

ANALYZING THE TRANSITION FROM THE SURROGACY (REGULATION) BILL OF 2016 TO THE SURROGACY (REGULATION) ACT OF 2021

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Surrogacy (Regulation) Bills and Surrogacy (Regulation) Act.

1. Surrogacy (Regulation) Bill, 2016.

On November 21, 2016, the Central Government presented this Bill in the Lok Sabha to establish National Surrogacy Board and State Surrogacy Boards for the purpose of regulating surrogacy practises in India and to designate the competent authorities to do so.

Since past few years India known to be a ‘Surrogacy hub’ for couples, from India as well as from abroad. The incidences like exploitation of surrogates in India by foreigners, abandonment of child born through surrogacy, import of human gametes and human embryos and other unethical practices have been reported continuously. Media and the newspapers have reportedly highlighted the commercial surrogacy cases in India. The Law Commission of India in its 228th Report also recommends regulating surrogacy in India and prohibiting commercialization from the county. There is a misuse of surrogacy practices due to lack of legislative provisions. Commercialization took a long way to make surrogacy practices unethical.

The Bill consists of the headings are as follows:

1.1. Introduction

It defines what ‘infertility’, ‘surrogacy’, ‘altruistic surrogacy’ and ‘commercial surrogacy’ is. It also tells us who is a ‘abandoned child’, ‘couple’, and ‘intended couple’, ‘surrogate mother’,

‘gynecologist’, ‘human embryologist’, ‘registered medical practitioner’ and ‘pediatrician’ . Also deals with ‘surrogacy procedures’, ‘surrogacy clinics’ and other related terms like ‘zygote’, ‘embryo’, ‘foetus’, ‘gamete’, ‘oocyte’, ‘implantation’ and ‘fertilization’ ‘insurance’. ‘State Board’, ‘National Board’ and ‘appropriate authority’ etc. are the authorities for regulating surrogacy procedures and surrogacy clinics.

Some of the important terms are as follows:

- 1) **“Infertility”** means the inability to conceive after five years unprotected coitus or other proven medical conditions preventing a couple from conception.
- 2) **“Surrogacy”** means a practice whereby one woman bears and gives birth to child for an intending couple with intention of handing over such child to the intending couple after the birth.
- 3) **“Altruistic surrogacy”** means the surrogacy in which no charges, expenses fees, remuneration or monetary incentives of whatever nature, except the medical 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.
- 4) **“Commercial surrogacy”** means commercialization 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 incurred on the surrogate mother and insurance coverage for the surrogate mother.
- 5) **“Abandoned child” means a child,**
 - i) born out of surrogacy procedures;
 - ii) deserted by his intending parents or guardians; and
 - iii) Who has been declared as abandoned by the appropriate authority after due enquiry.
- 6) **“Couple”** means the legally married Indian man and woman above the age of 21 years and 18 years respectively.
- 7) **“Intending couple”** means a couple who have been medically certified to be an infertile couple and who intend to become parents through surrogacy.

- 8) **“Surrogate mother”** means a woman bearing a child who is genetically related to the intending couple, 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.
- 9) **“Gynecologist”** shall have the same meaning as assigned to it in the pre-conception and pre-natal Diagnostic Technique (Prohibition of sex- selection) Act, 1994.
- 10) **“Human embryologist”** means a person who possesses any post graduate medical qualification in the field of human embryologist recognized under the Indian Medical Council Act, 1956 or who possesses a post-graduate degree in human embryology from a recognized University with not less than two years of clinical experience.
- 11) **“Registered medical practitioner”** means a medical practitioner who possesses any recognized medical qualification as defined in clause (h) of section 2 of the Indian medical Council Act, 1956 and whose name has been entered in State Medical Register;”
- 12) **“Paediatrician”** “means a person who possesses a post-graduate qualification in paediatrics as recognized under the Indian Medical Council Act, 1956.
- 13) **“Fertilization”** means the penetration of the ovum by the spermatozoan and fusion genetic materials resulting in the development of a zygote.
- 14) **“Implantation”** means the attachment and subsequent penetration by the zona-free blastocyst, which starts five to seven days following fertilization.
- 15) **“Foetus”** means a human organism during the period of its development beginning on the fifty seventh day following fertilization or creation (excluding any time in which its development has been suspended) and ending at the birth.
- 16) **“Surrogacy procedures”** means all gynaecological or obstetrical or medical procedures, techniques, tests, practices or services involving handling of human gametes and human embryo in surrogacy.
- 17) **“Surrogacy clinics”** means surrogacy clinic or centre or laboratory, conducting assisted reproductive technology services, in vitro fertilization services, genetic counseling centre,

genetic laboratory, Assisted Reproductive Technology Banks conducting surrogacy procedures or any clinical establishment, by whatsoever name called conducting surrogacy procedures in any form.

