

JGU Law Library Notes

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Regulation of Assisted Reproductive Technology and Surrogacy in India

Surrogacy or renting a womb has been a thriving business in India, and yet remains largely unregulated, despite being under judicial scrutiny and active consideration of the Parliament for many years. With over 30,000 clinics offering the surrogacy services, the market is estimated to be over 2 billion dollars.

Current Status

The Surrogacy (Regulation) Bill, 2019 which prohibited commercial surrogacy was passed by Lok Sabha in July 2019, and was introduced in Rajya Sabha on November 19, 2019. After a lengthy debate in Raja Sabha, the Bill was sent to a Select Committee under the chairmanship of Mr. Bhupendra Yadav.



The Bill defines surrogacy where a woman gives birth to a child for an intending couple with the intention to hand over the child after the birth. The Bill laid stringent conditions for altruistic surrogacy for both intending couples as well as surrogate mothers, and mechanism to regulate surrogacy. Some of the provisions that were mentioned as contentious during the debate in Rajyasabha, and potentially subject matter for further discussion were:

- Eligibility of persons who could be permitted to avail surrogacy
- Criminalization of Commercial surrogacy, and

- Eligibility, compensation and rights of surrogate mother
- Rights of the child born through surrogacy
- Regulation of surrogacy clinics

[Surrogacy \(Regulation\) Bill, 2019](#)

The Select Committee gave its recommendations, which are summarized below:

- Redefinition of Altruistic Surrogacy, to legalise expenses on medical, nutritional and insurance cover of surrogate mothers.
- Relaxation in eligibility criteria for surrogacy, by allowing single widows, divorcee women, couples of Indian Origin, in addition to legally married Indian Couples.
- Removal of conditions Close Relative to be eligible as surrogate mothers
- Removal of requirement of obtaining a certificate for infertility, and need for a five years after marriage, for intending couples.
- Enactment of Assistive Technology (ART) law before the Surrogacy Bill

[The Select Committee Report](#)

Legislative History

The process of regulating conceptive technologies (like artificial insemination, in vitro fertilization and surrogacy) commonly known as Assisted Reproductive Technologies (ARTs) became available commercially in India in the late 1970s, with the birth of world's second and India's first IVF baby Kanupriya alias Durga in Kolkata on Oct. 3, 1978. Since then, the business of surrogacy and ART has grown rapidly, due to low cost, and less legal liabilities. Since there was no regulatory framework, India became a popular destination for childless couples, singles willing to have their own child even outside the wedlock. By the beginning of the century, countries such as US, UK, France, Germany, Australia, Canada, Ukraine etc had already enacted legislation on surrogacy. The first attempt to regulate ART was made in 2005, when Indian Council of Medical Research (ICMR), drafted the National Guidelines for ART Clinics. Outlining the standards for operation of surrogacy clinics, rights and obligations

of commissioning parents, surrogate mothers, and surrogate children. These Guidelines also allowed hiring of sperms, eggs and wombs through civil contracts. ICMR also submitted a draft of Assistive Reproductive Technology Bill, to the Ministry of Health and Family Welfare, which was circulated in 2010, and further changes were made in 2014 and 2017. The proposals in the draft ART bill, included proper regulation & supervision of ART clinics, prevention of misuse of ART technology including surrogacy, ban on hiring Indian surrogates, by persons from the countries, where commercial surrogacy was not allowed.

- [ICMR draft bill 2008](#)
- [ICMR draft bill 2010](#)
- [Proposed ART Bill 2014 by Ministry of Health and Family Welfare](#)
- [Proposed ART Bill 2017 by Ministry of Health and Family Welfare](#)

In 228th report submitted in 2009, The Law Commission of India reviewed the ICMR Guidelines and made recommendations covering issues of banning commercial surrogacy, protection of rights of surrogate mothers, right to abortion, insurance cover, financial support for the child, parentage rights, etc.

[228th Law Commission Report](#)

The Surrogacy (Regulation) Bill, 2016 was introduced in Lok Sabha on Nov 21, 2016 which allowed altruistic surrogacy to Indian married couple who couldn't bear children. The bill was sent to the Rajya Sabha on Aug 10, 2017 and was further to the Standing Committee on Health and Family Welfare. The Standing Committee gave several recommendations with regard to: (i) Altruistic surrogacy, (ii) commissioning a close relative for surrogacy; (iii) inclusion of provisions for gamete donation; and (iv) regulation of abortion. The bill allowed only Indian citizens to avail surrogacy, foreigners, Non Resident of Indians and Persons of Indian Origins were banned. However, the Bill 2016, was lapsed with the dissolution of the 16th Lok Sabha.

[Surrogacy \(Regulation\) Bill, 2016](#)

[Report of Parliament Standing Committee on Health and Family Welfare or Surrogacy Bill](#)

The Surrogacy (Regulation) Bill, 2019 was re-introduced in Lok Sabha on July 15, 2019 to replace the lapsed 2016 Bill. This Bill was passed by the Lok Sabha.

However, finally the Bill again got stuck in Rajya Sabha, which sent it to a Select Committee. Since The Select Committee has given its recommendations, the matter is listed for discussion in 251st session of Raya Sabha.

[Surrogacy \(Regulation\) Bill, 2019](#)

Judicial History



Some of the major judgements delivered by the Indian courts are summarized below:

The first significant case decided by the Supreme Court of India involved rights of a surrogate mother. In *Baby Manji Yamada v. Union of India & Anr* (AIR 2009 SC 84) the biological parents from Japan were separated before the birth of the surrogate child by a surrogate mother, an Indian national. The court granted custody of the baby to his paternal grandmother, after a protracted courtroom battle. But the case created a public uproar as well as demands for a legal framework.

[Baby Manji Yamada v. Union of India & Anr \(AIR 2009 SC 84\)](#)

In *Jan Balaz v. Anand Municipality and ors.* (AIR 2010 GUJ 21) the question of nationality of surrogate children born in India came before the Gujarat High Court. The twin babies born to an Indian surrogate mother were initially given Indian passports, but later revoked, which prevented their German biological parents to take them to Germany. The Court held that gestational mother was the natural mother of the children and the children were entitled to Indian citizenship. The Court highlighted the need for legislation on various issues born out of surrogacy births. The Government of India moved to the Supreme Court against the Gujarat High Court judgement where the matter is still pending. (*Union of India v. Jan Balaz* CA No. 8714/2010). The Supreme Court however passed an interim order allowing the babies to leave India through an adoption arrangement with Central Adoption Resource Agency. The Supreme Court also passed another order in 2005 outlining 14 issues related to surrogacy

that need to be addressed. Union of India v Jan Balaz and ors (order dated 14 Oct 2015) Manu/SC/1362/2015.

[Jan Balaz v. Anand Municipality and ors.](#)

In a recent case *Kiran Kailas Gavhande And Ors v. Union Of India* (2018 SCC OnLine Bom 7463) the court allowed termination of surrogate pregnancy on the ground of complications and risk to the life of the baby.

[Kiran Kailas Gavhande And Ors v. Union Of India](#)

In *Dr. Pooja Jignesh Doshi v. State of Maharashtra* (2019 SCC OnLine Bom 1433) The Supreme Court ruled on rights and entitlements of biologically parents in case of surrogacy, and held that biological mother was not entitled to maternity benefits under employment regulations.

[Dr. Pooja Jignesh Doshi v. State of Maharashtra](#)

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This compilation work has been successfully completed under the guidance of Mr Buddhi Prakash Chauhan Director, Global Library alongwith the staff members of Global Library Ms Ritu Nagpal and Mr Jayaram Gouda.

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