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ANALYSIS OF THE USE OF THE MASCULINE RULE¹ IN
GENERAL ACTS FROM INDIA DURING THE SECOND SEMESTER
OF 2021

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¹ The masculine rule, norm, or generic was used by Kramer, Thorne, and Henley (1978) and refers to the use of he / his / him use as neutral terms.

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ABSTRACT

This work aims at analysing the so-called masculine rule in Indian General Acts during the second semester of 2021. Firstly, the topic has been contextualized within the different fields involved, that is, Linguistics, Legal English, Feminist Studies, English for Specific Purposes, and Discourse Analysis. In so doing, primary studies and more recent ones have been reviewed to set the background from an academic perspective. The most welcome options suggested by linguists, feminists, and legal professionals to eliminate this use have been included. Additionally, the study has also referred to the different ways these suggestions have been implemented according to the country and institution. Secondly, the Indian legal background has been examined. Thirdly, the content of the General Acts passed during the second semester of 2021 by the Indian Parliament has been closely analysed. To that end, examples of masculine pronouns and possessive adjectives used neutrally to refer to any gender have been collected. More inclusive terms used in the Acts have been also included in the collection of data.

KEY WORDS

Masculine rule, Indian General Acts, sexist language, Legal English, ESP

RESÚMEN

El objetivo del presente trabajo es analizar la aplicación de la conocida como “regla masculina” en las leyes aprobadas en la India durante el segundo semestre del pasado año 2021. Inicialmente, se contextualiza el tema dentro de los diferentes campos implicados, es decir, dentro de la Lingüística, Discurso jurídico e ESP, Estudios Feministas y Análisis del Discurso. De esta forma, se hace una revisión tanto de los estudios iniciales fundamentales en estos campos como de los más recientes para establecer su marco teórico desde una perspectiva académica. El estudio también incluye las sugerencias que lingüistas, feministas y profesionales legales han planteado para eliminar su uso, así como las diferentes formas en las que instituciones y países las han ido implementado. En segundo lugar, se examina el contexto jurídico hindú. Después se lleva a cabo un análisis profundo del contenido de las Leyes Generales Indias aprobadas por el Parlamento durante el segundo semestre del año 2021. A tal efecto, se recogen muestras tanto del uso de pronombres personales como de adjetivos posesivos en su forma masculina empleados como genéricos para referirse a cualquier género. La recogida de muestras también incluye otros términos más inclusivos usados en dichos documentos.

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1. INTRODUCTION

The use of English as a lingua franca has been extended all over the world due to globalization, mobility, and technical-scientific development according to Hutchinson and Waters (1987) and, as a result, English for Specific Purposes has evolved and divided into different branches, triggering the consolidation of English for Academic Purposes (EAP) as a specialized language at the end of 1980s. Legal English, framed in English for Social Sciences (ESS) according to Hutchinson and Waters (1987) or Dudley Evans and O St. John (1998), and rooted in English Language Teaching (ELT) is a variety of language within EAP. It is used among professionals and students of law and legal professions to refer to concepts and knowledge within this field and has similarities with other specialized languages. This may refer to lexical, syntactic, and semantic restrictions or even special grammatical rules in linguistics. However, the high frequency of vocabulary of Greek or Latin origin, and the use of passive structures or compound prepositions and adverbs among other features, make Legal English the most different variety of all. Regarding other extra-linguistic aspects, it is consciously acquired, it is exclusive, that is, refers to a particular subject matter, and what is more important for this paper, it might be sexist. There is literature devoted not only to researching the alleged sexism of legal language but also attempts to transform it, such as Ritchie (1975) who used the following comparison from the *Memorandum on the Drafting of Acts of Parliament and Subordinate Legislation* (1951), Department of Justice (Ottawa), regarding the use of masculine pronouns to encompass both genres (male and female) in the language of the law: “Definitions should not be too artificial. For example –‘dog’ includes a cat’ is asking too much of a reader; ‘animal’ means a dog or a cat would be better” (p. 685).

Other notable authors who have referred to this topic include Busby (1989), Marshall Thatcher (2014), Lagasse (2018), or more recently, Jaising (2019), who even addressed an open letter to the Chief Justice of India, requesting the avoidance of gender bias within the legal language in India, citing article 15.1 of the Indian Constitution:

A discriminatory act will be tested against constitutional values. A discrimination will not survive constitutional scrutiny when it is grounded in and perpetuates stereotypes about a class constituted by the grounds prohibited in Article 15(1). If any ground of discrimination, whether direct or indirect is founded on a stereotypical understanding of the role of the sex, it would not be distinguishable from the discrimination which is prohibited by Article 15 on the grounds only of sex. If certain characteristics grounded in stereotypes, are to be associated with entire classes of people constituted as groups by any of the grounds prohibited in Article 15(1), that cannot establish a permissible reason to discriminate.

Previous studies of the English Language, such as Lakoff's (1973) explore the way language talks about men and women, and she employs the example of Mr., Mrs., and Miss. She questions how language use can influence (and change) male and female roles in our society, examines these inequalities from a cultural relativist perspective, and analyses how language builds our universe and gives us (or prevents us from having) access to power. Spender (1980) also reflects on how social spheres seem to have been built to maintain a patriarchal hierarchy; other research has seemed to prove that the use of masculine generics (he, him, and his) may lead us to think of males rather than females more frequently. Authors such as Cole et al. (1983), MacKay (1980), and Conaghan (2015) refer to the historical importance of language in the construction of pattern relations between gender in which male figures prevail, and how it helps to consider (or disregard) the concept of gender in law and its language. Lumala and Mullany (2020) demonstrate that the language used in narratives may serve to build models in any profession such as politics, law, or education; the European Parliament (2018) stated "*Using gender-fair and inclusive language also helps reduce gender stereotyping, promotes social change and contributes to achieving gender equality*" (p. 3).

All these considered, it seems appropriate to think that language is a powerful tool that can be used to deconstruct the so-called hegemonic masculinity (Connell, 2005) and turn our society into a more open and inclusive one, and less constrained and discriminatory. Therefore, a reform in Legal English might help to adopt a real equalitarian stance towards gender and to build strong pillars to have an actual impact in terms of gender equality.

a. MOTIVATION

During my trip to India in 2013, I could perceive the discrimination women suffered and how rooted this inequality was there. On the second day of my stay, I was waiting to enter a restaurant and the waiter attended first two English-speaking men who arrived later than I did. He said to them, 'table for two, gentlemen?', and later, after I had already waited for a couple of minutes, he then came back to me and said, 'follow me' so I could have a table. It became clear that those men were going to be served before I was, and when I asked the waiter the reason for this, he disdainfully replied to me, 'men go first'. A similar experience took place when I entered the metro in New Delhi: women and children had different entrances and I had to wait until the men had entered first. These experiences shocked me, but I had not thought about it again until this project started.

When I was assigned the English for Academic Purposes (EAP) line of work, I immediately thought about the way women are misrepresented in language and decided to focus my research on this aspect of EAP. I then started my first search for literature in order to flesh out the subject and typed 'gender inequalities in EAP' on the library browser. The choices surpassed 3 million results, so I narrowed down the subject. Therefore, I focus on one of the sub-fields of EAP, that is, in Legal English, and I wondered if some regulation on the use of inclusive language existed. I only focused on English-speaking countries to limit the research. The global relevance of this subject was patent by:

- The amount of literature devoted to this scope (Schweikat (1998), Williams (2008), Conaghan (2008));
- The number of organizations and institutions that have issued manuals or booklets to avoid gender inequalities in language use: UNESCO (1999), the British Columbia Law Institute (1998), the Department of Justice of the Government of Canada (2021), the European Parliament (2018), NATO (2018);
- The universities worldwide, such as the University of Houston (2022), the University of Adelaide, and the University of Victoria have either a

published manual or a particular section devoted to guidance on inclusive language practice.

And within the academic sphere:

- Feminist Studies, from its multidisciplinary approach, is another field concerned with this issue, and it is worth mentioning some representative authors such as Kramer et al. (1978) or Cameron (1998).
- In the Linguistics arena, Lakoff (1975), Bodine (1975), and Baron (2020) issued relevant works.

The lack of guidelines or laws found at first sight in India (as I said previously, I only focused on English-speaking countries) lead me to access different legal national archives and to read distinct acts to compare how gender was represented. I accessed the English one <https://www.legislation.gov.uk>¹, the Australian <https://www.legislation.gov.au>², the European <https://eur-lex.europa.eu/advanced-search-form.html>³, the Canadian <https://lois-laws.justice.gc.ca/eng/>⁴, and the Indian one <https://legislative.gov.in>⁵. I noticed that there was a substantial difference in managing this issue in India, in comparison to the others. In this sense, the number of masculine forms of personal pronouns and possessive adjectives used neutrally was noticeable and a generalized practice in India, while it was less evident in the rest of the consulted countries. I recalled then my experience in India and thought that it was not accidental. Women in India appeared to suffer not only physical discrimination but also linguistic.

Subsequently, I tried to find some related literature from India, but I discovered instead that there were considerably more publications pointing out the gender inequalities within the legal system itself than focusing on the linguist aspect. Therefore, I was motivated to investigate it further and make it more visible by

¹ Consulted on May 2022

² Consulted on May 2022

³ Consulted on May 2022

⁴ Consulted on May 2022

⁵ Consulted on May 2022

working on this issue from a feminist perspective and showing the extent to which this practice is still present.

b. RELATION TO THE DIFFERENT SUBJECTS OF THE DEGREE

Below, I refer to the specific subjects related to the present research which will be of great help thanks to the knowledge acquired over several years in my English Language, Literature, and Culture Degree:

- Linguistics: The importance of transforming the English used in Law responds to the needs of part of society (female) to be linguistically represented. The observation and analysis of the masculine rule in Legal English will describe a linguistic phenomenon and will help to predict and generalize this model within Legal English in India. If traditionally Linguistics describes the rules of English usage according to Hutchinson and Waters (1987), it can transform the masculine rule into a more inclusive form within Legal English;
- Sociolinguistics: the social effects of this linguistic phenomenon (masculine rule in Legal English) is of paramount importance. The fact that women are not linguistically represented implies that they are ignored and, therefore, invisible to the rest of society. It contributes to the lack of models and perpetuates social inequalities. The existence and visualization of relevant women would contribute to evolving to a more egalitarian scenario;
- Gender Studies: its relevance lies in how the field helps to describe a particular discourse, presumably sexist, within Legal English, and more specifically, in the analysis of general acts in India, from a feminist point of view. The deconstruction of assumed discourses and the construction of new ones will help to give visibility and voice to women, who were previously ignored by the masculine rule;
- Pragmatics: this research is focused on explaining the use of a particular aspect of language, that is, the so-called '*pronoun problem*' (Burlingame, 1990, p. 87), in real communicative situations (general acts in India), and how it is interpreted within the legal context. The masculine rule ignores

and overshadows women, and this lack of visibility is understood as if they did not exist. These women's conditions could be changed by suppressing the masculine norm and adopting a more inclusive one. In this case, women would be part of the context and visible.

- Semantics: this field, focused on the meaning of units of the language (morphemes, lexemes, sentences, and discourse) and their grammatical information (number, case, and what is relevant for this work, gender) will help to explain the sexist aspect of the masculine norm in Indian general acts. The use of 'he', 'his', and 'him' as generic fails to include women since there are circumstances in which their use causes ambiguity in meaning;
- ESP: the present research will deal with one of the hallmarks of Legal English, which is clarity, and it will explore different ways to accurately obey this principle in Indian general Acts by suggesting dissimilar options to the masculine rule. In so doing, ambiguity will be avoided in this respect;
- Discourse Analysis: despite not being the main topic, this piece of research refers to the conditions in which the masculine form was normalized in English by grammarian John Kirby in 1746, according to Cameron (1998), and focuses on its employment in Indian general Acts as well as in its interpretation, in the construction of relationship, roles and stereotypes, that is, the relation between language and female status.

c. HYPOTHESIS

From an initial reading in <https://legislative.gov.in> of the two first General Acts passed in the Indian Parliament in 2021, I have observed that the masculine form of personal pronouns and possessive adjectives are still being used as generic or neutral to refer to any gender, either masculine, feminine, or any other. We talk about General Acts when referring to those applicable to the whole country, as against state Acts, which are applicable only in the particular state for which it is passed. Therefore, the hypothesis on which we will work is that it appears to be the case that in Legal English (as applicable to General Acts) the Indian Parliament tends to use the

masculine form of possessive adjectives and personal and object pronouns to draft Acts to encompass any gender.

d. OBJECTIVES

This piece of research will be focused on how gender is represented in Legal English. In particular, it will explore General Acts passed in Parliament and the Legislative Assembly in India during the last semester of the year 2021, and it will try to uncover inequalities in the use of personal and object pronouns and possessive adjectives in their masculine forms as neutral and encompassing terms. Therefore, the objectives are:

- To examine the General Parliament Acts -that is, those applicable to the whole country- passed in India during the last semester of 2021 to collect examples of masculine personal and object pronouns and possessive adjectives used neutrally to refer to any gender. There are 7 General Acts;
- To analyse whether more inclusive terms are also included;
- To test the hypothesis previously posed that the use of masculine forms in these documents may be the norm to refer to any gender form.

