

INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 6 | Issue 3

2024

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Surrogacy Regulation Bill, 2019

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ABSTRACT

According to the Surrogacy (Regulation) Bill 2019¹, surrogacy is the practice of a woman bearing a child on behalf of an intended pair with the goal of giving the child to the intended couple after the delivery. This article covered the bill's numerous clauses as well as the different kinds of surrogacy and the Indian government's opinion of the legislation. The bill has addressed the two forms of surrogacy: commercial surrogacy and altruistic surrogacy. The Altruistic Surrogacy conditions are presented in Bill². The certificates of essentiality and eligibility, which are granted by the proper authorities, are also covered in the law. The appointment of relevant officials at the state and federal levels is another topic covered in the measure. The National Surrogacy Board (NSB) and the State Surrogacy Board (SSB) will be the names given to them. The article also discusses penalties, which include fines of up to Rupees 10 lakhs and sentences of up to 10 years. The goal of the Surrogacy Regulation Bill is to control the surrogacy industry, which entails a woman bearing a child on behalf of another person or couple. Generally, the bill contains provisions that address who can participate in surrogacy, what circumstances allow it to be done, and what the rights and obligations of the intended parents, the child, and are the surrogator mother.

I. INTRODUCTION

Around the world, women use surrogacy to give birth to a child on behalf of a couple seeking to expand their family. The surrogate mother gives birth to the child and then gives the infant to the couple. Prior to November 2015, when the Indian government outlawed the surrogacy industry, over 80% of births in the nation were accounted for by surrogates. Several nations outlawed commercial surrogacy as a result. Several countries in Europe completely prohibited surrogacy not only to protect the reproductive health of the surrogate but also the future of the new born

But the unregulated surrogacy industry raised questions about the widespread exploitation of surrogate moms and their kids, which is why the nation needed surrogacy regulations. These law ensures fair and ethical surrogacy practices while protecting the rights and well-being all parties are involved.

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II. BACKGROUND

- In recent years, **India** has emerged as a **surrogacy hub** for couples from other countries.
- A strict legislation on surrogacy was required in response to several instances of unethical behavior, the exploitation of surrogate mothers, the abandoning of surrogate children, and rackets involving the import of human embryos and gametes by middlemen.
- Typically, the surrogates are low-income, illiterate women from rural backgrounds who are tricked into doing these transactions by their spouses or brokers in order to make quick money. **These women lack the authority to make decisions about their own lives and bodies**
- Following their recruitment by for-profit organizations, these women are moved into hostels under the guise of receiving prenatal care. The true goal is to avoid the social disgrace of being shunned by their group and cart them off. These women wind up worrying about their home and kids throughout the entirety of their pregnancy.
- Sometimes intended parents and surrogate moms are taken advantage of due to inadequate laws. The arrangement only benefits commercial agencies and intermediaries.
- However, the kid born out of the surrogacy agreement continues to be the most disadvantaged party. There have also been cases where the intended parent disowns the kid born via surrogacy because the child is not genetically related to them, forcing the child to live in an orphanage for the rest of their life.
- The **Indian Law Commission** also emphasized the necessity of passing such legislation. The commission recommended banning commercial surrogacy in its 208th report, citing concerns about the widespread use of surrogacy by foreigners and the absence of an appropriate legal framework that leads to the exploitation of surrogate mothers, who may have been forced to become surrogates due to poverty and low educational attainment.

(A) The Salient Feature of a bill are as follow:-

- In order to ensure effective regulation, it provides for the establishment of **surrogacy boards**³ at both the federal and state levels.
- It aims to permit the intended infertile Indian married couple, **aged 26–55 for men and**

23–50 for women⁴, to use ethically altruistic surrogacy.

- The only Indian couples who can choose surrogacy are those who have been lawfully opt for a minimum of 5 years.
- Before proceeding with surrogacy, the couple is required to get a certificate of eligibility and a certificate of essentiality. Additionally, it states that intended couples shall not, under any circumstances, desert the child delivered via surrogacy.
- to stipulate that intended couples shall not, under any circumstances, abandon the child born through a surrogacy procedure, and that the kid born through a surrogacy procedure shall have all the rights and privileges accorded to the biological child;

(B) Certificate of Essentiality

A district medical board issues this certificate of essentiality when it determines that one or both of the intended spouses are infertile. Furthermore, the magistrate court's order pertaining to the surrogate child's custody and parenthood must be followed. For sixteen months following the surrogate mother's postpartum delivery problems, this certificate also insures against insurance risk. During such a surgery, the surrogate mother's health needs must also be taken into consideration.