1.2. Discusses Regulation of surrogacy clinics

- Only the registered clinics can conduct activities related to surrogacy procedures.
- Gynecologist, registered medical practitioner, pediatrician, human embryologist shall not offer, avail or associate with commercial surrogacy.
- All surrogacy procedures shall be conducted at registered surrogacy clinic by gynecologist, registered medical practitioner, human embryologist or pediatrician.
- No person shall be employed or caused be employed by the surrogacy clinics either on honorary basis or on paid basis if he is not qualified as specified under the Act.
- Gynecologist, registered medical practitioner, human embryologist, pediatrician or any person shall not:
 - a) Shall not induce or force any woman to be a surrogate or act as a surrogate
 - b) shall not promote any clinic for commercial surrogacy or in general
 - c) shall not aimed at seeking any woman to act as surrogate
 - d) shall not imply or state that woman wants to be a surrogate
 - e) shall not advertise either in electronic media or in print form or any other ways
- Surrogacy clinics or no other person without the written consent of surrogate mother and without authorization by an appropriate authorized person shall not cause or conduct abortion of a surrogate child during the period of surrogacy. Provided such complications or need arises under the provisions of medical termination of pregnancy Act 1971,
- Surrogacy clinics shall not store human embryo or gamete for the purpose of surrogacy. Provided such storage for the purpose of sperm banks, IVF and medical research in such manner or for such period as prescribed in this Act.

1.3. Enumerates Regulation of surrogacy and surrogacy procedures

Surrogacy clinics shall conduct surrogacy procedures; those are specified and mentioned under this Act:

- Couples who are medically proven infertile
- Surrogacy for altruistic purpose
- Not for any commercialization purpose or not for commercial surrogacy procedures
- Not for the purpose sale of children, exploitation of woman or for the purpose of prostitution
- For the purpose of any other condition or any disease due to which couple could not conceive their own child

Until and unless the Director or in charge of surrogacy clinic or any person who is qualified to conduct surrogacy is satisfied and shall record such reasons in writing for fulfillment of all conditions of conducting surrogacy procedures:

- An intended pair must get a district medical certificate from a gynaecologist or obstetrician and the district's head paediatrician in order to qualify for surrogacy treatments.
- A request for parental rights or for custody of a child delivered through surrogacy. The intending partners' and surrogate mother's application must have been approved by the court's first-class magistrate.
- A woman who is between the ages of 25 and 35 can serve as a surrogate mother or contribute her egg or oocyte in order to facilitate surrogacy arrangements.
- A woman can act as a surrogate once in her lifetime, provided that it is for the purpose of providing gametes or carrying a pregnancy as may be prescribed under this Bill. A certificate of medical and psychological fitness for the surrogate woman is provided by a medical professional for surrogacy arrangements.

Eligibility certificate for intending couples by appropriate authority for the purpose of surrogacy procedures:

- Couples' average ages range from 26 to 55 for men and 23 to 50 for women.
- Couples must be Indian citizens and have been wed for at least five years.
- Couples shouldn't have any children through surrogacy or adoption who will survive them. If a kid who is physically or cognitively challenged, or who has a life-threatening illness or another chronic condition, is allowed to choose surrogacy.

- A woman's spouse or family members are not allowed to pressure her into being a surrogate. Medical practitioner or gynecologist or any other person who conducts surrogacy shall have to explained the side effects and after effects of the surrogacy procedures to the surrogate
- The contract's terms and conditions must be written in the local language so that the surrogate or a member of her family may adequately comprehend them.
- The intended parents cannot refuse to accept the child born through surrogacy arrangements due to any defects, such as a genetic birth defect, a medical condition, later defects, the child's gender, or the conception of more than one child, provided that any child born through such arrangements is treated as a natural child with all the rights and privileges accorded to natural children and is recognised as the legitimate child under the Act.
- For the purpose of surrogacy, the surrogate mother must receive the required quantity of embryos and oocytes.