2. STATE OF THE ART

a. LINGUISTICS AND FEMINIST STUDIES

English is a language that has no gender-neutral form to address a third person in the singular, that is, it lacks a gender-neutral pronoun, according to Baron (2020). Despite the existence of 'it', its use can only be applied to refer to a referent which is a thing, animal, situation, or idea, but not to a person. If we consider the Oxford Learners Dictionary's explanation (2022)⁶, "(it' is) used to refer to an animal or a thing that has already been mentioned or that is being talked about now". This phenomenon was coined as 'the pronoun problem' by Burlingame (1990, p. 87), and it has been a matter of debate in different fields. The undeniable eclecticism of the topic ranges from linguistics, and gender studies, to discourse analysis among others, as Meyerhoff and Ehrlich (2019) suggested, not to mention Legal Studies.

As Ann Bodine (1975) documented in her work, the use of the 'masculine rule', 'masculine norm', or 'masculine generic' he / his / him, as Kramer et al. (1978) referred to, was not established until the 18th century by prescriptive grammarians. In the 19th century, it was applied in grammar books after the British Parliament passed the 'Act for shortening the language used in Acts passed in Parliament' in 1850. It then became widely used. There are records of the use of 'they' as a singular pronoun to refer to a third person whose gender is unknown, such as in Chaucer's 'The Pardoner's Tale', in Shakespeare's 'The Comedy of Errors', or later in Austen's 'Pride and Prejudice' when the rule was spread. Bodine also claimed that this norm was androcentric, and she marked the Second Feminist wave 1960-70 as the catalyst for feminist linguists to put focus on the sexist aspect of the language.

Initial studies were focused on different facets of language, such as the distinct use and speech employed by men and women; the sexist aspect of the language, its connection between structure and use; and the divergent attempts to change it.

⁶ Consulted on Sept. 2022

Lakoff (1975) suggested that women were linguistically discriminated by the way language is used to refer to them. However, she put the focus of her work on how women are identified according to their relationship with men. She explained why terms such as bachelor/spinster, man/wife, or widow/widower, were not used equally and asserted that these feminine denominations had either a negative connotation or were not exact equivalents. Nevertheless, she thought that the pronoun neutralization was not discriminatory for women, but rather that its use was deeply rooted in our mind and consequently, less likely to be analysed and expected to be changed. The studies illustrated in the previously given examples of Kramer et al. (1978) traced back the generalized use of 'they' as a generic pronoun, proving a shift in the norm. This leads us to suggest that if the masculine rule was adopted before with its implying change, there is no reason to think that a new change is impossible now.

Kramer et al. (1978) reflected on the same issues: the ways women and men use language, patterns of language which reveal and construct sexism, and approaches to transform sexist language. Through their research, they pointed out men as the power who labeled concepts in some way or another, and who decided which words must be used, and which ones must be included in dictionaries. If language models help to build gender discrimination and men are the ones who make decisions about concepts and language, it then follows that the choice of the term 'he' as generic hints towards a vested interest in the perpetuation of this power. Additionally, these authors claimed that '*language tends to elevate men and to deprecate women*', and the generic 'he' is a clear example.

At the end of the 20th century, feminist author Deborah Cameron (1998) reflected on the need to reconsider the state of Gender and Language studies at that time, and to revise literature and assumptions taken as facts. She also suggested new directions for linguistics, pointing towards discourse analysis and social sciences, broadening the scope of the field.

Once the problem was recognized, it was accepted that 'he' was exclusionary and that a solution was needed, the difficulty then lay in choosing the most

appropriate and consistent option. Some of the most discussed and welcomed alternatives proposed over time have been summarized by Baron (2020):

- ‘E’ for ‘he’, ‘es’ for ‘his’, and ‘em’ for ‘him’;
- ‘Se’, ‘sim’, and ‘sis’;
- Coinage ‘thon’, a term which does not denote gender and emerged from melting ‘the’ and ‘one’;
- ‘Hiser’;
- ‘One’;
- ‘He or she’;
- Singular ‘they’: those who opposed to its use alleged lack of number agreement with the antecedent it refers to;
- Generic ‘she’;
- It.

He concluded that ‘they’ is the most privileged term, due to its previous use for many years and that the term is familiar to English speakers. Additionally, he pointed out its adaptability to be used among non-binary persons or transgender. In doing so, he has contributed to the widening of the subject academically speaking and has also highlighted new directions which are now in the pipeline.

It is remarkable to mention at this point that ‘they’ is currently accepted by dictionaries such as the online version of the Oxford Learner Dictionaries (2022)⁷, in whose definitions include: “(‘they’ is) used instead of ‘he’ or ‘she’ to refer to a person whose sex is not mentioned or not known”. It also includes the following explanatory note:

People who are non-binary (do not identify as either male or female) also often prefer to be referred to as they. E.g.: Asher thought they were the only non-binary person at school.

⁷ Consulted on Sept. 2022

b. ENGLISH FOR SPECIFIC PURPOSES

Traditionally, learning a second language was a practice restricted to high-class and educated people, but with the expansion of technology and commerce worldwide English became the international language. As a result, the customary aim of linguistics, that is, the description of language rules turned to its use in communicative situations. Some studies focused on these communicative aspects such as Widdowson (1978), discovered that the English used was very different according to the context and the speaker's needs. For example, the English employed by a doctor was different from that employed by a lawyer. Hence, learners' needs and interests became central not only to the development of English courses but also to their success, triggering the emergence of ESP Hutchinson and Waters (1987), whose main aim was to teach and learn English as a second language in a particular field, and to enable students to use it naturally, according to Paltridge and Starfield (2012). It could explain the practical approach of this field and its lack of theory Salmani-Dodoushan, M. A. (2020). Paltridge and Starfield also identified three stages in the history of ESP:

- 1962-1981: researchers placed their interest in describing aspects of English for Science and Technology within the academic context such as grammar and lexicon used, and curriculum design. By this descriptive approach authors such as Swales aimed at analysing grammar within particular genres so as to generalize features at a more sentence level. The concept of genre in the ESP context is explained by Bathia (1993) and Aull and Swales (2015) as a communicative event with a particular communicative aim, which is accepted traditionally, and which has a meaning in a concrete academic or professional background. Others such as Lackstrom et al. (1972) related grammar and lexicon used in these texts with authors' rhetorical aims. Tarone et al. (1981) focused on relating the use of the passive voice and how it could influence rhetorically some scientific articles. Their research, framed within Washington school was of paramount importance to set two influential approaches which remain present today: the analysis of rhetoric and grammar, and the gathering of information from specialized sources within technology and science fields.

- 1981-1990: emerged after Swale's publication of "Aspects of Article Introductions", it entailed broadening the scope of ESP by focusing on teacher training, international teaching assistant training, and interlanguage. Some relevant topics were introduced, such as 'needs assessment' and 'linguistic devices and their rhetorical purposes'. Technology and other less common topics also appeared, such as 'error analysis', or 'learning strategies', and others previously presented such as 'genre' and 'rhetorical moves' continued being significant.
- 1990-2011: This period is characterized by the emergence of new international Journals and by the consolidation of the genre as a dominant concept in ESP. Additionally, corpus methodologies increased, and they examined rhetorical moves in TESOL and written academic genres. During this period Bhatia's research (1993), based on genre analysis, focused his studies on professional writing within academia and ranged from language to law.

Following Swales' and, Bhatia's approaches, the present research aimed at analysing a concrete aspect of grammar (masculine rule), from a descriptive perspective, in a particular genre, within the domain of Legal English, which is approached next.

i. ENGLISH FOR LEGAL PURPOSES

English for Legal Purposes (ELP) is one branch of ESP (Matrozi Marin, 2009) but it is essential to remark on the three different areas within the field, which are: legal writing (legal textbooks and research journals); juridical writing (court judgments, case-books, and law reports); and decisions of the judge and legislative writing (statutory instruments, documents to legislate, and Acts of Parliament) Bhatia (1993). This division would support Belcher's idea (2006) that depending on the objective this variety is used for, ELP can be framed into EAP or in English for Occupational Purposes (EOP). Matrozi Marin referred to two main genres addressed in the ELP field, which are legal cases and legislative writing. This paper is framed in the last one, that is, in legislative writing, and the

documents chosen to be analysed - Indian general Acts belong to the legislative writing area.

Despite attempts to change Legal English into more accessible to the general audience such as the Plain Legal English movement, one of the main characteristics of this domain is still redundancy. However, the use of nouns repeatedly when the referent is known is a way to avoid the masculine rule, and this theory has been supported by authors such as Tiersman (2000), and Stefanou, C. and Xanthaki, H. (2008), and employed in manuals to avoid sexism in language, such as in NATO (2022), European Union (2022).

c. DISCOURSE ANALYSIS

Much research on sexist language has followed the same strand proposed by Kramer et al. (1978), that is, differences in speech between men and women, ways in which language helps build stereotypes, and how it could be changed. But the influence of poststructuralism played an important role in the tendency language took when it became a primary concern beyond linguistics. The expansion to social sciences (sociology, psychology, or anthropology, among others) widened the analysis of language and pointed towards evaluating bigger samples of language in use. As a result, discourse analysis represented the new direction that feminists took to rethink language and gender.

Cameron (1998) observed that this new dimension of the language influenced the way feminist language studies approached it. If before they considered separately male and female speech behaviour, and the ways they are linguistically represented, now discourse and language are concurrently responsible for constructing gender socially and culturally. She remarked that while sexist language (as the masculine rule) was still a matter of debate, now feminist theory attributes this to discourse, and not only to language itself but also to the responsibility in building sexist stereotypes and meanings. To support her view, she recurs to the failure of institutional attempts to reform sexist language through guidelines, which will explain the failure of UNESCO's guidelines in this matter, or the Report on the Status of Indian Women (2013) carried out later, but this will be referred to later on.

For Cameron, these solutions disregard the social grounds upon which sexism and meaning are built and she suggested that the way to change it is through continuous dialogue and negotiation. This idea evokes Lakoff's statement:

It should be recognized that social change creates language change, not the reverse; or at best, language change influences changes in attitudes slowly and indirectly, and these changes in attitudes will not be reflected in social change unless society is receptive already. (Lakoff, 1975, p. 76).

In summary, both authors reflect on the multidimensional ground in which the matter lies and point out cooperation among the different fields as the way to provoke real change.

Cameron also reflected on whether the analysis of language and discourse was the best approach feminist researchers should focus on to understand their matters of interest. From her viewpoint, the deconstruction of an idea, concept, or discourse only means its previous construction, but it does not imply any change. Hence it could be implied in this reflection that she criticized the lack of solutions by theoreticians.

By the same token, other authors, such as Kitzinger and Thomas (1995) or Gil (1995) criticized the lack of political ground, and the latter questioned this tendency for its subjectivity. But as everything is political, according to Cameron, it should have been politicians and not feminists who proposed these changes after the evaluation of the problems. In this sense, her statement '*politics is discursive*', could particularly explain the lack of agreement and policies on the use of sexist language and, more specifically, in the Indian case. Eventually, Kitzinger and Thomas (1995) also reflected on the risk of turning to discursive analysis and disregarding other non-discursive aspects within matters.

d. FEMINIST LEGAL STUDIES

During the 80s, the gender-neutral language movement had an influence on legal professionals. Authors such as Griffith (1988) and Busby (1989) investigated Legal English from a political and feminist point of view and developed the idea that this specialized language excluded women. Griffith's research stated not only that there was a significant number of male professionals who were gender-

biased, but also that law and language were two sexist bodies. She analysed the scarce presence of women in Legal English, the means to change it, and how to facilitate their presence, and addressed the possible impact that it might have not only on women but also on legal writing.

In her reflection upon the relevance of language and worldview, she delved into the three feminist concerns suggested by previous linguists (Lakoff, Kramer, Thorne, and Henley, among others). First, whether men and women employ language differently and why; second, the evaluation of patriarchy within language; and finally, how language contributes to perpetuating it, and possible ways to suppress it. Griffith criticized feminist linguists such as Lakoff, who focused her research (or part of it) on studying speech differences in language between men and women. From Griffith's point of view, this approach only helps to perpetuate patriarchal norms, for it contributes towards constructing language stereotypes and supporting them. She also criticized Lakoff's endorsement of the idea that any endeavour to change grammar aspects such as the masculine generic is a waste of time.

Chapter five is particularly relevant as she further analyses the way sexism makes an impression on systems such as Law. Regarding the use of the masculine form, she addressed how men in general, and important lawyers such as Irving Younger defended its use by referring to aspects such as grammar rules, or the less attractiveness of unbiased forms, that is, the use of 'they', a double form 'she/he', 'one', or coinage such as 'thon'. However, she referred to other studies such as Miller and Swift, which denied these grammar points. They proved that advocates for its perpetuation and their arguments rely on popular conviction rather than on linguistic evidence. Griffith eventually pointed out that the law is neither neutral nor objective. Among her suggestions was to reform Legal English in relation to the use of "he" as generic, contrary for example to Lakoff, and concluded that the means to achieve it are self-reflective towards the way we express ourselves, and women's actions. In other words, her proposal was to change our way of expressing ourselves, placing responsibility on women.