(C) Certificate of Eligibility

The spouses must be citizens of India, have been married for at least five years, and fall between the ages of 26 and 55 for the husband and 23 and 50 for the lady. It is significant to remember that the husband and wife should not have any biological, adoptive, or surrogate children. This also does not apply to children who are physically or mentally ill, have a life-threatening condition, or are terminally ill.

III. PROVISION UNDER SURROGACY (REGULATION) BILL, 2019

There are numerous provisions under the Surrogacy (Regulation) Bill 2019 but this article discusses primarily about the major provisions which this bill addresses at large for the development of the society. There are two types of surrogacy which have been covered under the bill. Commercial and Non-Commercial Surrogacy. Altruistic surrogacy refers to situations in which the surrogate mother receives no financial compensation other than prenatal care and insurance coverage. The majority of the bill favors this kind of surrogacy, which also meets the needs of the modern culture. Since surrogate moms in particular have long been exploited, significant reforms to address this social issue are now required. The second kind of surrogacy is called "commercial surrogacy," which entails financial rewards (either in kind or financially)

that go above and beyond insurance and medical costs.

(A) Conditions for Altruistic Surrogacy

1. Those couple who are childless means they did not have child naturally for 5 years after marriage and suffer from proven infertility and fall under the age group of 23-50 for women and 26-55 for man.

2. There is a provision that the surrogate mother must be among the relatives. Moreover, the bill has to clearly specify the definition of relative so as to clarify it further.

3. A clause states that no money may be transferred to cover medical or insurance costs in order to avoid being viewed as an inducement.

4. In order for a woman to serve as a surrogate mother, she must be between the ages of 25 and 35. She can only take on the role of surrogate mother once in her lifetime.

(B) Prohibited Acts / Categories for Surrogacy

1. Commercial Surrogacy
2. Foreigners, NRIs and PIOs
3. Homo-Sexual Couples
4. People in Live-in relationships
5. Single Parents
6. Unmarried couples

(C) Further rules and regulations of the Bill, 2019

It explains further that a child born through surrogacy would be considered the intended couple's biological child. It also states that protections against the baby's sex being chosen are included in the measure. It will be considered a crime. The bill promotes altruistic surrogacy, where the surrogate mother volunteers to carry the child without any monetary compensation except for the medical expenses and insurance coverage related to the pregnancy. It also bans foreign nationals, NRI couples, and single individual from seeking surrogacy services in India.

1. In addition, the following offenses are covered by the aforementioned 2019 bill:
Engaging in or promoting commercial surrogacy
2. Abandoning, abusing, or disowning a surrogate child
3. Refusing to acknowledge or acknowledge a surrogate child
4. Purchasing or exporting human gametes or embryos for use in surrogacy.

Penalties for the aforementioned offenses include up to ten years in prison and a fine of up to ten lakh rupees.

IV. REASONS FOR BANNING INDIAN SURROGACY

When Indian surrogacy originally peaked, there were no laws governing the business, which led to the development of risky and immoral practices. Surrogates are subjected to exploitation, subpar living conditions, and unethical treatment. The demand from foreign intended parents led to the effective operation of "baby factories" by Indian surrogacy companies.

Indian women were abandoned when they became pregnant and were forced to live without family support until they gave birth to their intended parents' children. In India, surrogates are reportedly paid between \$4,000 and \$5,000, which is a small portion of the money the intended parents paid to the surrogacy firm. Commercial surrogacy involved the use of surrogates. Their constant attraction to the surrogacy process was a combination of financial gain, poverty, and lack of education. Their health consequently declined as they essentially turned into "baby-making machines" year after year. Even during this difficult journey, surrogate moms do not get the support resources they require for themselves and their families. The Indian government has attempted to take action to ensure that everyone involved in the process is secure for all of these reasons.

