

New Surrogacy Bill in India: Pros and Cons

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Received on: 05 May 2023; Accepted on: 03 June 2023; Published on: 31 July 2023

Keywords: Bill, Punishments under law, Surrogacy.

Journal of South Asian Federation of Obstetrics and Gynaecology (2023); 10.5005/jp-journals-10006-2257

INTRODUCTION

Surrogacy is a boon for many childless couples. Right from the Epic Mahabharata, Indians knew the surrogacy technique. Assisted Reproductive Technology (Regulation) Bill and the Surrogacy (Regulation) Bill passed in December 2021 aims to clean up India's hitherto unregulated surrogacy industry by bringing thousands of assisted reproductive technologies (ARTs) and surrogacy clinics under the ambit of the law. These bills passed by the Indian Parliament, will positively influence Indian women's reproductive rights and health.

The purpose of this bill is to "regulate" and "supervise" assisted reproductive technology (ART) clinics and surrogacy and curb unethical practices like sex selection. The new law permits only "ethical" or altruistic surrogacy, which will be completely free of any monetary transaction or payment to surrogates.

Although surrogacy to foreigners was banned in India in 2015, ART and domestic commercial surrogacy have flourished with the help of networks of unvetted agents.

Now onwards, new National and State ART and Surrogacy Boards, and National ART and Surrogacy Registry will be set up to advise the government on regulation and policy matters. The Registry will maintain a database of the ART treatments to ensure transparency in such matters.

The intending mother should have a married life of at least 5 years. The age of male of intending couple should be between 26–55 years and female 23–50 years. Those who have a surviving child either biologically or through adoption or previous surrogacy are not eligible.

The criteria for anyone opting to be a surrogate mother states that the woman (surrogate mother) must be married (at least once in her life) and should have her own child and she should be between 25–35 years of age and a close relative of the couple opting for surrogacy. Any woman agreeing to be a surrogate cannot be a surrogate more than once in her life and at the time, she should be certified for medical and psychological fitness.

The bill also lays down specific eligibility criteria for both the couple opting for surrogacy and the surrogate mother. The couple should have a "certificate of essentiality," which includes a certificate of proven infertility of one or both persons, by an appropriate authority, a court order on the parentage and custody of the child born through the surrogate, and insurance coverage for the surrogate mother for 16 months, including for postpartum delivery complications.

Single men, cohabiting heterosexual couples, same-sex couples, and LGBTQ persons are no more eligible to avail of surrogacy. Only after written consent of the surrogate mother, her

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How to cite this article: Garg R, Malhotra N, Lal P. New Surrogacy Bill in India: Pros and Cons. *J South Asian Feder Obst Gynae* 2023;15(3):372.

Source of support: Nil

Conflict of interest: Dr Ruchika Garg and Dr Narendra Malhotra are associated as the Editorial board members of this journal and this manuscript was subjected to this journal's standard review procedures, with this peer review handled independently of these Editorial board members and their research group.

abortion can be done by appropriate authority. No one can force the surrogate mother to abort the child except under conditions as may be prescribed.

PUNISHMENTS UNDER THE LAW

Any medical practitioner who commits an offense under the Act shall be punished with imprisonment extending up to 5 years (non-bailable) and a fine of up to 100,000 Indian rupees (\$1,300). If a subsequent offense is committed by the same person, the practitioner shall be reported to the appropriate authority and the State Medical Council for the suspension of their registration for 5 years.

Now fashion surrogacy by celebrities, etc. will be a big no. This law will surely help avoid exploitation of children born out of surrogacy by declaring him the biological child of the intending couple and not allowing them to abandon the child born due to his/her sex or any disorder.

This bill bans commercial surrogacy: offering financial benefits that involve compensation beyond medical expenses and insurance during pregnancy. We even advocate maternity leaves for surrogate mothers.

This will go a long way to curb the exploitation of surrogate mothers by imposing both monetary penalty and jail terms for violations. In the course of time, a few unaddressed issues and detailed explanations of clauses will be cleared. This law will have far-reaching implications for the women's rights. Let dharma win.