From my point of view, the relevance of works such as Lakoff's or Griffith's on linguistic feminist grounds and particularly, on the suppression of the masculine rule lies in the visibility they provided to the problem, as well as their commitment to transforming language. However, solutions in Griffith's case were devoid of proper alternatives, hence, her proposals were not strong enough for a real change. Lakoff not only did not make suggestions, but she even criticized those who attempted to do it.

Busby (1989), in the same line as Griffith, critically reflected on how a powerful register such as Legal English protects the use of male partiality and analyzed whether this discourse helps build patriarchy and male superiority in society. In her approach, she also foregrounded the relationship between language and gender, and how Legal English contributed to women's discrimination. In her collection of samples, she placed the focus on the grammatical features of this register that ignored or diminished women, and what is relevant for the purpose of my research, the employment of pronouns to refer to a referent whose gender is indefinite. From this analysis, she concluded that unmarked masculine pronouns and generics exclude women from the reader's mind, as Cole et al. (1983) later suggested. She stated that "the connection between language, gender and the suppression of women is clear and present in the use of male pronouns" (p. 196) and concluded that these practices are not only discriminatory but that they also help to perpetuate male domination at different levels. This affirmation could partly prove the scarce representation of women in the legal system and other bodies and, more specifically, in India. Lastly, by appealing to the principles of clarity and precision on which Legal English is underpinned, she urged to reform these aspects. Nevertheless, she admitted the difficulty in finding solutions due to the profoundness of the problem as well as the reluctance to face it, coinciding with Lakoff's view in this respect. Despite the importance of her work in highlighting how language contributes to creating stereotypes and ignoring women, it could be said that the author failed to give solutions.

An ulterior empirical study to evaluate Legal English in American courts was carried out by Fisher (2008), who extended her research from 1965 (before the Second Feminist Wave) to 2006. She examined the use of gender-neutral

language, the movements that promoted it, and the extent to which changes suggested by previous linguists and feminists had progressed. As previous scholars did, she first deconstructed the pillars in which the masculine generic lay in by citing Miller's and Swift's (1976) following quotations: "man is the only primate that commits rape" and "man being a mammal breastfeeds his young" (p. 474). With these examples, she aimed at proving that while in some cases the masculine generic may encompass men and women, others inarguably may not and therefore, provoke ambiguities. Like Griffith (1989) and Hill (1992), she appealed to the principle of clarity and fairness to sustain the need of turning Legal English into a gender-neutral language and remarked on the benefits that it produces not only for readers, but also for writers themselves. But what was innovative was that for those reluctant to use either the options previously suggested or the alternatives 's/he' and 'he/she', '(s)he', 'they', 'them', 'their', she pointed out other less disconcerting and more achievable choices for readers. They are as follows:

- Change the number of the antecedent noun to achieve number agreement by using a plural pronoun;
- Mould the sentence again to avoid pronoun;
- Use the passive voice to avoid pronoun;
- Use feminine and masculine pronouns interchangeably to avoid the male norm;
- Use both pronouns to reflect reality more faithfully;
- Use the same noun again;
- Use a synonym to avoid the pronoun.

Her research found out that there were still detractors to adopting an inclusive language who alleged diverse reasons, such as individual difficulties caused by social influence (already foreseen by Lakoff more than 30 years earlier), aestheticism, triviality, or the awkwardness that gender-neutral forms may cause in readers who disagree with the matter. However, she proved a significant change in the mindset within Legal English and legal bodies in recent years.

But the application of changes within Legal English has not been restricted to the American courts and in some cases, requests and proposals have been turned into policies. Some examples are seen in New Zealand, which adopted a formal gender-neutral policy at the direction of the Attorney General in the 1980s, or the UK, where the House of Commons announced an amendment to the Interpretation Act 1978 in 2007. In contrast, the requested changes have only been prescriptive and emerged in the form of guidelines in institutions such as UNESCO. Its “Guidelines on Gender-Neutral Language” (1987) included a particular section on the use of the masculine rule, as well as recommendations for its members to avoid it. Additionally, it proposed to remove a perceived barrier to equality and offered concrete solutions to the six UN official languages. However, a linguistic analysis carried out by Teso Elena and Liz Crolley (2012) on the implementations of UNESCO’s own suggestions in their legal documents unveiled that its application was very modest. In other words, they proved that the use of the masculine rule was already a consistent norm in their texts.

From the different analyses exposed it could be inferred that many changes have been adopted, despite detractors, and that there are countries and institutions which have taken the problem more seriously than others.

e. THE CASE OF INDIA

From a linguistic, legal, theoretical, and feminist perspective, changes proposed by the different studies and research mentioned before should be applicable in every English-speaking territory, which should include India and the language used in its legal system. For example, UNESCO’s “Guidelines on Gender-Neutral Language” previously mentioned (1987), suggested helpful options for the use of the masculine rule as well as recommendations for its members to avoid it. However, in the current research, not a single thing has been found in India in terms of a comprehensive government initiative, a guide for gender-neutral drafting, or a linguistic policy in this sense. Actually, Section 13 of the General Clauses Act, 1897, is still applicable and stated that: “In all (Central Acts) and Regulations, unless there is anything repugnant in the subject or context, words importing the masculine gender shall be taken to include females”. (p. 10).

Admittedly, some of UNESCO's recommendations have been included in its general Acts, such as the use of 'spouse' instead of 'wife', 'Chairperson' instead of 'Chairman', or 'humanity' / 'people', / 'humankind' instead of 'men'.

The Indian Government, through its Ministry of Women and Child Development, requested a report on the status of Women in India (2015), which was developed by the High-Level Committee on the Status of Women in India. The work was a deep analysis of different facets of female discrimination, not only in language, which is the topic of my research, but also in their general conditions, their socio-cultural context, rates of the impact they have on the Indian economy, their position regarding power and decision making, and the budget devoted to reverting these conditions from the different branches of Government. In its section on Women's Studies in Education, it refers to the need of transforming the literature at every level, including the legal one, in order to suppress all kinds of gender-biased language. From my point of view, this analysis shows that female discrimination is very rooted in India and that it is not only restricted to language, which appeared to be a minor problem. Additionally, the subsequent Global Gender Gap Index Report by World Economic Forum (2020) ratified that it has not had a real impact after its publication, which could sustain my primary hypothesis.

It is worth mentioning that the Indian Feminist Judgement Project, influenced by the Women's Court of Canada born in 2004, is currently in existence. However, it aims at applying a feminist perspective and rewriting present judgments under these eyes, but its scope is only content, not the language itself (Munro, 2021). More recently, activist Jaising (2020), referred to in the introduction, published a formal request to the Chief Justice of India, in which she claimed the elimination of gender bias within the legal language in India, among other forms of female discrimination within Law.

THE STUDY

The current research is based upon the idea that society, genders, roles, or status are social constructs, and that language is one of the main tools to that end. It is framed within the poststructuralist theory, which aims at deconstructing previously accepted and generalized norms and stereotypes, disregarding voices previously silenced or ignored, as women have been and still are in this respect, by the use of the masculine generic.

It is a multifaceted work, enclosed in English for Specific Purposes (ESP), as the language to be analysed is a variety of English with a specific function, which is used among legal professionals. But general Acts are applicable to the whole Indian society, that is, it is Indian people whom they address. Considering the scope of these sorts of documents, and the impact they may have, my approach is political and feminist.

I am also going to work within the Linguistics field since the aim of the paper deals with a specific aspect of the language, that is, the use of personal and object pronouns and possessive adjectives in their masculine forms, as well as with the apparent discourse it may imply. Hence, the connection with Gender Studies and with Feminist Legal Theory.

METHODOLOGY

The units of analysis for the present research are the personal and object pronouns and possessive adjectives employed as generic. To ascertain the degree of use of the masculine norm in Legal English in India, I have selected a consistent sample (the general Acts passed in India during the last semester of 2021) from the Legislative Department website to prove it. It is the official site where the archive of official legal documents resides, and it provides free access to the General acts passed from 1836 onwards.

I then selected each General act manually, read them to assess the content, counted the occurrence of each unit, and generalized the norm. Consequently, this research is a quantitative study.

The deductive methodology has been employed in this paper, that is, I have derived logical conclusions from premises. My initial observations have been the first premise: if the use of personal and object pronouns and possessive adjectives have been used as a neutral form in the first two general Acts read, identical results can therefore be expected in the others passed during the mentioned period, which is the second premise. If both are true, the original hypothesis can be generalized.

My research has analyzed:

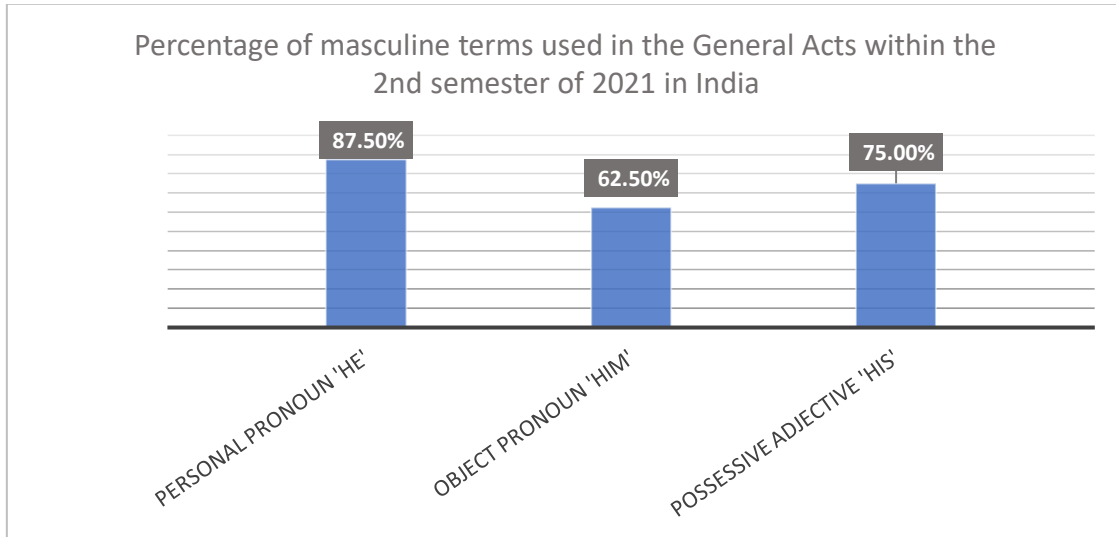
- The instances of personal pronouns in their masculine form used as generic forms;
- The instances of object pronouns in their masculine form used as generic forms;
- The instances of possessive adjectives in their masculine form used as generic forms.
- Inclusive terms introduced in the Acts.

ANALYSIS AND INTERPRETATION OF DATA

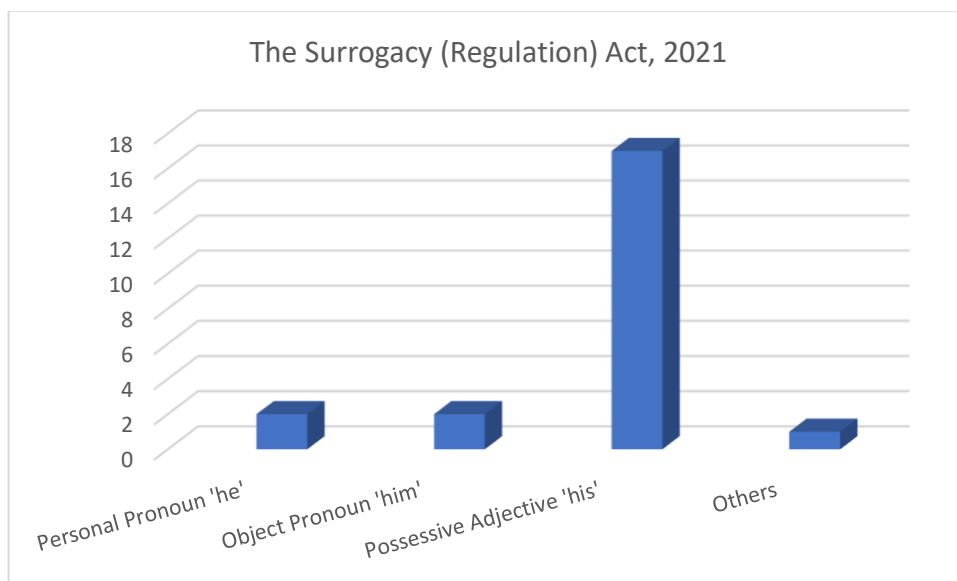
The seven General Acts passed during the second semester of the year 2021 were selected for my analysis. The analysis of the documents reveals that the personal pronoun 'he' as a generic form that encompasses any gender was used in every Act except one, which was only an arrangement of sections of previous Acts. The object pronoun 'him' with the same function was used in four of the seven Acts analysed, and the possessive adjective 'his', in five of them. The data is reflected in the following table.