Key observation and recommendation⁵ of the select committee are :-

- Commercial versus altruistic surrogacy: Surrogacy is the process in which a woman carries a child on behalf of another with the goal of transferring the child's legal custody after the child is born. The Bill permits selfless surrogacy while outlawing commercial surrogacy. Altruistic surrogacy does not pay the surrogate mother anything beyond the costs of pregnancy-related medical care and insurance.
- The Committee suggested a compensation-based surrogacy paradigm as an alternative to selfless surrogacy. The surrogate mother must receive compensation to make up for her lost income and health. Committee observations revealed that women from low-income households have viewed surrogacy as a financial opportunity. The Bill ignores the fact that altruistic surrogacy is exploitative as well, by outlawing commercial surrogacy.
- The Committee suggested classifying surrogacy according to the particular purpose behind a woman's decision to volunteer as a surrogate mother. Either (i) provide a paid service and profit, or (ii) act philanthropically, could be the motivation.

- Consequences of the surrogate being a "close relative": The Bill restricts the surrogate to being a "close relative" of the intended pair. The Committee observed that the requirement of having a "close relative" would limit the pool of potential surrogate mothers and have an impact on those who are truly in need. It suggested eliminating the meaning of "close relative" and enabling any willing woman to take on the role of a surrogate mother.
- Five-year waiting period: Under the Bill, if a couple is unable to conceive after five years of unprotected coitus or other medical issues that hinder pregnancy, they may proceed with a surrogacy agreement. The Committee noted that the five-year waiting period requirement is excessive, especially in cases where a natural pregnancy cannot be ruled out or if there is no uterus, fibroids, or uterine excision owing to malignancy.
- Insurance coverage: The Bill offers a surrogate mother 16 months of insurance coverage. The Committee suggested making this a 36-month extension.
- Appeals: The surrogate mother and the intended pair must get certifications of eligibility and essentiality from the relevant appropriate authorities after meeting certain requirements in order to begin the surrogacy procedure.

V. APPROACH IN THE SURROGACY (REGULATION) BILL, 2020

On February 26, 2020, the Union Cabinet approved the new Surrogacy Regulation Act, 2020, allowing any woman who wishes or has the willingness to become a surrogate mother. The COVID-19 epidemic caused the Bill to be shelved, although it was later scheduled to be tabled as Bill 2021 in the lower house of the Indian Parliament during the next session. The Surrogacy Regulation Act of 2019's shortcomings were greatly addressed by the Bill, while it still takes a needs-based rather than a rights-based approach, which must be incorporated into law before it can fulfill its intended purpose and receive presidential assent.

Some of the main features of the proposed surrogacy legislation are:-

1. Establishment of regulatory bodies: The bill suggests that each Union Territory will have one or more capable authorities or agencies, a National Surrogacy Board at the federal level, and a State Surrogacy Board at the state level in order to govern surrogacy.
2. Establish minimal requirements for the physical facilities, lab and diagnostic tools, and qualified personnel that surrogacy clinics must hire.
3. Ban of commercial surrogacy: In its 228th report, the Law Commission of India suggested that appropriate laws be established to prohibit commercial surrogacy.

4. It only permits altruistic surrogacy in order to stop the expansion of the uterine leasing market and shield surrogate moms from abuse.

5. Commercial surrogacy is prohibited, which also implies that fashionable surrogacy—that is, surrogacy performed just for convenience as opposed to medical necessity—is prohibited.

6. Omission of the definition of infertility:- The surrogacy (Regulation) Act 2019 stated that in order for an intended couple to be qualified for the surrogacy process, at least one member of the couple must experience "proven infertility." This definition of infertility was left out. But if the intended partner has a medical condition that necessitates gestational surrogacy, the 2020 Bill changed what couples could be able to surrogate.

7. A 35 to 45 year-old Indian lady who is widowed or divorced and plans to use surrogacy chooses surrogacy.

VI. CONCLUSION

The Surrogacy Regulation Bill of 2019 seeks to control the surrogacy industry in India. One of its principal features is that it forbids commercial surrogacy while permitting charitable surrogacy for Indian couples unable to conceive. The goal of the measure is to protect surrogate mothers from being exploited and to guarantee the rights and welfare of the child born via surrogacy.

The focus placed by this bill on moral and regulated surrogacy procedures is one of its important findings. The measure aims to stop the exploitation of women and discourage the commercialization of surrogacy by limiting commercial surrogacy. Overall, the Surrogacy Regulation Bill of 2019 reflects a balanced approach to surrogacy, prioritizing ethical considerations, safeguarding the interests of surrogate mothers and children, and regulating the practice for the benefit of all parties involved.