1.4. Explains the Registration of Surrogacy Clinics

- Only registered clinics can conduct surrogacy procedures as per the Act.
- Surrogacy clinics have to satisfy appropriate authority that they are in a position to provide well designed and well equipped, with all facilities and specialized manpower, with proper physical infrastructure and diagnostic facilities for the purpose of conducting surrogacy procedures.
- Appropriate authority after conducting enquiry and satisfy them that the applicant is complying with all rules and regulations and other requirement mentioned under the Act, grant the clinic registration certificate for conducting surrogacy arrangements within the period of ninety days.
- If such clinics could not comply with the rules and regulations under the Act.
- The registration certificate is valid for three years and after three years registration needs to be renewed with prescribed fees.
- The appropriate authority may suo motu issue a notice stating a reason and may have power to suspend or cancel the registration of clinics on a receipt of complaints against such clinic. Clinics may give a reasonable opportunity to being heard.

1.5. Gives constitution of National Surrogacy Board and State Surrogacy Board.

- The National Surrogacy Board must be established by the central government. The Board will be made up of the responsible minister, the responsible secretary to the Indian government, three female members of parliament, three responsible members of central government ministries, the director general, and 10 knowledgeable members. Members of this group were chosen from the Ministries of Home Affairs, Women's and Children's Affairs, Council of States, and Law and Justice's Legislative Department.
- Created by the federal government, the National Surrogacy Board is required. The Board will be comprised of the responsible minister, the responsible secretary of the Indian government, three female members of parliament, three responsible ministers from the central government, the director general, and 10 qualified members. Members of this group were chosen by the Ministry of Law and Justice's Women's and Children's Affairs, Council of States, and Legislative Department.

1.6. Goes on to the appointment of Appropriate Authority.

- For the purposes of this Act, the Central Government shall designate one or more appropriate authorities for each of the Union Territories within a 90-day period, and the State Government shall designate one or more appropriate authorities for the whole or any portion of the State within a 90-day period.
- Include additional individuals such as an officer, a prominent group for women's rights, a law department official, and a prominent registered physician.
- Functions of appropriate authority; to grant, suspend, cancel registration of surrogacy clinics, to enforce standards to be fulfilled, to take suo motu action against person who indulge unethical practice, supervise implementation of provisions, recommend modifications required for rules and regulations, brought to the notice for changes in technology and social conditions and to consider and grant or rejection of any application as prescribed under this Bill.
- Powers of appropriate authority; summon a person in possession of any information about any violation, production of any documents, search any place or material object and other powers such as maintain details of registration, cancellation of registration,

issuance of certificates to intended couples and surrogate mothers, as well as issuance of any further licences.

1.7. Covered with offences and punishments and penalties

- The inability to utilise individual brokers or middlemen to arrange for surrogates; the exploitation of surrogate mothers and the children born via surrogacy; and the prohibition of commercial surrogacy.
- Advertisement of commercial surrogacy such as issue, publish, distribute, communicate, cause to do the same for commercial surrogacy,
- Exploiting a surrogate mother; abandoning, disowning, or abusing a child delivered through surrogacy operations; buying or selling human gametes or embryos for surrogacy agreements.
- Manage a business, organisation, or racket for the importation of human gametes or embryos for surrogacy. Shall be penalised in accordance with this Bill by a term of imprisonment that may reach ten years, but not less, and a fine that may reach 10 lakhs.
- The owner and operator of a surrogacy clinic, as well as anybody working there or providing services on a paid or unpaid basis, who violates any of the rules, would be punished with a period of imprisonment that must not be less than five years and a fine that may reach 10 lakhs. When a violation occurs again or continues, the authorised authority notifies the State Medical Council, which may take the required measures, such as suspending the practitioner's registration for five years.
- Anyone who conducts commercial surrogacy procedures, including intending parents, registered medical professionals, etc., will be punished with a minimum of five years in prison and a fine that could reach five lakhs, and for a second offence, a maximum of ten years in prison and a fine that could reach ten lakhs.
- Any provision of this Bill that is violated may result in a sentence of not less than three years in prison and a fine of up to five lakh rupees. If the violation persists, there may be an additional fine of up to ten thousand rupees per day beginning on the first day of subsequent violations after the conviction.