Act	Pronoun Category				Inclusive terms included
	Personal Pronoun 'he'	Object Pronoun 'him'	Possessive Adjective 'his'	Others	
The Surrogacy (Regulation) Act, 2021	2	2	17	1	Persons, Chairperson, human, his or her, the said child
The Assisted Reproductive Technology (Regulation) Act, 2021	1	0	0	0	Chairperson, person
The Dam Safety Act, 2021	3	0	4	2	Chairperson, person, individual, such officer (instead of he)
The Farm Laws Repeal Act, 2021	0	0	0	0	This Act only referred to some changes of previous one
The Tribunal Reforms Act, 2021	3	2	9	6	
The Commission for Air Quality Management in National Capital Region and Adjoining Areas Act, 2021	7	4	24	2	
The Inland Vessels Act, 2021	16	3	14	1	
The Essential Defence Services Act, 2021	1	1	1	0	
%	87,5%	62,5%	75,0%		

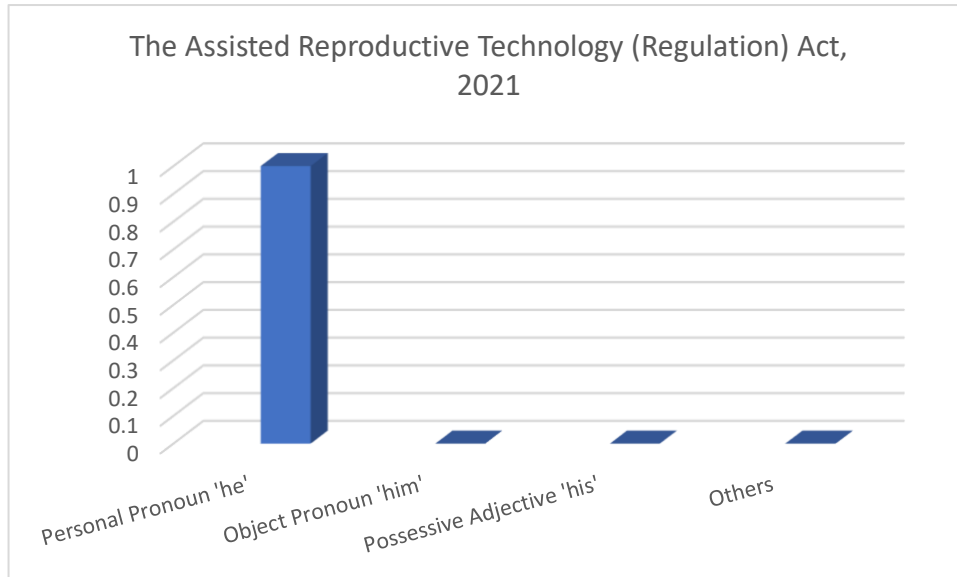
As it can be appreciated in the next table, the statistics show 87,5% of the use of 'he'; 62,5 % of 'him'; and 75% of 'his'.



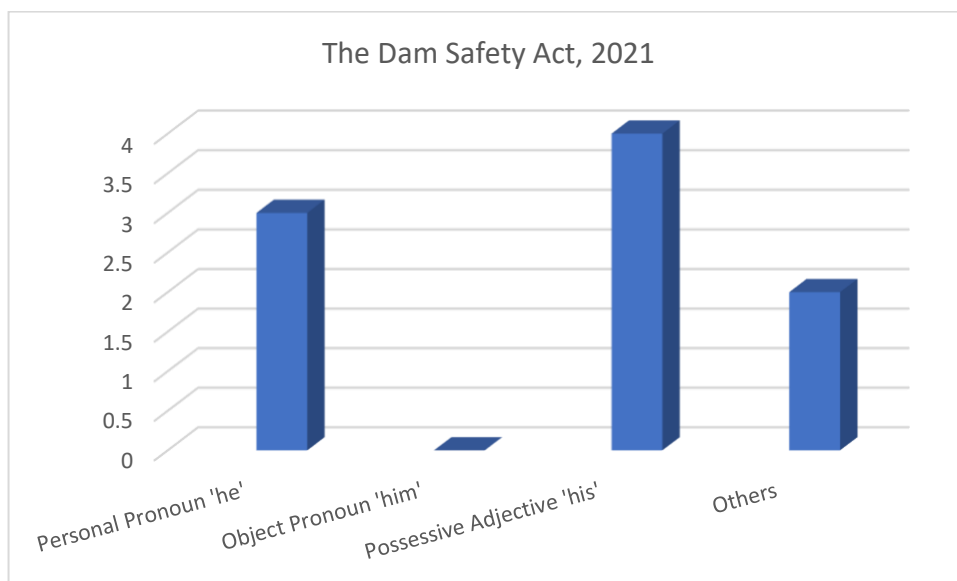
In the first Act, the 'Surrogacy Act, 2021', the personal pronoun 'he' as generic was used two times, referring to 'the person; the object pronoun 'him' twice, referring to 'the Vice-Chairperson'; 'his' appeared seventeen times in the same document; 'himself', referring to medical practitioners, paedriatician, embryologist, medical practitioner appeared once; and an inclusive alternative to the masculine problem, that is 'his or her', appeared once.



In the 'Assisted Reproductive Technology (Regulation) Act, 2021' the personal pronoun 'he' was used once to refer to 'the Executive Head'; there is no trace of the use of the object pronoun 'him' or the possessive 'his' in this document; no other use of a biased term either.

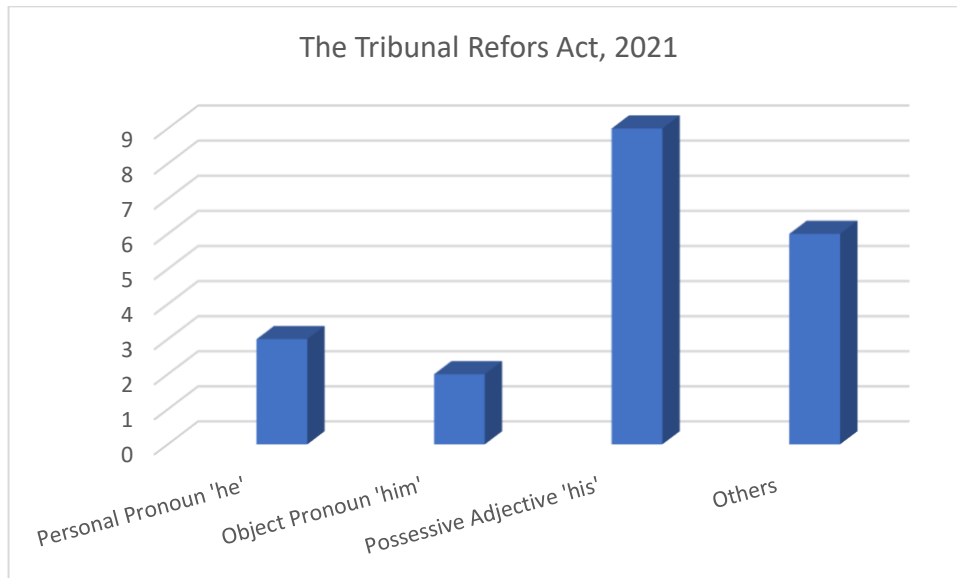


Regarding 'The Dam Safety Act, 2021', three instances of 'he' were found, referring to 'the representative', 'the head of the Department' or to 'any person'; no instance of the object pronoun 'him'; the possessive adjective 'his' occurred four times, referring to a 'person authorised', to the head of Department' or to 'any person'.

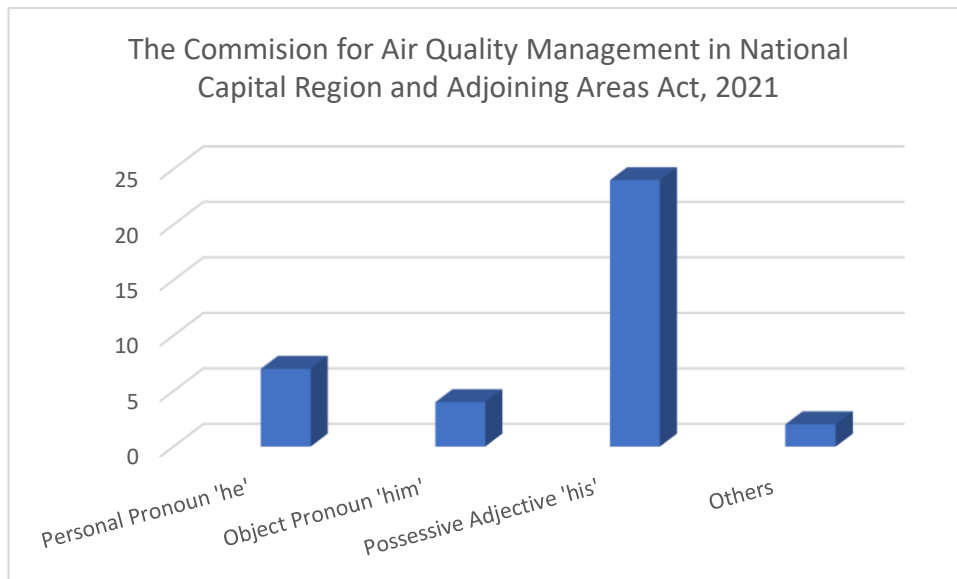


'The Farm Laws Repeal Act, 2021' was only an arrangement of some sections of previous Acts and its extension is only five sentences. No occurrences of personal pronouns or possessive adjectives were found.

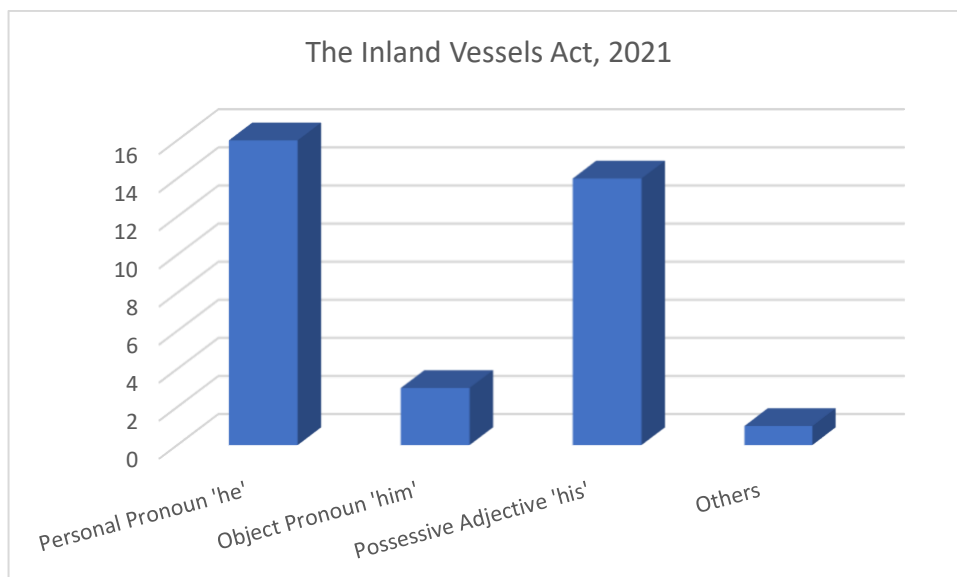
In 'The Tribunals Reforms Act, 2021', three instances of 'he' referring to 'Chairperson', 'Member of Tribunal' or to 'a single judge'; two occurrences of 'him'; nine instances of 'his' alluding to the same referent, 'Chairperson or Member of the Tribunal'; six instances of himself; and no inclusive alternative used.



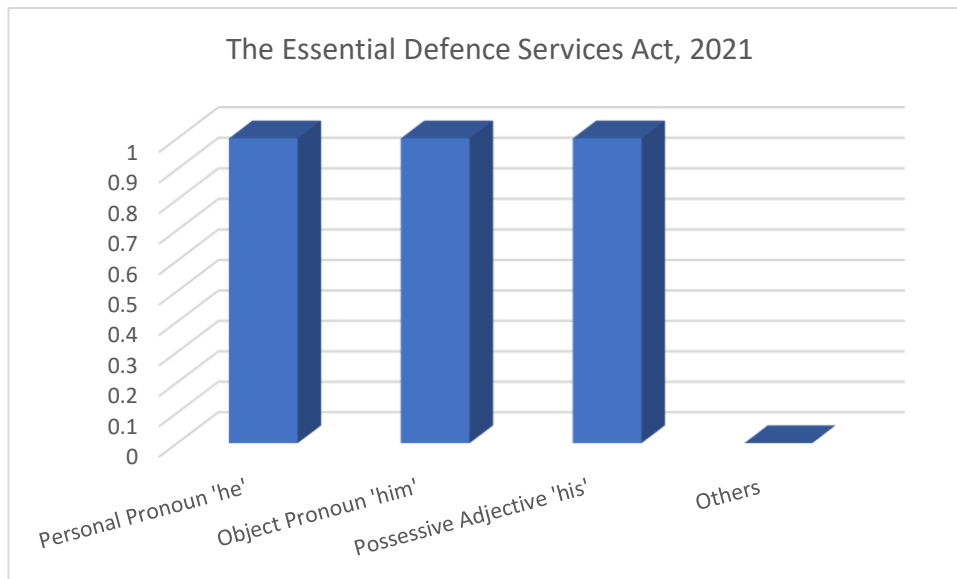
In 'The Commission for Air Quality Management in National Capital Region and Adjoining Areas Act, 2021', seven instances of 'he' were found alluding to 'chairperson', 'appointed officer', 'person' or 'the Head of Department'; four instances of 'him' alluding to 'controller' or 'appointed officer'; twenty-four instances of 'his' alluding to 'chairperson' repeatedly; and two instances of himself.



