registry.

These clinics' and banks' registrations are valid for five years and can be extended for an additional five years. It may be revoked or terminated if the institution breaches the Act's provisions. Clinics aren't allowed to provide children of a specific sex and must screen for genetic disorders before implanting an embryo in a woman's body.

*The duties of ART clinics:* The Act also outlines the obligations placed on ART banks and medical facilities, including ensuring that the prospective parents, woman, and donor are qualified to receive ART facilities; requiring medical centres to acquire donors' gametes from donation banks, which must guarantee that the donor has been examined for diseases; offering counselling to commissioning couples and women regarding the possible consequences of ART; and upholding children's rights.<sup>34</sup> Clinics and banks are required to keep commissioning couples' and women's details secret and to create a grievance redressal cell. The Act also authorises the Central Government to issue guidelines to carry out the requirements of the Act as and when necessary.

*The duties of ART clinics while using human gametes and embryos:* As per section 24 of the ART Act, ART clinics and banks are duty-bound to perform the under-mentioned duties while using human gametes and embryos: –

- i. The clinics are required to follow the legal procedure for retrieving oocytes.
- ii. During the treatment cycle, a maximum of three oocytes or embryos can be implanted in a woman's uterus.

<sup>33</sup> Assisted Reproductive Technology (Regulation) Act, 2021, s.8.

<sup>34</sup> *Id.*, s. 21.

- iii. Gametes or embryos from only one man or woman can be used for treating a woman during a single treatment cycle.
- iv. Semen from different individuals should not be mixed by any clinic.
- v. It is not allowed to divide embryos for the purpose of twinning and obtaining more embryos.
- vi. The posthumous collection of gametes is permissible only if the commissioning couple has given prior consent.
- vii. The clinic cannot use an ovum obtained from a foetus for any in-vitro fertilization process.

*Establishment of a National Board:* The Act also calls for the establishment of a National Reproductive Technology and Surrogacy Board,<sup>35</sup> which will formulate a Code of Conduct for those engaged in ART clinics and banks, as well as a minimum standard for physical facilities, the lab and testing facilities, and expert personnel employed by clinics and banks. The Board will also oversee the operation of the Registry.

*Eligibility criteria for surrogacy:* The Act establishes stringent qualifying standards for surrogacy, including minimum age requirements for intended parents, medical proof of infertility, and a confirmation from a competent authority.

To be deemed “eligible,” the couple must have been married for at least five years, with the wife between the ages of 25 and 50 and the husband between the ages of 26 and 55. Furthermore, they should not have any surviving biological, adopted, or surrogate children, except for those with disabilities or life-threatening conditions.

If the couple is proven to be infertile by a district medical board, they may be issued an “essential” certificate. This certificate, along with a court order regarding the parentage and custody of the surrogate child from a Magistrate’s court, is required to proceed with surrogacy. The couple must also ensure that the surrogate mother has insurance coverage for at least 16 months to cover any postpartum complications.

Top of Form

*Punishment in the event of contravention of provisions of the Act:* Furthermore, the Act imposes severe penalties for violations of its provisions. First-time violators may be fined between 5 lakh and 10 lakh, while repeated offenders may face imprisonment for 8 to 12 years as well as a fine of 10 to 12 lakhs. The owner of clinics or banks that provide or promote sex selective ART may face imprisonment for 5 to 10 years, as well as a fine of 10 to 25 lakhs, or both.<sup>36</sup>

*Legal parentage of the child:* The Act provides for the legal parentage of the child born through ART, including surrogacy. The intended parents are recognized as the legal parents of the child, and the birth certificate will reflect their names as parents.

Concerns regarding the Act include the fact that it prohibits unmarried males, divorced men, widowed men, unmarried but cohabiting heterosexual couples, trans

<sup>35</sup> *Id.*, s. 3.

<sup>36</sup> *Id.*, s. 33.

people, and homosexual couples (whether married or cohabiting) from receiving ART services. This omission is significant since the Surrogacy Act prohibits the aforementioned individuals from using surrogacy as a method of reproduction.

### **The Surrogacy (Regulation) Act, 2021**

The Surrogacy (Regulation) Act, 2021 is a bill passed by the Indian Parliament in 2021.<sup>37</sup> The Act consists of eight chapters and 54 sections that deal with the regulation of surrogacy in India. The Surrogacy (Regulations) Act, 2021, received the President's assent on December 25, 2021. The Act regulates surrogacy in India by establishing rules and procedures for surrogacy arrangements, with the aim of protecting the rights of surrogates and ensuring the welfare of children born through surrogacy.

*Type of surrogacy permitted under the Act:* The statute defines surrogacy as an arrangement in which a woman bears a child for other couples and differentiates between two types of surrogacy: altruistic surrogacy and commercial surrogacy. Altruistic surrogacy, in which the surrogate mother gets no monetary benefit other than healthcare expenses and insurance coverage, is lawful for Indian citizens who are married and have been identified as clinically infertile. Commercial surrogacy, in which the surrogate mother is compensated for her services, is illegal and unlawful under the Act.

*The Act establishes National Surrogacy Board and State Surrogacy Boards:* The statute creates a National Surrogacy Board<sup>38</sup> and State Surrogacy Boards<sup>39</sup> to oversee surrogacy arrangements and safeguard the health and safety of the surrogate mother and child. The boards will be in responsible for licencing surrogacy facilities, validating prospective parents' eligibility, and monitoring the surrogacy process.<sup>40</sup>

*Rights of the Surrogate Mother:* According to the Act, the surrogate mother has the right to receive all necessary information regarding the ART procedure, and her approval must be obtained before the procedures may begin. Section 8 of the Act says that any child born through surrogacy is considered the biological child of the intended couple and has exactly the same legal rights as any other child. Furthermore, Section 10 of the Act clearly says that no organisation or individual can pressure the surrogate mother to have an abortion at any point, except in specified conditions authorised by law.