- If the woman or surrogate mother is coerced or forced by her husband, her family, or the intended parents to perform surrogacy services, their procedures and the donation of gametes for the purpose of surrogacy shall be liable for the abetment of such offence under section 37 of the Indian Evidence Act, 1872, and shall be punished accordingly.
- Any authorised representative of the Central Government, a State Government, or a person, including a social organisation, pursuant to Section 41, Ma'am
- The matters punished by this Act/Bill shall be tried by a court not below the Metropolitan Magistrate or a judicial Magistrate of the first class.
- The crucial provision of this chapter is that the offence is cognizable, not subject to bail, and not subject to compounding.

1.8. Deals with the miscellaneous part

It covers a variety of topics, including maintaining records and the authority of the proper authority to search for and seize records. It also defends law enforcement officials who have operated honestly.

Applications of other laws are not prohibited, the Central Government has the authority to create rules and regulations that must be presented to Parliament, as well as to provide transitional arrangements and eliminate obstacles. Furthermore, the contents of this bill shall be in addition to and not in conflict with any other currently in effect laws.

2. Surrogacy (Regulation) Bill, 2018

The Surrogacy Regulation Bill, 2016, same Bill is introduced before the Lok Sabha as Surrogacy Regulation Bill, 2018 and has been passed by the Lok Sabha on 19 December, 2018, and now the Bill is kept before the Rajya Sabha for getting recognition of the Law It is awaiting to see the light of the day.

2.1. Introduction

Surrogacy (Regulation) Bill, 2016 was introduced in the Lok Sabha on 21 November, 2016, but passed in 19 December, 2018; the Bill regulates altruistic surrogacy and prohibits commercial surrogacy. This is the brief overview of the Bill with some issues. The main aim of the Bill is to

protect woman from exploitation. Researcher only highlights main changes that have been made in this Bill, from the previous Bill.

The Bill defines Surrogacy as a practice where a woman carries a baby for another couple and agrees to relinquish her parental rights on child to the commissioning couple.

Further this bill allows altruistic surrogacy where only medical expenses and surrogate insurance will be paid. No further expenses can be paid except above.

Commercial surrogacy is prohibited in which surrogate is been paid for more than medical expenses and insurance coverage policy i.e. (in cash or kind).

2.2. Commissioning couples who can opt for surrogacy arrangements; Conditions are as follows:

- 1) Couple shall be legally married and completed their five years of marriage.
- 2) Their age shall be between 23-50 for female and 26-55 for male.
- 3) One of them shall be proved medically infertile.
- 4) They do not have any surviving child either biological, adopted, or surrogate, except if the child shall be mentally or physically challenged or suffers any fatal illness.
- 5) A court orders concerning the parental and custody of the child born out of surrogacy.
- 6) Insurance coverage of the surrogate mother.
- 7) Only 'close relative' can perform surrogacy.

2.3. Eligibility for the surrogate mother

- 1) She should be 'close relative' of the couple,
- 2) She was married and has her own biological child.
- 3) She will be 25-35 years of age
- 4) She has not been the surrogate mother ever before.
- 5) She should possess a medical certificate of fitness for surrogacy.

2.4. Legal status of surrogate child:

Any child born out of surrogacy arrangement should have all rights of a biological child of an intending couple or natural child and entitled for all rights and privileges.

2.5. Punishments for the following offences:

- 1) Any couple who takes the advantage of any doctor of surrogacy clinic in order to conduct commercial surrogacy will be liable for punishment with minimum imprisonment term for 5 years and fine that may extend to five lakh rupees.
- 2) If any couple undertake or advertise commercial surrogacy or exploiting or abandoning surrogate mother or surrogate child or selling and importing human embryo or gametes for surrogacy, will be imprisonment for 10 years and fine up to 10 lakhs

The above Bill has no more changes as compare to the previous Bill. It is passed by Lok Sabha with few changes brought into the Bill.

3. The Surrogacy (Regulation) Bill, 2019

The Surrogacy (Regulation) Bill, 2019 was introduced by the Minister of Health and Family Welfare Dr. Harsh Vardhan in the Lok Sabha on 15th July 2019, and for appointment of appropriate authority to regulate surrogacy practice in India and to constitute National Surrogacy Board and State Surrogacy Board for controlling the misuse and unethical practices of Surrogacy in India.

Bill Defines “Surrogacy is a practice where woman carry a child for intending couple with the intention to relinquish all her rights over the baby and hand over the baby to the intended couple”. This Bill banned commercial surrogacy from India and allows only altruistic surrogacy with some major changes in the Bill.