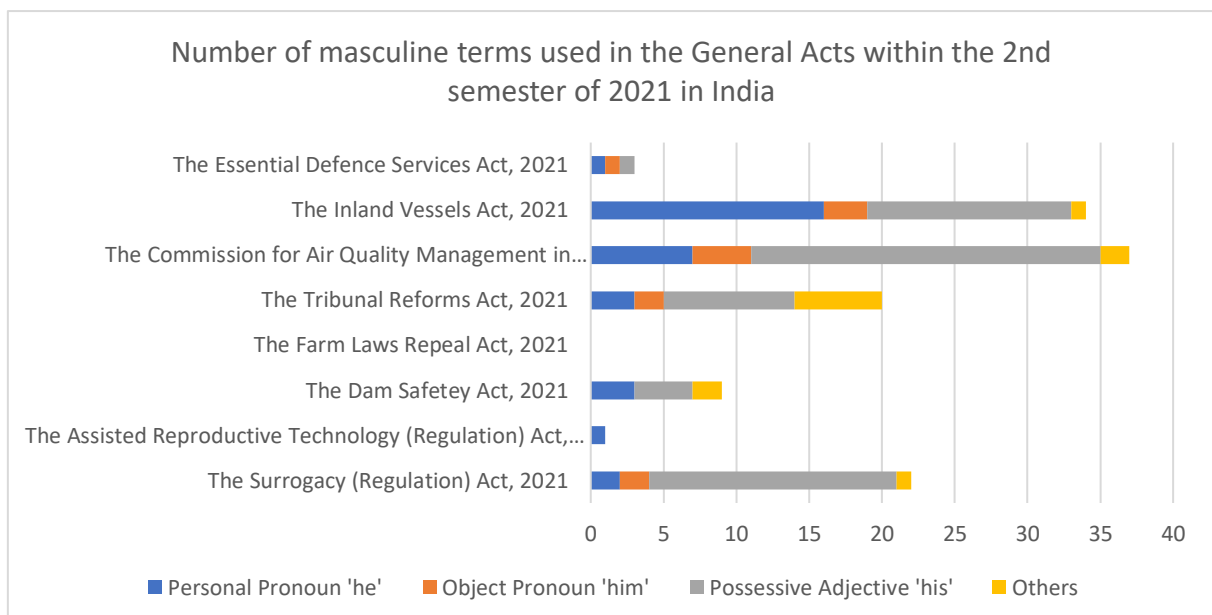
'The Inland Vessels Act, 2021' had sixteen instances of the generic 'he' alluding to 'the owner', 'the Registrar of Inland Vessels', 'the master', 'the operator' or 'the District Magistrate'; the object pronoun 'him' was found three times referring to 'the holder', 'the District Magistrate' or 'the person'; fourteen instances of 'his' as generic were found alluding to 'insurer', 'Registrar of Inland Vessels', 'master', 'officer' or 'person'; and no instances of more inclusive terms appeared.



Lastly, in 'The Essential Defence Services Act, 2021' one instance of each, that is, the personal pronoun 'he', object pronoun 'him', and the possessive adjective 'his' were found, all of them referring to 'employee'; no inclusive terms were used.



Overall, the personal pronoun 'he' has been used thirty-three times, the object pronoun 'him' twelve, and the possessive adjective sixty-nine. The analysis also reveals that an inclusive option for the masculine rule was used only once adopting the form 'his or her'. It is worth mentioning that other inclusive terms were used, such as 'person' thirty-seven times, 'Chairperson' nineteen, 'human' twenty-one, 'individual' four times, and 'such officer' seven.



CONCLUSIONS

The masculine rule has been a long-lasting and problematic matter of debate for linguistics, feminists, judges, and discourse analysts, whose endeavours to find solutions have been rendered into guidelines and laws in many English-speaking countries.

The objectives of this research aimed at analysing how gender is represented in the Legal English employed in the Indian Parliament and its Legislative Assembly to draft their General Acts during the second semester of the year 2021. After a careful evaluation of these documents, the data demonstrates many traces of inequalities. Additionally, it evidences that the employment of the masculine rule is still the norm to encompass any gender. It has also revealed an increasing use of neutral terms such as 'person', 'Chairperson', 'human', or 'individual'. Nevertheless, their concurrent employment with the masculine norm shows that its implementation is not already rooted.

While in countries such as the United Kingdom, Australia, New Zealand, and Canada laws have advanced positively in the extinction of this linguistic phenomenon, there has not been an implemented norm or rule in India to avoid it. Laws are designated for a whole society and have effects on all its members, which implies that they should be equally just. When deficiencies exist, amends are carried out, and in this respect, Indian laws represent an exception in Anglo-speaking countries' systems, where an obsolete law is still in existence (General clauses Act, 1897). Such an exception contributes to how they are interpreted and how relationships, roles, and stereotypes are built between genders. Moreover, it seems obvious to think that gender laws are more efficient than simple guidelines, as UNESCO's one evidenced.

In relation to legal English employed in their acts, and based on the results of their observation, the evidence shows that despite attempts to represent linguistically part of the society previously ignored, that is, women, only forms such as 'person', 'Chairperson', 'individual', or 'human' were used to be more neutral.

However, their employment was not entirely convincing, considering that in some cases, the masculine adjective or pronoun was concurrently employed in the same sentences or paragraph to refer to this person/Chairperson/human/individual referent.

In the social sphere, the fact that women are misrepresented in higher ranks of important institutions is not accidental and parallels their lack of linguistic representation. It also leads to depriving models for future generations of women. For this reason, it seems appropriate to believe that the lack of normative changes responds to an ingrained patriarchy with a vested interest in its perpetuation.

The scarcity or lack of Gender Studies related to the masculine rule in the English used in Indian acts obeys the need to prioritize other sources of discrimination against women, such as the law itself, in which case a huge piece of literature can be found. It also unveils an enormous gap in the fight for women's rights between western societies and less developed countries such as India. While in the former one, the first studies related to this matter can be traced back to the 70s of the 20th century, the last one is still in the primary stage, for it has been proved by the report on the Status of Women in India in 2015 or by the Global Gender Gap Index Report.

Lastly, the semantic ambiguity (Miller's and Swift's, 1976) caused by the attempt to neutralise the masculine rule in the ESP field, and more concretely in Legal English is still unresolved and real neutral forms are needed.

FURTHER RESEARCH

Further studies in the field may address more effective initiatives to apply neutral language in speech not only in India but also all over the world. Additionally, ways to implement neutral linguistic policies in this respect in undeveloped countries such as India, where patriarchy and other ways of discrimination towards women are endemic and even more problematic than in the so-called First World.

Furthermore, it could open a debate on the way non-binary, transgender, and gender-nonconforming persons are represented in Legal English.

ANNEX 1: SURROGACY ACT, 2021

Due to the extensions of the Acts, I only enclosed one of them as a sample, which is 'The Surrogacy (Regulation) Act, 2021'. Below are the links to the rest of the Acts consulted in the present research:

[The Assisted Reproductive Technology \(Regulation\) Act, 2021](#)

[The Dam Safety Act, 2021](#)

[The Farm Laws Repeal Act, 2021](#)

[The Tribunals Reforms Act, 2021](#)

[The Commission for Air Quality Management in National Capital Region and Adjoining Areas Act, 2021](#)

[The Essential Defence Services Act, 2021](#)

[The Inland Vessels Act, 2021](#)

THE SURROGACY (REGULATION) ACT, 2021

ARRANGEMENT OF SECTIONS

CHAPTER I

PRELIMINARY

SECTIONS

1. Short title, extent and commencement.
2. Definitions.

CHAPTER II

REGULATION OF SURROGACY CLINICS

3. Prohibition and regulation of surrogacy clinics.

CHAPTER III

REGULATION OF SURROGACY AND SURROGACY PROCEDURES

4. Regulation of surrogacy and surrogacy procedures.
5. Prohibition of conducting surrogacy.
6. Written informed consent of surrogate mother.
7. Prohibition to abandon child born through surrogacy.
8. Rights of surrogate child.
9. Number of oocytes or human embryos to be implanted.
10. Prohibition of abortion.

CHAPTER IV

REGISTRATION OF SURROGACY CLINICS

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17. Constitution of National Assisted Reproductive Technology and Surrogacy Board.
18. Term of office of Members.
19. Meetings of Board.
20. Vacancies, etc., not to invalidate proceedings of Board.
21. Disqualifications for appointment as Member.
22. Temporary association of persons with Board for particular purposes.

SECTIONS

23. Authentication of orders and other instruments of Board.
24. Eligibility of Member for re-appointment.
25. Functions of Board.
26. Constitution of State Assisted Reproductive Technology and Surrogacy Board.
27. Composition of State Board.
28. Term of office of members.
29. Meetings of State Board.
30. Vacancies, etc., not to invalidate proceedings of State Board.
31. Disqualifications for appointment as member.
32. Temporary association of persons with State Board for particular purposes.
33. Authentication of orders and other instruments of State Board.
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THE SURROGACY (REGULATION) ACT, 2021

ACT NO. 47 OF 2021

[25th December, 2021.]

An Act to constitute National Assisted Reproductive Technology and Surrogacy Board, State Assisted Reproductive Technology and Surrogacy Boards and appointment of appropriate authorities for regulation of the practice and process of surrogacy and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Seventy-second Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Surrogacy (Regulation) Act, 2021.

(2) It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions. — (1) In this Act, unless the context otherwise requires,—

(a) “abandoned child” means a child born out of surrogacy procedure who has been deserted by his intending parents or guardians and declared as abandoned by the appropriate authority after due enquiry;

(b) “altruistic surrogacy” means the surrogacy in which no charges, expenses, fees, remuneration or monetary incentive of whatever nature, except the medical expenses and such other prescribed expenses incurred on surrogate mother and the insurance coverage for the surrogate mother, are given to the surrogate mother or her dependents or her representative;

(c) “appropriate authority” means the appropriate authority appointed under Section 35;

(d) “Assisted Reproductive Technology Act” means the Assisted Reproductive Technology (Regulation) Act, 2021;

(e) “Board” means the National Assisted Reproductive Technology and Surrogacy Board constituted under Section 17;

(f) “clinical establishment” shall have the same meaning as assigned to it in the Clinical Establishments (Registration and Regulation) Act, 2010 (23 of 2010);

(g) “commercial surrogacy” means commercialisation of surrogacy services or procedures or its component services or component procedures including selling or buying of human embryo or trading in the sale or purchase of human embryo or gametes or selling or buying or trading the services of surrogate motherhood by way of giving payment, reward, benefit, fees, remuneration or monetary incentive in cash or kind, to the surrogate mother or her dependents or her representative, except the medical expenses and such other prescribed expenses incurred on the surrogate mother and the insurance coverage for the surrogate mother;

1. 25th January, 2021, *vide* Notification no. S.O. 292(E), dated 20th January, 2021, *see* Gazette of India, Extraordinary, Part II, sec. 3 (ii).

(h) “couple” means the legally married Indian man and woman above the age of 21 years and 18 years respectively;

(i) “egg” includes the female gamete;

(j) “embryo” means a developing or developed organism after fertilisation till the end of fifty-six days;

(k) “embryologist” means a person who possesses any post-graduate medical qualification or doctoral degree in the field of embryology or clinical embryology from a recognised university with not less than two years of clinical experience;

(l) “fertilisation” means the penetration of the ovum by the spermatozoan and fusion of genetic materials resulting in the development of a zygote;

(m) “foetus” means a human organism during the period of its development beginning on the fifty-seventh day following fertilisation or creation (excluding any time in which its development has been suspended) and ending at the birth;

(n) “gamete” means sperm and oocyte;

(o) “gynaecologist” shall have the same meaning as assigned to it in the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (57 of 1994);

(p) “implantation” means the attachment and subsequent penetration by the zona-free blastocyst, which starts five to seven days following fertilisation;

(q) “insurance” means an arrangement by which a company, individual or intending couple undertake to provide a guarantee of compensation for medical expenses, health issues, specified loss, damage, illness or death of surrogate mother and such other prescribed expenses incurred on such surrogate mother during the process of surrogacy;

(r) “intending couple” means a couple who have a medical indication necessitating gestational surrogacy and who intend to become parents through surrogacy;

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

(t) “Member” means a Member of the National Assisted Reproductive Technology and Surrogacy Board or a State Assisted Reproductive Technology and Surrogacy Board, as the case may be;

(u) “notification” means a notification published in the Official Gazette;

(v) “oocyte” means naturally ovulating oocyte in the female genetic tract;

(w) “Paediatrician” means a person who possesses a post-graduate qualification in paediatrics as recognised under the Indian Medical Council Act, 1956 (102 of 1956);

(x) “prescribed” means prescribed by rules made under this Act;

(y) “registered medical practitioner” means a medical practitioner who possesses any recognised medical qualification as defined in clause (h) of Section 2 of the Indian Medical Council Act, 1956 (102 of 1956) and whose name has been entered in a State Medical Register;

(z) “regulation” means regulations made by the Board under this Act;

(za) “sex selection” shall have the same meaning as assigned to it in clause (o) of Section 2 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (57 of 1994);

(zb) “State Board” means the State Assisted Reproductive Technology and Surrogacy Board constituted under section 26;

(zc) “State Government” in relation to Union territory with Legislature, means the Administrator of the Union territory appointed by the President under Article 239 of the Constitution;

(zd) “surrogacy” means a practice whereby one woman bears and gives birth to a child for an intending couple with the intention of handing over such child to the intending couple after the birth;

(ze) “surrogacy clinic” means surrogacy clinic, centre or laboratory, conducting assisted reproductive technology services, invitro fertilisation services, genetic counselling centre, genetic laboratory, Assisted Reproductive Technology Banks conducting surrogacy procedure or any clinical establishment, by whatsoever name called, conducting surrogacy procedures in any form;

(zf) “surrogacy procedures” means all gynaecological, obstetrical or medical procedures, techniques, tests, practices or services involving handling of human gametes and human embryo in surrogacy;

(zg) “surrogate mother” means a woman who agrees to bear a child (who is genetically related to the intending couple or intending woman) through surrogacy from the implantation of embryo in her womb and fulfils the conditions as provided in sub-clause (b) of clause (iii) of Section 4;

(zh) “zygote” means the fertilised oocyte prior to the first cell division.

