

THE SURROGACY (REGULATION) BILL 2016:

REGULATION OR BAN

Up till now, India did not have any law regulating surrogacy and related issues arising out of same.

In many countries, of the world surrogacy had been prevalent practice since pre-historic times. History has instances of many religions and civilizations practising surrogacy. However the modern concept of surrogacy dates back to mid 1970 when the first official legal surrogacy agreement was enacted. Surrogacy is a process where the biological parents' sperm and ovum undergo a process called IVF –in vitro fertilization and are subsequently implanted into womb of the surrogate mother. In recent times commercial surrogacy has gone on to scale new heights of popularity. It acts as ray of hope for people who are unable to get a child of their own. The surrogate carries the intended parents biological child till term, usually in return for a financial compensation, after which they receive the official parental rights.

As there was no law regulating surrogacy, the surrogacy relationships were governed by contract. This resulted in commercial surrogacy and many NRIs, foreigners etc. and even wealthy Indians used the practice by paying negotiated amount to the needy women to fulfil their desire to have a child. The Indian surrogacy industry is at around \$ 1 billion a year and growing. Anand (Gujrat) became a centre and a hub for surrogacy. Though this was true to some extent awareness building, scientific and medical advancement and skilled Gynaecologists resulted in even other needy people getting into surrogacy relationships. Surrogacy reached even small places in India and was not only restricted to wealthy sector but to others who for various reasons decided to get a child through surrogacy. It obviously benefited needy women who were prepared to undergo the nine months of incubation. Many a times it proved to be a cheaper mode of reproduction than other IVF methods.

The Govt. of India on Wednesday, 24 August 2016, in its cabinet meeting approved the Surrogacy Regulation Bill 2016. The main features of the said bill are as under:

1. The Bill seeks to ban Commercial surrogacy and allow altruistic surrogacy only. The heterosexual couple therefore is not allowed to pay surrogate mother but can bear only her medical bills.
2. The Bill seeks to ban foreigners/ NRIs to seek an Indian surrogate mother.

3. The Bill only allows heterosexual married couples, with proven infertility to try the surrogacy route. It therefore prohibits homosexual couples. Live in partners, single men and women to try the surrogacy route.
4. The Bill makes it necessary that the married couple must have been married for at least 5 years before approaching the surrogate mother. Further the woman has to be between 23 to 50 years of age and the man should be between 26 to 55 years of age.
5. The Bill allows to take surrogacy only from a person who is a close relative.
6. The Bill bans approaching surrogacy if you already have a child or if you have adopted a child in past.
7. The Bill does not allow a couple with surrogate child to approach surrogacy second time and someone who has been a surrogate mother once, she cannot be a surrogate mother again.
8. The Govt. has proposed establishment of National Surrogacy Board at national level and State Surrogacy Board and appropriate authorities to overlook all cases of surrogacy and regulate Hospitals and clinics that offer surrogacy in India.
9. The Bill seeks to penalise violations of the provisions with a jail term and fine.

The Bill thus seeks to ban surrogacy than to regulate the same. It is in contrast to another Bill which was prepared by Department of Health seeking to regulate all aspects of assisted reproductive practices.

In our view, the Bill is another example of trying to force ethical and moral principles believed by the Govt. on the people.

The Bill is definitely counterproductive and against the modern development of medical science, technology and skills. It has unnecessarily banned Commercial surrogacy instead of regulating the same. The Bill seeks to discriminate against homosexual couples, live in partners, single men and women who are otherwise recognised under other laws to be having equal legal rights. The Bill seeks to take away freedom of choice of having child by use of reproductive technology and is in violation of Art. 21 right to life, Art. 19 (1) (g) freedom to practice any profession or to carry on any occupation, trade or business, and Art. 14 right to equality.

The Bill has made penal provisions against medical practitioners thereby increasing the possibility of their unnecessary harassment.

Allowing surrogacy with a close relative will destroy the required confidentiality and discourage couples from taking this route and also limit their choice.

In Indian Social Scenario couples are under tremendous pressure to have a child failing which divorces, re marriages, illegitimate relations and resort to unscientific methods, desperate methods are not uncommon. There is a possibility that such a ban and prohibitions may lead to surrogacy going underground and becoming more expensive and dangerous.

The bill has failed to take into consideration the fact that the couple may opt for surrogacy for second child, where a couple, who already have a child and due to some medical reasons, become incapable of carrying a child again second time. However, the bill seeks to ban seeking surrogacy if a couple already have a child in past. In such case, it can lead to deprivation from having a second child for no fault of the couple. No other law deprives couples of having more than one child or at least a second child. Similarly, the condition of minimum 5 years of marriage is also unjust in today's era of late marriages.

It is further unjust to not to allow restoring to surrogacy without proven infertility as there may be couples affected with other physical, mental, emotional reasons who are unable to bear a child.

It appears that the bill is a knee jerk action against Indian Bollywood celebrities like Shaharukha Khan, Tushar Kapoor seeking surrogacy. However, legislature cannot draft legislation on the basis of very exceptional cases of celebrities forgetting the overall view of the public where surrogacy may many a times be a necessity or a matter of great convenience.

It is important that, women do not sign a surrogacy contract without understanding the same. Women should be informed of physical, mental and emotional effects of surrogacy. Instead of therefore providing for proper regulation to curb or control exploitation, the Bill goes to the extreme of banning the practice.

Surrogacy is based on grooming up a child without there being a biological background by creating beautiful bond for life. We hope that as the Bill goes forward to different committees and Parliament, this side of the Bill is taken in to consideration.