This Bill allows only couples with ‘proven infertility’. Intending couples should have the certificate of essentiality and certificate of eligibility issued by the appropriate authority. It should be for the altruistic purpose and not for commercial purpose. Not for producing children for sale, prostitution or other forms of exploitation. Surrogacy is allowed only when the condition or disease may be specified the regulatory authorities.

3.1. The Certificate of essentiality will be issued to those couples

- Couple shall have a certificate of proven infertility either one or both the members by District Medical Board.
- A couple shall have parental and custody orders passed by Magistrate court;

- Couple shall have to provide insurance coverage of 16 months postpartum delivery complication for the surrogate.

3.2. Couples who eligible for surrogacy procedures

- A couple shall be an Indian citizen and married for atleast five years,
- They must be between the age group of 23 to 50 year old female and 26-55 years old male
- They shall not have any surviving child of their own (either biological, adopted or surrogate); this would not include the child who is mentally ill, physically challenged or suffers from any life threatening disease or illness.
- For the purpose of any other condition or any disease due to which couple could not conceive their own child

3.3. Eligibility criteria of surrogate mother

- Surrogate mother should be the close relative of the commissioning couple.
- A married woman having her own living children
- She should be of the age between the 25 to 35 years old
- She should act as surrogate only once in her life time
- She should possess the certificate of medical fitness and psychological fitness for surrogacy
- And the surrogate mother cannot provide her own gametes for surrogacy arrangements.

3.4. Appropriate authority

- The central and the state government shall appoint one or more appropriate authorities within the period of 90 days of the Bill becoming an Act.
- Appropriate authority may any time grant, suspend or cancel the registration of surrogacy clinics as he deems fit.
- Appropriate authority can enforce standards for surrogacy clinics.
- Appropriate authorities can investigate and take any action against the breaching of the provisions of the Bill.
- Appropriate authorities can recommend modifications to the rules and regulations.

3.5. Registration of surrogacy clinics

- Surrogacy clinics cannot take surrogacy related procedures until and unless they are registered by the appropriate authority.
- Clinics must apply for registration within the period of 60 days from the date of appointment of the appropriate authority.

3.6. Functions of National and State Surrogacy Boards

- The Central and State Governments shall constitute the National Surrogacy Board at central level and State Surrogacy Board at state level.
- National Surrogacy Board has to advice the Central government on the policy matters which are related to the surrogacy.
- National Surrogacy Board has to laying down the code of conduct of surrogacy clinics.
- National Surrogacy Board has to supervise the functions of State Surrogacy Boards.

3.7. Parentage of surrogate child

- A child born out of surrogacy procedures will be deemed to be the biological child of the intending parent.
- Child shall be considered as a natural child of the intending parents.
- Child born out of surrogacy has same rights over the properties as the natural children.

3.8. In case of abortions

- If surrogate mother wants to abort a child due to some complications then she must have to sign written consent form and with the authorization permission of appropriate authority.
- An appropriate authority shall have the authorization complaints with the Medical Termination of Pregnancy Act, 1971.
- Surrogate mother has right to withdraw her consent from surrogacy procedures before the embryo is implanted into her womb.

3.9. Offences and punishments

- Any person or clinic shall be liable for punishment, which undertake or advertise the commercial surrogacy;
- Any person or clinic shall be liable for the punishment, who exploits the surrogate woman/mother;
- Any person or clinic or intending couples who abandoning, exploiting or disowning the surrogate child shall be liable for the punishments;
- Any person or clinics that caught in selling or importing human embryo or gametes for surrogacy purposes;
- Shall be liable for such offences with imprisonment upto 10 years and fine upto 10 lakh rupees.

4. The Surrogacy (Regulation) Bill, 2020

After taking into account the recommendations of the 23-member Rajya Sabha Select Committee on November 21, 2019, the Union Cabinet passed the Surrogacy (Regulation) Bill, 2020, on February 26, 2020. The Bill's modification is a revised version of the legislation's draught that the Lok Sabha approved on August 5, 2019. Additionally, this bill proposes to regulate surrogacy by creating a State Surrogacy Board at the state level, a National Surrogacy Board at the federal level, and the appropriate authorities in each state and union territory. This will help to prevent the abuse and unethical use of surrogacy in India.