(2) Words and expressions used herein and not defined in this Act but defined in the Assisted Reproductive Technology Act shall have the meanings respectively assigned to them in that Act.

CHAPTER II

REGULATION OF SURROGACY CLINICS

3. Prohibition and regulation of surrogacy clinics.—On and from the date of commencement of this Act, —

(i) no surrogacy clinic, unless registered under this Act, shall conduct or associate with, or help in any manner, in conducting activities relating to surrogacy and surrogacy procedures;

(ii) no surrogacy clinic, paediatrician, gynaecologist, embryologist, registered medical practitioner or any person shall conduct, offer, undertake, promote or associate with or avail of commercial surrogacy in any form;

(iii) no surrogacy clinic shall employ or cause to be employed or take services of any person, whether on honorary basis or on payment, who does not possess such qualifications as may be prescribed;

(iv) no registered medical practitioner, gynaecologist, paediatrician, embryologist or any other person shall conduct or cause to be conducted or aid in conducting by himself or through any other person surrogacy or surrogacy procedures at a place other than a place registered under this Act;

(v) no surrogacy clinic, registered medical practitioner, gynaecologist, paediatrician, embryologist or any other person shall promote, publish, canvass, propagate or advertise or cause to be promoted, published, canvassed, propagated or advertised which—

(a) is aimed at inducing or is likely to induce a woman to act as a surrogate mother;

(b) is aimed at promoting a surrogacy clinic for commercial surrogacy or promoting commercial surrogacy in general;

(c) seeks or aimed at seeking a woman to act as a surrogate mother;

(d) states or implies that a woman is willing to become a surrogate mother; or

(e) advertises commercial surrogacy in print or electronic media or in any other form;

(vi) no surrogacy clinic, registered medical practitioner, gynaecologist, paediatrician, embryologist, intending couple or any other person shall conduct or cause abortion during the period of surrogacy without the written consent of the surrogate mother and on authorisation of the same by the appropriate authority concerned:

Provided that the authorisation of the appropriate authority shall be subject to, and in compliance with, the provisions of the Medical Termination of Pregnancy Act, 1971 (34 of 1971);

(vii) no surrogacy clinic, registered medical practitioner, gynaecologist, paediatrician, embryologist, intending couple or any other person shall store a human embryo or gamete for the purpose of surrogacy:

Provided that nothing contained in this clause shall affect such storage for other legal purposes like sperm banks, IVF and medical research for such period and in such manner as may be prescribed;

(viii) no surrogacy clinic, registered medical practitioner, gynaecologist, paediatrician, embryologist, intending couple or any other person shall in any form conduct or cause to be conducted sex selection for surrogacy.

CHAPTER III

REGULATION OF SURROGACY AND SURROGACY PROCEDURES

4. Regulation of surrogacy and surrogacy procedures.— On and from the date of commencement of this Act, —

(i) no place including a surrogacy clinic shall be used or cause to be used by any person for conducting surrogacy or surrogacy procedures, except for the purposes specified in clause (ii) and after satisfying all the conditions specified in clause (iii);

(ii) no surrogacy or surrogacy procedures shall be conducted, undertaken, performed or availed of, except for the following purposes, namely:

(a) when an intending couple has a medical indication necessitating gestational surrogacy:

Provided that a couple of Indian origin or an intending woman who intends to avail surrogacy, shall obtain a certificate of recommendation from the Board on an application made by the said persons in such form and manner as may be prescribed.

Explanation.—For the purposes of this sub-clause and item (i) of sub-clause (a) of clause (iii) the expression “gestational surrogacy” means a practice whereby a surrogate mother carries

a child for the intending couple through implantation of embryo in her womb and the child is not genetically related to the surrogate mother;

(b) when it is only for altruistic surrogacy purposes;

(c) when it is not for commercial purposes or for commercialisation of surrogacy or surrogacy procedures;

(d) when it is not for producing children for sale, prostitution or any other form of exploitation; and

(e) any other condition or disease as may be specified by regulations made by the Board;

(iii) no surrogacy or surrogacy procedures shall be conducted, undertaken, performed or initiated, unless the Director or in-charge of the surrogacy clinic and the person qualified to do so are satisfied, for reasons to be recorded in writing, that the following conditions have been fulfilled, namely:—

(a) the intending couple is in possession of a certificate of essentiality issued by the appropriate authority, after satisfying itself, for the reasons to be recorded in writing, about the fulfilment of the following conditions, namely: —

(I) a certificate of a medical indication in favour of either or both members of the intending couple or intending woman necessitating gestational surrogacy from a District Medical Board.

Explanation.—For the purposes of this item, the expression “District Medical Board” means a medical board under the Chairpersonship of Chief Medical Officer or Chief Civil Surgeon or Joint Director of Health Services of the district and comprising of at least two other specialists, namely, the chief gynaecologist or obstetrician and chief paediatrician of the district;

(II) an order concerning the parentage and custody of the child to be born through surrogacy, has been passed by a court of the Magistrate of the first class or above on an application made by the intending couple or the intending woman and the surrogate mother, which shall be the birth affidavit after the surrogate child is born; and

(III) an insurance coverage of such amount and in such manner as may be prescribed in favour of the surrogate mother for a period of thirty-six months covering postpartum delivery complications from an insurance company or an agent recognised by the Insurance Regulatory and Development Authority established under the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999);

(b) the surrogate mother is in possession of an eligibility certificate issued by the appropriate authority on fulfilment of the following conditions, namely: —

(I) no woman, other than an ever married woman having a child of her own and between the age of 25 to 35 years on the day of implantation, shall be a surrogate mother or help in surrogacy by donating her egg or oocyte or otherwise;

(II) a willing woman shall act as a surrogate mother and be permitted to undergo surrogacy procedures as per the provisions of this Act:

Provided that the intending couple or the intending woman shall approach the appropriate authority with a willing woman who agrees to act as a surrogate mother;

(III) no woman shall act as a surrogate mother by providing her own gametes;

(IV) no woman shall act as a surrogate mother more than once in her lifetime:

Provided that the number of attempts for surrogacy procedures on the surrogate mother shall be such as may be prescribed; and

(V) a certificate of medical and psychological fitness for surrogacy and surrogacy procedures from a registered medical practitioner;

(c) an eligibility certificate for intending couple is issued separately by the appropriate authority on fulfilment of the following conditions, namely:--

(I) the intending couple are married and between the age of 23 to 50 years in case of female and between 26 to 55 years in case of male on the day of certification;

(II) the intending couple have not had any surviving child biologically or through adoption or through surrogacy earlier:

Provided that nothing contained in this item shall affect the intending couple who have a child and who is mentally or physically challenged or suffers from life threatening disorder or fatal illness with no permanent cure and approved by the appropriate authority with due medical certificate from a District Medical Board; and

(III) such other conditions as may be specified by the regulations.

5. Prohibition of conducting surrogacy.— No person including a relative or husband of a surrogate mother or intending couple or intending woman shall seek or encourage to conduct any surrogacy or surrogacy procedures on her except for the purpose specified in clause (ii) of section 4.

6. Written informed consent of surrogate mother.—(I) No person shall seek or conduct surrogacy procedures unless he has—

(i) explained all known side effects and after effects of such procedures to the surrogate mother concerned; and

(ii) obtained in the prescribed form, the written informed consent of the surrogate mother to undergo such procedures in the language she understands.

(2) Notwithstanding anything contained in sub-section (I), the surrogate mother shall have an option to withdraw her consent for surrogacy before the implantation of human embryo in her womb.

7. Prohibition to abandon child born through surrogacy.— The intending couple or intending woman shall not abandon the child, born out of a surrogacy procedure, whether within India or outside, for any reason whatsoever, including but not restricted to, any genetic defect, birth defect, any other medical condition, the defects developing subsequently, sex of the child or conception of more than one baby and the like.

8. Rights of surrogate child.— A child born out of surrogacy procedure, shall be deemed to be a biological child of the intending couple or intending woman and the said child shall be entitled to all the rights and privileges available to a natural child under any law for time being in force

9. Number of oocytes or human embryos to be implanted.— The number of oocytes or human embryos to be implanted in the uterus of the surrogate mother for the purpose of surrogacy, shall be such as may be prescribed.

10. Prohibition of abortion.— No person, organisation, surrogacy clinic, laboratory or clinical establishment of any kind shall force the surrogate mother to abort at any stage of surrogacy except in such conditions as may be prescribed.

CHAPTER IV

REGISTRATION OF SURROGACY CLINICS

11. Registration of surrogacy clinics.— (1) No person shall establish any surrogacy clinic for undertaking surrogacy or to render surrogacy procedures in any form unless such clinic is duly registered under this Act.

(2) Every application for registration under sub-section (1) shall be made to the appropriate authority in such form, manner and shall be accompanied by such fees as may be prescribed.

(3) Every surrogacy clinic which is conducting surrogacy or surrogacy procedures, partly or exclusively, referred to in clause (ii) of section 4 shall, within a period of sixty days from the date of appointment of appropriate authority, apply for registration:

Provided that such clinic shall cease to conduct any such counselling or procedures on the expiry of six months from the date of commencement of this Act, unless such clinic has applied for registration and is so registered separately or till such application is disposed of, whichever is earlier.

(4) No surrogacy clinic shall be registered under this Act, unless the appropriate authority is satisfied that such clinic is in a position to provide such facilities and maintain such equipment and standards including specialised manpower, physical infrastructure and diagnostic facilities as may be prescribed.

12. Certificate of registration.— (1) The appropriate authority shall after holding an enquiry and after satisfying itself that the applicant has complied with all the requirements of this Act and the rules and regulations made thereunder, grant a certificate of registration to the surrogacy clinic, within a period of ninety days from the date of application received by it, in such form, on payment of such fees and in such manner, as may be prescribed.

(2) Where, after the inquiry and after giving an opportunity of being heard to the applicant, the appropriate authority is satisfied that the applicant has not complied with the requirements of this Act or the rules or regulations made thereunder, it shall, for reasons to be recorded in writing, reject the application for registration.

(3) Every certificate of registration shall be valid for a period of three years and shall be renewed in such manner and on payment of such fees as may be prescribed.

(4) The certificate of registration shall be displayed by the surrogacy clinic at a conspicuous place.

13. Cancellation or suspension of registration.— (1) The appropriate authority may, *suo motu* or on receipt of a complaint, issue a notice to the surrogacy clinic to show cause as to why its registration should not be suspended or cancelled for the reasons mentioned in the notice.

(2) If after giving a reasonable opportunity of being heard to the surrogacy clinic, the appropriate authority is satisfied that there has been a breach of the provisions of the Act or the rules or regulations made thereunder, it may, without prejudice to any criminal action that it may take against such clinic, suspend its registration for such period as it may think fit or cancel its registration, as the case may be.

(3) Notwithstanding anything contained in sub-sections (1) and (2), if the appropriate authority is of the opinion that it is necessary or expedient to do so in the public interest, it may, for reasons to be recorded in writing, suspend the registration of any surrogacy clinic without issuing any notice under sub-section (1).

14. Appeal.— The surrogacy clinic or the intending couple or the intending woman may, within a period of thirty days from the date of receipt of the communication relating to order of rejection of application, suspension or cancellation of registration passed by the appropriate authority under section 13 and communication relating to rejection of the certificates under section 4, prefer an appeal against such order to—

(a) the State Government, where the appeal is against the order of the appropriate authority of a State;

(b) the Central Government, where the appeal is against the order of the appropriate authority of a Union territory,

in such manner as may be prescribed.

