

The Surrogacy (Regulation) Bill, 2016 – An over view

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Abstract

The Surrogacy (Regulation) Bill 2016 was introduced in Lok Sabha on November 21, 2016. As per the reports from various sources India has become the hub of Surrogacy for couples. There are various problems relating to Surrogacy. In this paper I would like to discuss the problems of Surrogacy and the recent law relating to it.

Introduction:

According to Sec. 2 (zb) of the Surrogacy (Regulation) Bill, 2016 the term “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. For the past few years media has reported about commercial Surrogacy in India and the mushroom growth of Surrogacy clinics. Surrogacy has become like a business. Since there was no separate and other stringent laws for Surrogacy this could not be controlled properly. Now the new Law of Surrogacy protects the Surrogate mother and the rights of children born through Surrogacy. According to the Bill, only Indian couples, who have been married for at least five years can opt surrogacy, provided at least one of them have been proven to have fertility-related issues, put a complete ban on commercial surrogacy, bans unmarried people, live-in couples and homosexuals from opting for altruistic surrogacy, setting up of Surrogacy Regulation Board at both Central and State –level, registration of All Assisted Reproductive Technology, Commercial Surrogacy, abandoning the surrogate child, exploitation of surrogate mother, selling /import of human embryo have been categorized as violations that are punishable and the surrogate child will have the same rights of as that of a biological child.

Objective of Study:

- To understand the Law relating to Surrogacy
- To understand the Rights of Surrogate Mother And Child.

Methodology:

The present Study based on Secondary Date. The main sources of data are Government Publications apart from this the data is collected from Law Journal, Law Books, Newspapers and Internet have been used to support the work.

The Surrogacy (Regulation) Bill, 2016 has 51. As per Clause 5, there is prohibition for conducting Surrogacy and here it is specifically mentioned that “No person including a relative or husband of a Surrogate mother or intending couple shall seek or encourage to conduct any Surrogacy procedure on her except under certain circumstances. The circumstances as per Clause 5 are the following, when

- either or both members of the couple is suffering from proven infertility;
- it is only for altruistic surrogacy purposes;
- it is not for commercial purposes or for commercialization of surrogacy or surrogacy procedures;
- it is not for producing children for sale, prostitution or any other form of exploitation; and
- Any other condition or disease as may be specified by regulations made by the Board;

As per Section 3 (zc) of the Surrogacy (Regulation) Bill, 2016 Surrogacy Clinic means surrogacy clinic or centre or laboratory, conducting assisted reproductive technology services, invitro fertilization services, genetic counseling centre, genetic laboratory, Assisted Reproductive Technology Banks conducting surrogacy procedure or any clinical establishment, by whatsoever name called conducting surrogacy procedures in any form.

Earlier the main issue of Surrogacy was relating to the child born out of Surrogacy. In case the couples get divorced or if one of the couples dies or if the child was a big problem the surrogate mother and the child had

problems. Now putting an end to all the queries raised the new Bill has incorporated a clause which prohibits to abandon child born through Surrogacy. As per the new clause 6 it is made very clear that the intending couple 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 and the Bill had made very clear that any child born out of Surrogacy procedure shall be deemed to be a biological child and have all rights and privilege of a natural child.

Another issue raised earlier before this Bill was made about abortion. Already there are provisions in, our Criminal Laws against abortion. But still in this Bill it has made it very clear under clause 9 that “No person, organization, surrogacy clinic, laboratory or clinical establishment of any kind shall force the surrogate mother to abort at any stage of surrogacy expect in such conditions as any be prescribed.

Clause No. 10, deals with the Registration procedure of Surrogacy Clinics.

The Bill also provides Constitution of Surrogacy Board at National and State Level.

Clause 43 of the Bill makes its mandatory for the surrogacy clinic to maintain all records, charts, forms, reports, consent letter, agreement and all the documents.

Due to the high demand of Surrogate mother, there was mushroom growth of Surrogacy Clinics and no record was maintained. The Bill has made Laws for regulating these Clinics and also has incorporated penalty for these Clinics if they are not following the norms.

Penal Provisions at a Glance:

Clause		Penalty
35	Prohibition of commercial surrogacy, exploitation of surrogate mothers and children born through surrogacy.	Imprisonment for a term which shall not be less than ten years and with fine which may extend to ten lakh rupees.
36	Punishment for contravention of provisions of Act.	Imprisonment for a term which shall not be less than five years and with fine which may extend to ten lakh rupees.
37	Punishment for initiation of commercial surrogacy.	Imprisonment for a term which shall not be less than 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 then years and with fine which may extend to ten lakh rupees.
38	Penalty for contravention of provisions of Act or rules for which no specific punishment is provided.	Imprisonment for a term which shall not be less than 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.

Conclusion

The main concern earlier was relating to Surrogate mother, Rights of child and the Misuse of Technology causing serious problems.. Now this new Bill to a great extent will stop exploitations of surrogate mothers, abandonment of children and commercial surrogacy.

Reference

- 1) The Surrogacy (Regulation) Bill, 2016 – Bill No. 257 of 2016
- 2) Larry Ogalthorpe Gostin, Surrogate Motherhood: Politics and Privacy, Indiana University Press.
- 3) Sarojini N.B. and Aastha Sharma: ‘The Draft The Assisted Reproductive Technology (Regulation) Bill : In whose Interest?’, India Journal of Medical Ethics, 2009 (Jan – March) Volume 6 (1).
- 4) Ministry of Health and Family Welfare, Government of India, Indian Council of Medical Research. The Assisted Reproductive Technology (Regulation) Bill & Rules – 2008.
- 5) www.prsindigo.org
- 6) www.dhr.gov.in