According to Cabinet Minister Prakash Javedekar, the bill aims to ensure effective regulation of surrogacy services while prohibiting commercial surrogacy and permitting altruistic surrogacy. It also aims to limit unethical practises like the exploitation of surrogate mothers, abandoning children born through surrogacy, and importing and exporting embryos and gametes.

The Bill proposes some changes are as follows:

The major changes which have been adopted by the Surrogacy (Regulation) Bill, 2020 are as follows:

- 1) "Abandoned child": means a child born out of surrogacy procedure who has been deserted by his intending parents or guardian and declared as abandoned by the appropriate authority after due enquiry.

- 2) "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, are given to the surrogate mother or her dependents or her representative;"
 - 3) "Embryologist": "means a person who possesses any post graduate medical qualification or doctoral degree in the field of (**) embryology or clinical embryology (**) from a recognized University with not less than two years of clinical experience;"
 - 4) "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;"
 - 5) "Intending couple": means a couple who have (**) a medical indication necessitating gestational surrogacy and who intend to become parents through surrogacy.
 - 6) 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.
 - 7) 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 fulfills the conditions as provided in sub-clause (b) of clause (iii) of section 4.
- The term "infertility" has been eliminated from the 2020 definition on the grounds that waiting five years for an unprotected foetus to conceive was too long for the intended parents to wait for a child through surrogacy treatments.
 - This Bill removes the requirement that the surrogate mother be a "near relative" and instead permits any willing woman to operate in that capacity for the intended parents.
 - This bill also permits Indian women who are unmarried (only widows and divorcees between the ages of 35 and 45 are permitted to complete the requirements.)
 - With the completion of specific requirements, this Bill also permits Indian married couples and married couples of Indian descent to choose "ethical altruistic surrogacy."
 - Another proposal in this bill was to govern the State Surrogacy Board at the state level, the National Surrogacy Board at the federal level, and the appropriate authorities in the various states and union territories.

- This Bill also prohibits or outlaws commercial surrogacy, including the sale and purchase of human embryos and gametes.
- This Bill also recommends that the insurance coverage of the surrogate mother has been raised from 16 months to 36 months for the benefit of the surrogate mother.

5. The Surrogacy (Regulation) Act, 2021

The Surrogacy (Regulation) Act, 2021, which established the National Assisted Reproductive Technology and Surrogacy Board and State Assisted Reproductive Technology and Surrogacy Boards, was approved by the President on December 25, 2021.

Key points are:

5.1. Prohibition and regulation of surrogacy clinics:

- Unless registered under this Act, no surrogacy clinic may engage in, associate with or otherwise support surrogacy and surrogacy procedures, or retain any person's services, whether on an honorarium basis or for payment, who does not fulfill the conditions that may be imposed.
- Except for storage for IVF, sperm banks, or medical research, no surrogacy centre, paediatrician, gynaecologist, embryologist, registered medical practitioner, or other individual shall engage in, offer, undertake, promote, or use commercial surrogacy in any way. They also may not carry out or cause to be carried out sex selection for surrogacy.
- Where a potential couple's medical condition necessitates gestational surrogacy, provided that a potential couple of Indian ancestry or a potential surrogate woman must acquire a certificate of recommendation from the Board.
- It should be noted that "gestational surrogacy refers to a procedure where a surrogate mother carries an embryo in her womb for an intended partner; the child is not genetically connected to the surrogate mother".
- If it is solely for charitable surrogacy reasons.
- When there are no business motives, commercial surrogacy practises, or commercial surrogacy methods.

- When it isn't done to breed children for the purpose of prostitution, child labour, or any other kind of exploitation.
- No surrogacy clinics may they hire any individual who does not meet the requirements outlined in the Act.
- Within sixty days after the appointment of the authorised authority, each clinic that performs surrogacy treatments must submit an application for clinic registration. Every three years, registration must be renewed.
- The prospective parents must be an Indian couple who are legally married, between the ages of 25 and 50, have never had a biological, adoptive, or surrogate child previously. There is just one opportunity in a woman's lifetime to use a surrogate mother.
- When a couple plans to use a surrogate because they are in need of one because of a medical problem, the National/State Assisted Reproductive Technology and Surrogacy Board must provide a "Certificate of Essentiality/Infertility."
- The surrogate mother must also give her written, fully informed consent in a language she can understand.
- Every State and Union Territory shall create a comparable type of Board for surrogacy-related matters, along with the Centre.