15. Establishment of National Assisted Reproductive Technology and Surrogacy Registry.— There shall be established a Registry to be called the National Assisted Reproductive Technology and Surrogacy Registry for the purposes of registration of surrogacy clinics under this Act.

16. Application of provisions of Assisted Reproductive Technology Act with respect to National Registry.— The National Assisted Reproductive Technology and Surrogacy Registry referred to in section 15 and to be established under section 9 of the Assisted Reproductive Technology Act shall be the National Registry for the purposes of this Act and the functions to be discharged by the said Registry under the Assisted Reproductive Technology Act shall, *mutatis mutandis*, apply.

CHAPTER V

NATIONAL ASSISTED REPRODUCTIVE TECHNOLOGY AND SURROGACY BOARD AND STATE ASSISTED REPRODUCTIVE TECHNOLOGY AND SURROGACY BOARDS

17. Constitution of National Assisted Reproductive Technology and Surrogacy Board.— (1) The Central Government shall, by notification, constitute a Board to be known as the National Assisted Reproductive Technology and Surrogacy Board to exercise the powers and perform the functions conferred on the Board under this Act.

(2) The Board shall consist of—

(a) the Minister in-charge of the Ministry of Health and Family Welfare, the Chairperson, *ex officio*;

(b) the Secretary to the Government of India in-charge of the Department dealing with the surrogacy matter, Vice-Chairperson, *ex officio*;

(c) three women Members of Parliament, of whom two shall be elected by the House of the People and one by the Council of States, Members, *ex officio*;

(d) three Members of the Ministries of the Central Government in-charge of Women and Child Development, Legislative Department in the Ministry of Law and Justice and the Ministry of Home Affairs, not below the rank of Joint Secretary, Members, *ex officio*;

(e) the Director General of Health Services of the Central Government, Member, *ex officio*;

(f) ten expert Members to be appointed by the Central Government in such manner as may be prescribed and two each from amongst—

(i) eminent medical geneticists or embryologists;

(ii) eminent gynaecologists and obstetricians;

(iii) eminent social scientists;

(iv) representatives of women welfare organisations; and

(v) representatives from civil society working on women's health and child issues, possessing such qualifications and experience as may be prescribed;

(g) four Chairpersons of the State Boards to be nominated by the Central Government by rotation to represent the States and the Union territories, two in the alphabetical order and two in the reverse alphabetical order, Member, *ex officio*; and

(h) an officer, not below the rank of a Joint Secretary to the Central Government, in-charge of Surrogacy Division in the Ministry of Health and Family Welfare, who shall be the Member-Secretary, *ex officio*.

18. Term of office of Members.— (1) The term of office of a Member, other than an *ex officio* Member, shall be—

(a) in case of nomination under clause (c) of sub-section (2) of section 14, three years:

Provided that the term of such Member shall come to an end as soon as the Member becomes a Minister or Minister of State or Deputy Minister, or the Speaker or the Deputy Speaker of the House of the People, or the Deputy Chairman of the Council of States or ceases to be a Member of the House from which she was elected; and

(b) in case of appointment under clause (f) of sub-section (2) of section 17, three years:

Provided that the person to be appointed as Member under this clause shall be of such age as may be prescribed.

(2) Any vacancy occurring in the office whether by reason of his death, resignation or inability to discharge his functions owing to illness or other incapacity, shall be filled by the Central Government by making a fresh appointment within a period of one month from the date on which such vacancy occurs and the Member so appointed shall hold office for the remainder of the term of office of the person in whose place he is so appointed.

(3) The Vice-Chairperson shall perform such functions as may be assigned to him by the Chairperson from time to time.

19. Meetings of Board.— (1) The Board shall meet at such places and times and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as may be determined by the regulations:

Provided that the Board shall meet at least once in six months.

(2) The Chairperson shall preside at the meeting of the Board and if for any reason the Chairperson is unable to attend the meeting of the Board, the Vice-Chairperson shall preside at the meetings of the Board.

(3) All questions which come up before any meeting of the Board shall be decided by a majority of the votes of the members present and voting, and in the event of an equality of votes, the Chairperson, or in his absence, the Vice-Chairperson shall have a second or casting vote.

(4) The Members, other than *ex officio* Members, shall receive only compensatory travelling expenses for attending the meetings of the Board.

20. Vacancies, etc., not to invalidate proceedings of Board.— No act or proceeding of the Board shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Board; or

(b) any defect in the appointment of a person acting as a Member of the Board; or

(c) any irregularity in the procedure of the Board not affecting the merits of the case.

21. Disqualifications for appointment as Member.— (1) A person shall be disqualified for being appointed and continued as a Member if, he—

- (a) has been adjudged as an insolvent; or
- (b) has been convicted of an offence, which in the opinion of the Central Government, involves moral turpitude; or
- (c) has become physically or mentally incapable of acting as a Member; or
- (d) has acquired such financial or other interest, as is likely to affect prejudicially his functions as a Member; or
- (e) has so abused his position, as to render his continuance in office prejudicial to the public interest; or
- (f) is a practicing member or an office-bearer of any association representing surrogacy clinics, having financial or other interest likely to affect prejudicially, his function as a Member; or
- (g) is an office-bearer, heading or representing, any of the professional bodies having commercial interest in surrogacy or infertility.

(2) The Members referred to in clause (f) of section 17 shall not be removed from their office except by an order of the Central Government on the ground of their proved misbehaviour or incapacity after the Central Government, has, on an inquiry, held in accordance with the procedure prescribed in this behalf by the Central Government, come to the conclusion that the Member ought on any such ground to be removed.

(3) The Central Government may suspend any Member against whom an inquiry under sub-section (2) is being initiated or pending until the Central Government has passed an order on receipt of the report of the inquiry.

22. Temporary association of persons with Board for particular purposes.— (1) The Board may associate with itself, in such manner and for such purposes as may be determined by the regulations, any person whose assistance or advice it may desire in carrying out any of the provisions of this Act.

(2) A person associated with the Board under sub-section (1) shall have a right to take part in the discussions relevant to that purpose, but shall not have a right to vote at a meeting of the Board and shall not be a Member for any other purpose.

23. Authentication of orders and other instruments of Board.—All orders and decisions of the Board shall be authenticated by the signature of the Chairperson and all other instruments issued by the Board shall be authenticated by the signature of the Member-Secretary of the Board.

24. Eligibility of Member for re-appointment.— Subject to other terms and conditions of service as may be prescribed, any person ceasing to be a Member shall be eligible for re-appointment as such Member:

Provided that no Member other than an *ex officio* Member shall be appointed for more than two consecutive terms.

25. Functions of Board.— The Board shall discharge the following functions, namely: —

- (a) to advise the Central Government on policy matters relating to surrogacy;
- (b) to review and monitor the implementation of the Act, and the rules and regulations made thereunder and recommend to the Central Government, changes therein;
- (c) to lay down the code of conduct to be observed by persons working at surrogacy clinics;
- (d) to set the minimum standards of physical infrastructure, laboratory and diagnostic equipment and expert manpower to be employed by the surrogacy clinics;
- (e) to oversee the performance of various bodies constituted under the Act and take appropriate steps to ensure their effective performance;

(f) to supervise the functioning of State Assisted Reproductive Technology and Surrogacy Boards; and

(g) such other functions as may be prescribed.

26. Constitution of State Assisted Reproductive Technology and Surrogacy Board.— Each State and Union territory having Legislature shall constitute a Board to be known as the State Assisted Reproductive Technology and Surrogacy Board or the Union territory Assisted Reproductive Technology and Surrogacy Board, as the case may be, which shall discharge the following functions, namely:—

(i) to review the activities of the appropriate authorities functioning in the State or Union territory and recommend appropriate action against them;

(ii) to monitor the implementation of the provisions of the Act, and the rules and regulations made thereunder and make suitable recommendations relating thereto, to the Board;

(iii) to send such consolidated reports as may be prescribed, in respect of the various activities undertaken in the State under the Act, to the Board and the Central Government; and

(iv) such other functions as may be prescribed.

27. Composition of State Board.— The State Board shall consist of.—

(a) the Minister in-charge of Health and Family Welfare in the State, Chairperson, *ex officio*;

(b) the Secretary in-charge of the Department of Health and Family Welfare, Vice-Chairperson, *ex officio*;

(c) Secretaries or Commissioners in-charge of the Departments of Women and Child Development, Social Welfare, Law and Justice and Home Affairs or their nominees, members, *ex officio*;

(d) Director-General of Health and Family Welfare of the State Government, member, *ex officio*;

(e) three women members of the State Legislative Assembly or Union territory Legislative Council, members, *ex officio*;

(f) ten expert members to be appointed by the State Government in such manner as may be prescribed, two each from amongst—

(i) eminent medical geneticists or embryologists;

(ii) eminent gynaecologists and obstetricians;

(iii) eminent social scientists;

(iv) representatives of women welfare organisations; and

(v) representatives from civil society working on women's health and child issues,

possessing such qualifications and experiences as may be prescribed;

(g) an officer not below the rank of Joint Secretary to the State Government in-charge of Family Welfare, who shall be the Member-Secretary, *ex officio*.

28 . Term of office of members.— (1) The term of office of a member, other than an *ex officio* member, shall be.—

(a) in case of nomination under clause (e) of section 27, three years:

Provided that the term of such member shall come to an end as soon as the member becomes a Minister or Minister of State or Deputy Minister, or the Speaker or the Deputy Speaker of the Legislative Assembly, or the Deputy Chairman of the Legislative Council or ceases to be a member of the House from which she was elected; and

(b) in case of appointment under clause (f) of section 27, three years:

Provided that the person to be appointed as member under this clause shall be of such age, as may be prescribed.

(2) Any vacancy occurring in the office whether by reason of his death, resignation or inability to discharge his functions owing to illness or other incapacity, shall be filled within a period of one month from the date on which such vacancy occurs by the State Government by making a fresh appointment and the member so appointed shall hold office for the remainder of the term of office of the person in whose place he is so appointed.

(3) The Vice-Chairperson shall perform such functions as may be assigned to him by the Chairperson from time to time.

29. Meetings of State Board.—(1) The State Board shall meet at such places and times and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as may be specified by the regulations:

Provided that the State Board shall meet at least once in four months.

(2) The Chairperson shall preside at the meetings of the Board and if for any reason the Chairman is unable to attend the meeting of the State Board, the Vice-Chairperson shall preside at the meetings of the State Board.

(3) All questions which come up before any meeting of the State Board shall be decided by a majority of the votes of the members present and voting, and in the event of an equality of votes, the Chairperson, or in his absence, the Vice-Chairperson shall have a second or casting vote.

(4) The members, other than *ex officio* members, shall receive only compensatory travelling expenses for attending the meetings of the State Board.

30. Vacancies, etc., not to invalidate proceedings of State Board.— No act or proceeding of the State Board shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the State Board; or

(b) any defect in the appointment of a person acting as a member of the State Board; or

(c) any irregularity in the procedure of the State Board not affecting the merits of the case.

31. Disqualifications for appointment as member.—(1) A person shall be disqualified for being appointed and continued as a member if, he —

(a) has been adjudged as an insolvent; or

(b) has been convicted of an offence, which in the opinion of the State Government, involves moral turpitude; or

(c) has become physically or mentally incapable of acting as a member; or

(d) has acquired such financial or other interest, as is likely to affect prejudicially his functions as a member; or

(e) has so abused his position, as to render his continuance in office prejudicial to the public interest; or

(f) is a practicing member or an office-bearer of any association representing surrogacy clinics, having financial or other interest likely to affect prejudicially, his functions as a member; or

(g) is an office-bearer, heading or representing, any of the professional bodies having commercial interest in surrogacy or infertility.

(2) The members referred to in clause (f) of section 27 shall not be removed from their office except by an order of the State Government on the ground of their proved misbehaviour or incapacity after the State Government, has, on an inquiry, held in accordance with the procedure prescribed in

this behalf by the State Government, come to the conclusion that the member ought on any such ground to be removed.

(3) The State Government may suspend any member against whom an inquiry under sub-section (2) is being initiated or pending until the State Government has passed an order on receipt of the report of the inquiry.

32. Temporary association of persons with State Board for particular purposes.— (1) The State Board may associate with itself, in such manner and for such purposes as may be determined by the regulations, any person whose assistance or advice it may desire in carrying out any of the provisions of this Act.

(2) A person associated with it by the State Board under sub-section (1) shall have a right to take part in the discussions relevant to that purpose, but shall not have a right to vote at a meeting of the State Board and shall not be a member for any other purpose.

33. Authentication of orders and other instruments of State Board.—All orders and decisions of the State Board shall be authenticated by the signature of the Chairperson and all other instruments issued by the State Board shall be authenticated by the signature of the Member-Secretary of the State Board.

34. Eligibility of member for re-appointment.— Subject to the other terms and conditions of service as may be prescribed, any person ceasing to be a member shall be eligible for re-appointment as such member:

Provided that no member other than an *ex officio* member shall be appointed for more than two consecutive terms.