The Act also protects surrogate mothers' rights, including as accessibility to medical treatment and insurance coverage, and requires contracts for surrogacy to be in writing and recorded with the appropriate authorities. The Act also mandates the formation of a Surrogacy Regulation Authority to supervise the law's implementation.

*Establishment of Registry:* Section 15 of the Act creates the National Assisted Reproductive Technology and Surrogacy Registry. Furthermore, section 16 requires any organisation registered under section 15 of the Act to also be registered under section 9 of the Assisted Reproductive Technology Act.

37 Act No. 47 of 2021.

38 The Surrogacy (Regulation) Act, 2021, s. 17.

39 *Id.*, s. 26.

40 *Id.*, s. 3.

*Maintenance of records:* Section 46 of the Act requires all surrogacy and IVF clinics to keep records for at least 25 years. However, if there are any criminal or legal proceedings pending, the recordings must be preserved until the case is resolved. The records must be available for inspection whenever necessary.

*Punishment for not allowing Altruistic Surrogacy:* Section 40 of the Act provides that anyone who inhibits an intending couple from pursuing altruistic surrogacy may face up to five years in prison and a fine of up to five lakh rupees for the first violation. For subsequent offences, the punishment can be imprisonment for up to ten years and a fine of up to ten lakh rupees. The individuals who may face these penalties include the person, clinic, laboratory, or any authorised person or authority.

Overall, the Surrogacy (Regulation) Act, 2021 aims to regulate surrogacy in India in a manner that protects the rights of surrogates and ensures the welfare of children born through surrogacy.

### **The National Commission for Allied and Healthcare Professions Act, 2021**

The National Commission for Allied and Healthcare Professions Act, 2021 is a bill passed by the Indian Parliament in 2021 and the Act was notified in the official gazette on 28th March 2021.<sup>41</sup> The Act establishes a new regulatory body, the National Commission for Allied and Healthcare Professions (NCAHP), to oversee and regulate the education and practice of allied and healthcare professionals in India in line of existing regulatory bodies for medical (National Medical Commission), dental (Dental Council of India), nursing (Indian Nursing Council), and pharmacy (Pharmacy Council of India) education.<sup>42</sup>

The Act defines allied healthcare professionals as those who provide support to healthcare professionals in the diagnosis, treatment, and rehabilitation of patients. This includes professions such as physiotherapy, radiography, medical laboratory technology, and optometry, among others. Healthcare professionals include those who have received medical education and are licensed to diagnose and treat patients, such as doctors, dentists, and nurses.<sup>43</sup>

The National Council for Allied Health Professionals (NCAHP) will be made up of several members, including a Chairperson, a Vice-Chairperson, five members who are Joint Secretaries representing different Central Government Departments/ Ministries, one representative from the Directorate General of Health Services, three Deputy Directors or Medical Superintendents appointed on a rotational basis from medical institutions like AIIMS, Delhi and AIIPMR, Mumbai and twelve part-time members representing State Councils, among other positions.

The NCAHP will be in charge of establishing guidelines for allied and medical professionals' training, certification, and professional conduct. It would also keep an

41 Act No. 14 of 2021.

42 National Commission for Allied and Healthcare Professions Act, 2021, s. 3.

43 *Id.*, s. 2.

44 *Id.*, s. 12.

online central national registration of these professionals and have the authority to suspend or cancel their licences if they engage in acts of professional misconduct.

The statute also establishes a National Advisory Council to advise and lead the NCAHP. Experts in allied and healthcare professions, as well as members from other government agencies and organisations, will serve on the council.<sup>44</sup>

*State Councils:* In a timeframe of six months after passing of the Act, the state governments will establish State Allied and Healthcare Councils. These councils will be composed of various members, including a chairperson who has at least 25 years of experience in allied and healthcare science, a representative from the medical sciences in the state government, two representatives from state medical colleges, two representatives from charitable institutions, and two members from each of the recognized categories of allied and healthcare professions nominated by the state government.<sup>45</sup>

The state councils have the responsibility to ensure that allied healthcare professionals adhere to a professional code of ethics, maintain state registers, conduct inspections of allied and healthcare institutions, and administer consistent entry and exit exams.

*Offences and penalties:* Chapter VII of the Act deals with offences and penalties. It states that no person is allowed to practice as a qualified allied and healthcare practitioner other than those enrolled in a State Register or the National Register. Any person who contravenes this provision will be punished with a fine of Rs 50,000. The National Commission for Allied and Healthcare Professions Act, 2021 aims to improve the quality of healthcare in India by regulating the education and practice of allied and healthcare professionals and ensuring that they adhere to high standards of professionalism and ethics.

## V CONCLUSION

The year 2021 presented notable legislative frameworks to the country. The Surrogacy (Regulation) Act, 2021 and the Assisted Reproductive Technology (Regulation) Act, 2021 (ART Act) aim to regulate the multimillion-dollar industry of reproductive medicine, stipulate who can access assisted reproductive technologies and procedures such as in vitro fertilisation and surrogacy, the conditions under which gamete donation and surrogacy can take place, and specify requirements for clinics to operate.

The Commission for Air Quality Management in National Capital Region and Adjoining Areas Act, 2021 seeks to establish the commission which will regulate the air quality of Delhi NCR, which were become big concern for the government over the years and act as coordinating factors between various adjoining state government and the Dam Safety Act, 2021 will provide the long-standing demand for the safety, maintenance and the security of the dams across the country. The year 2021 proves to be instrumental year in passing of the new legislations which are the need of the hour.

45 *Id.*, s. 22(1).