Any couple that engages in commercial surrogacy will be penalised under the Surrogacy (Regulation) Act of 2021 with up to five years in prison and a punishment of up to Rs. 50,000, and up to ten years in prison and a fine of up to Rs. 1,000,000 for a subsequent offence. Any individual, group, or facility involved in the exploitation of surrogate mothers.

5.2. Constitutional Scrutiny of the Surrogacy (Regulation) Act, 2021

Balancing the various interests of both parties is the main barrier to surrogacy in India. The state has a responsibility to safeguard the rights of the unborn child and prevent the exploitation of surrogate mothers, but it also has a responsibility to preserve the reproductive freedom of women and the rights of the intended parents. India's surrogacy laws are still working to strike the correct balance between these competing interests.

In *Devika Biswas v. Union of India*, the Apex Court determined that the "Right to Life" guaranteed by Article 21 of the Indian Constitution included the "Right to Reproduction" as a fundamental aspect. The capacity to get pregnant, give birth, and rear children is a part of the right to reproduction. Hence, limiting surrogacy to a particular age bracket of heterosexual couples only creates a partial imbalance. Communities, including single people and old couples, are all categorically denied the right to access reproductive alternatives, which may violate both Article 21 and Article 14 of the Indian Constitution.

According to experts, the Surrogacy (Regulation) Act, 2021's conflicting sections won't be able to safeguard the rights and interests of intended parents and surrogate mothers. It has been feared that these flaws may encourage the growth of an unauthorised industry for surrogacy services. As surrogacy should be acknowledged as a reproductive right available to all persons regardless of their standing in the community, concerns have been expressed about hurdles like age restrictions and barring gay couples, not helping in the advancement of society. There is doubt regarding the existing surrogacy laws when it comes to the advancement of Indian society because India is going through a revolutionary period where the mindset of the populace is drastically shifting from patriarchal norms to a more feministic ethos.

6. Assisted Reproductive Technology (Regulation) Act, 2021

The Parliament passed the Assisted Reproductive Technology (Regulation) Act, 2021 on December 18, 2021.

6.1. Key points are:

- The Act aims to “control and oversee assisted reproductive technology clinics and banks, prevent misuse, ensure safe and ethical assisted reproductive technology practises and address issues of reproductive health where assisted reproductive technology is necessary for becoming a parent or for freezing gametes, embryos, or embryonic tissues for use in the future due to infertility, disease, or social or medical concerns”.
- The Act mandates that every ART bank and clinic be registered with the National Registry of Banks and Clinics of India. To streamline the registration process, state governments choose relevant authorities in their respective states.

- The Registration is valid for five years and is subject to cancellation or suspension if an entity violates the Act's rules.
- For the purposes of this Act, the National Board will establish the National Assisted Reproductive Technology and Surrogacy Board.
- The Act details the registration process for assisted technology clinics and banks, including guidelines for granting registration, renewing it, suspending it, or cancelling it.

The clinics and banks shall perform the following duties:

- The banks will deliver donor gametes to the clinics after making sure that the donor has undergone any appropriate medical testing. The clinics will provide the commissioning couple or woman with legal information on a child born via the use of assisted reproductive technologies.
- The clinics are required to provide a discharge certificate to the commissioning couple or woman that details the assisted reproductive technology procedure that was performed on them.

6.2. Offences and Penalties

1. No advertisement for sex-selective assisted reproductive technology facilities may be issued, published, distributed, or transmitted by the clinic, its bank, or any of their agents in any medium, including the internet.
2. Violations of the law are penalised by a five-year sentence that can be extended to ten years in prison, a fine that must be at least ten lakh .
 - a. Abandon, or exploited the kid or children conceived via assisted reproductive technology.
 - b. Operate an organisation or racket for buying, selling, or trading human embryos or gametes, or sell human embryos or gametes.
 - c. importing human gametes or embryos, or aiding in their importation in any way
 - d. taking advantage of the commissioning couple, the woman, or the gamete donor
 - e. transferring human gametes or embryos into male or animal recipients
 - f. selling any human gametes or embryos for research
 - g. Using any intermediaries to find gamete donors.

Any breach of the terms of clauses (a) to (g) is punishable by up to 8 years in prison and a fine of not less than 10 lakh rupees but as much as 20 lakh rupees for a first offence, and not less than 5 lakh rupees but as much as 10 lakh rupees for successive offences.

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