CHAPTER VI

APPROPRIATE AUTHORITY

35. Appointment of appropriate authority.— (1) The Central Government shall, within a period of ninety days from the date of commencement of this Act, by notification, appoint one or more appropriate authorities for each of the Union territories for the purposes of this Act and the Assisted Reproductive Technology Act.

(2) The State Government shall, within a period of ninety days from the date of commencement of this Act, by notification, appoint one or more appropriate authorities for the whole or any part of the State for the purposes of this Act and the Assisted Reproductive Technology Act.

(3) The appropriate authority, under sub-section (1) or sub-section (2), shall,—

(a) when appointed for the whole of the State or the Union territory, consist of—

(i) an officer of or above the rank of the Joint Secretary of the Health and Family Welfare Department—Chairperson, *ex officio*;

(ii) an officer of or above the rank of the Joint Director of the Health and Family Welfare Department—Vice Chairperson, *ex officio*;

(iii) an eminent woman representing women's organisation—member;

(iv) an officer of Law Department of the State or the Union territory concerned not below the rank of a Deputy Secretary—member; and

(v) an eminent registered medical practitioner—member:

Provided that any vacancy occurring therein shall be filled within one month of the occurrence of such vacancy;

(b) when appointed for any part of the State or the Union territory, be officers of such other rank as the State Government or the Central Government, as the case may be, may deem fit.

36. Functions of appropriate authority.—The appropriate authority shall discharge the following functions, namely:—

- (a) to grant, suspend or cancel registration of a surrogacy clinic;
- (b) to enforce the standards to be fulfilled by the surrogacy clinics;
- (c) to investigate complaints of breach of the provisions of this Act, rules and regulations made thereunder and take legal action as per provision of this Act;
- (d) to take appropriate legal action against the use of surrogacy by any person at any place other than prescribed, suo motu or brought to its notice, and also to initiate independent investigations in such matter;
- (e) to supervise the implementation of the provisions of this Act and rules and regulations made thereunder;
- (f) to recommend to the Board and State Boards about the modifications required in the rules and regulations in accordance with changes in technology or social conditions;
- (g) to take action after investigation of complaints received by it against the surrogacy clinics; and
- (h) to consider and grant or reject any application under clause (vi) of section 3 and sub-clauses (a) to (c) of clause (iii) of section 4 within a period of ninety days.

37. Powers of appropriate authorities.— (1) The appropriate authority shall exercise the powers in respect of the following matters, namely:—

- (a) summoning of any person who is in possession of any information relating to violation of the provisions of this Act, and rules and regulations made thereunder;
- (b) production of any document or material object relating to clause (a);
- (c) search any place suspected to be violating the provisions of this Act, and the rules and regulations made thereunder; and
- (d) such other powers as may be prescribed.

(2) The appropriate authority shall maintain the details of registration of surrogacy clinics, cancellation of registration, renewal of registration, grant of certificates to the intending couple and surrogate mothers or any other matter pertaining to grant of license, etc., of the surrogacy clinics in such format as may be prescribed and submit the same to the National Assisted Reproductive Technology and Surrogacy Board.

CHAPTER VII

OFFENCES AND PENALTIES

38. Prohibition of commercial surrogacy, exploitation of surrogate mothers and children born through surrogacy.— (1) No person, organisation, surrogacy clinic, laboratory or clinical establishment of any kind shall.—

- (a) undertake commercial surrogacy, provide commercial surrogacy or its related component procedures or services in any form or run a racket or an organised group to empanel or select surrogate mothers or use individual brokers or intermediaries to arrange for surrogate mothers and for surrogacy procedures, at such clinics, laboratories or at any other place;
- (b) issue, publish, distribute, communicate or cause to be issued, published, distributed or communicated, any advertisement in any manner regarding commercial surrogacy by any means whatsoever, scientific or otherwise;
- (c) abandon or disown or exploit or cause to be abandoned, disowned or exploited in any form, the child or children born through surrogacy;

(d) exploit or cause to be exploited the surrogate mother or the child born through surrogacy in any manner whatsoever;

(e) sell human embryo or gametes for the purpose of surrogacy and run an agency, a racket or an organisation for selling, purchasing or trading in human embryos or gametes for the purpose of surrogacy;

(f) import or shall help in getting imported in, whatsoever manner, the human embryo or human gametes for surrogacy or for surrogacy procedures; and

(g) conduct sex selection in any form for surrogacy.

(2) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), contraventions of the provisions of clauses (a) to (g) of sub-section (1) by any person shall be an offence punishable with imprisonment for a term which may extend to ten years and with fine which may extend to ten lakh rupees.

(3) For the purposes of this section, the expression "advertisement" includes any notice, circular, label, wrapper or any other document including advertisement through internet or any other media, in electronic or print form and also includes any visible representation made by means of any hoarding, wall-painting, signal light, sound, smoke or gas.

39. Punishment for contravention of provisions of Act.— (1) Any registered medical practitioner, gynaecologists, paediatrician, embryologists or any person who owns a surrogacy clinic or employed with such a clinic or centre or laboratory and renders his professional or technical services to or at such clinic or centre or laboratory, whether on an honorary basis or otherwise, and who contravenes any of the provisions of this Act (other than the provisions referred to in section 38) and rules and regulations made thereunder shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to ten lakh rupees.

(2) In case of subsequent or continuation of the offence referred to in sub-section (1), the name of the registered medical practitioner shall be reported by the appropriate authority to the State Medical Council concerned for taking necessary action including suspension of registration for a period of five years.

40. Punishment for not following altruistic surrogacy.—Any intending couple or intending woman or any person who seeks the aid of any surrogacy clinic, laboratory or of a registered medical practitioner, gynaecologist, paediatrician, embryologist or any other person for not following the altruistic surrogacy or for conducting surrogacy procedures for commercial purposes shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to five lakh rupees for the first offence and for any subsequent offence with imprisonment which may extend to ten years and with fine which may extend to ten lakh rupees.

41. Penalty for contravention of provisions of Act or rules for which no specific punishment is provided.—Whoever contravenes any of the provisions of this Act, rules or regulations made thereunder for which no penalty has been provided in this Act, shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to five lakh rupees and in the case of continuing contravention with an additional fine which may extend to ten thousand rupees for every day during which such contravention continues after conviction for the first such contravention.

42. Presumption in the case of surrogacy.— Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), the court shall presume, unless the contrary is proved, that the woman or surrogate mother was compelled by her husband, the intending couple or any other relative, as the case may be, to render surrogacy services, procedures or to donate gametes for the purpose other than those specified in clause (ii) of section 4 and such person shall be liable for abetment of such offence under section 40 and shall be punishable for the offence specified under that section.

43. Offence to be cognizable, non-bailable and non-compoundable.— Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence under this Act shall be cognizable, non-bailable and non-compoundable.

44. Cognizance of offences.— (1) No court shall take cognizance of any offence punishable under this Act except on a complaint in writing made by--

(a) the appropriate authority concerned, or any officer or an agency authorised in this behalf by the Central Government or the State Government, as the case may be, or the appropriate authority; or

(b) a person including a social organisation who has given notice of not less than fifteen days in the manner prescribed, to the appropriate authority, of the alleged offence and of his intention to make a complaint to the court.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

45. Certain provisions of Code of Criminal Procedure, 1973 not to apply.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), Chapter XXI A of the said Code relating to plea bargaining shall not apply to the offences under this Act.

CHAPTER VIII

MISCELLANEOUS

46. Maintenance of records.— (1) The surrogacy clinic shall maintain all records, charts, forms, reports, consent letters, agreements and all the documents under this Act and they shall be preserved for a period of twenty-five years or such period as may be prescribed:

Provided that, if any criminal or other proceedings are instituted against any surrogacy clinic, the records and all other documents of such clinic shall be preserved till the final disposal of such proceedings.

(2) All such records shall, at all reasonable times, be made available for inspection to the appropriate authority or to any other person authorised by the appropriate authority in this behalf.

47. Power to search and seize records, etc.— (1) If the appropriate authority has reason to believe that an offence under this Act has been or is being committed at any surrogacy clinic or any other place, such authority or any officer authorised in this behalf may, subject to such rules as may be prescribed, enter and search at all reasonable times with such assistance, if any, as such authority or officers considers necessary, such surrogacy clinic or any other place and examine any record, register, document, book, pamphlet, advertisement or any other material object found therein and seize and seal the same if such authority or officer has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act.

(2) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to search and seizure shall apply, as far as may be, to all action taken by the appropriate authority or any officer authorised by it under this Act.

48. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against the Central Government or the State Government or the appropriate authority or any officer authorised by the Central Government or the State Government or by the appropriate authority for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act.

49. Application of other laws not barred.— The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

50. Power to make rules.— (1) The Central Government may, by notification and subject to the condition of pre-publication, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for--

- (a) the prescribed expenses under clauses (b), (f) and (g) of sub-section (1) of section 2;
- (b) the minimum qualifications for persons employed at a registered surrogacy clinic under clause (iii) of section 3;
- (c) the period and manner in which a person shall store human embryo or gamete under clause (vii) of section 3;
- (d) the form and manner of application for obtaining certificate of recommendation from the Board under proviso to sub-clause (a) of clause (ii) of section 4;
- (e) the insurance coverage in favour of the surrogate mother from an insurance company and the manner of such coverage under item (III) of sub-clause (a) of clause (iii) of section 4;
- (f) the number of attempts of surrogacy or providing of gametes under the proviso to item (III) of sub-clause (b) of clause (iii) of section 4;
- (g) the form in which consent of a surrogate mother has to be obtained under clause (ii) of section 6;
- (h) the number of oocytes or embryos to be implanted in the uterus of the surrogate mother under section 9;
- (i) the conditions under which the surrogate mother may be allowed for abortion during the process of surrogacy under section 10;
- (j) the form and manner in which an application shall be made for registration and the fee payable thereof under sub-section (2) of section 11;
- (k) the facilities to be provided, equipment and other standards to be maintained by the surrogacy clinics under sub-section (4) of section 11;
- (l) the period, manner and form in which a certificate of registration shall be issued under sub-section (1) of section 12;
- (m) the manner in which the certificate of registration shall be renewed and the fee payable for such renewal under sub-section (3) of section 12;
- (n) the manner in which an appeal may be preferred under section 14;
- (o) the qualifications and experiences of the Members as admissible under clause (f) of sub-section (2) of section 17;
- (p) the procedures for conducting an inquiry against the Members under sub-section (2) of section 21;
- (q) the conditions under which a Member of the Board eligible for re-appointment under section 24;
- (r) the other functions of the Board under clause (g) of section 25;
- (s) the manner in which reports shall be furnished by the State Assisted Reproductive Technology and Surrogacy Board and the Union territory Assisted Reproductive Technology and Surrogacy Board to the Board and the Central Government under clause (iii) of section 26;
- (t) the other functions of the State Board under clause (iv) of section 26;
- (u) the qualifications and experiences of the members as admissible under clause (f) of section 27;
- (v) the age of the person to be appointed as a member, referred to in clause (f) of section 27, under the proviso to clause (b) of sub-section (1) of section 28;
- (w) the procedures for conducting an inquiry against the members under sub-section (2) of section 31;

(x) the conditions under which the members of State Board eligible for re-appointment under section 34;

(y) empowering the appropriate authority in any other matter under clause (d) of section 36;

(z) the other powers of appropriate authority under clause (d) of sub-section (1) of section 37;

(za) the particulars of the details of registration of surrogacy clinics, cancellation of registration, etc., in such format under sub-section (2) of section 37;

(zb) the manner of giving notice by a person under clause (b) of sub-section (1) of section 44;

(zc) the period up to which records, charts, etc., shall be preserved under sub-section (1) of section 46;

(zd) the manner in which the seizure of documents, records, objects, etc., shall be made and the manner in which seizure list shall be prepared and delivered under sub-section (1) of section 47; and

(ze) any other matter which is to be, or may be, or in respect of which provision is to be made by rules.

51. Power to make regulations.— The Board may, with the prior approval of the Central Government, by notification, make regulations not inconsistent with the provisions of this Act and the rules made thereunder to provide for.—

(a) the fulfilment of any other condition under which eligibility certificate to be issued by the appropriate authority under sub-clause (d) of clause (v) of section 4;

(b) the time and place of the meetings of the Board and the procedure to be followed for the transaction of business at such meetings and the number of Members which shall form the quorum under sub-section (1) of section 19;

(c) the manner in which a person may be temporarily associated with the Board under sub-section (1) of section 22;

(d) the time and place of the meetings of the State Board and the procedure to be followed for the transaction of business at such meetings and the number of members which shall form the quorum under sub-section (1) of section 29;

(e) the manner in which a person may be temporarily associated with the Board under sub-section (1) of section 32; and

(f) any other matter which is required to be, or may be, specified by regulations.

52. Rules and regulations to be laid before Parliament.— Every rule made by the Central Government and every regulation made by the Board under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification.

53. Transitional provision.— Subject to the provisions of this Act, there shall be provided a gestation period of ten months from the date of coming into force of this Act to existing surrogate mothers' to protect their well being.

54. Power to remove difficulties.— (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of the said Act as appear to it to be necessary or expedient for removing the difficulty:

Provided that no order shall be made under this section after the expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

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