

Comments of NHRC India on safeguards for the protection of the rights of children from surrogacy arrangements

India does not have any law to regulate surrogacy except for some guidelines - National Guidelines for Accreditation, Supervision & Regulation of ART Clinics in India, 2005 by the Indian Council of Medical Research. However, The Surrogacy (Regulation) Bill, 2016 was passed by the Lok Sabha in 2018 (a copy of the bill is attached as Annexure-I). The salient features of the bill are as under :-

- The infertile couple seeking an arrangement of surrogacy should be Indian citizens and married for at least five years.
- Surrogacy will be permissible in cases of infertility. Any other condition or disease for seeking surrogacy may be specified by regulations by the surrogacy board.
- The surrogate woman has to be a close relative of the couple and a married woman of between the age of 25-35 and having at least a child of her own. Such a woman shall not assist in any way for surrogacy more than once in her lifetime. (The bill however does not define the term "close relative".)
- The bill prescribes punishments of imprisonment for a term, which is not less than 10 years and fine up to 10 lakh rupees for undertaking surrogacy for a fee, advertising it or exploiting a surrogate mother.
- The child born of surrogacy will be deemed the biological child of the commissioning couple. The intending couple should not have any surviving child, biological, adopted, or born through surrogacy earlier, until such a child is certified to be suffering from life threatening disability or fatal illness.
- The surrogate mother, under the law, will be permitted to donate her egg in the process, thus becoming not only the gestational mother but also the biological mother.
- The central and state governments will appoint authorities who would provide eligibility certificates to the intending parents and the

surrogate mother. (But the bill is silent on the timeframe under which such certificates are to be issued or any provision for appeal.) Such authorities will also regulate fertility clinics that arrange for surrogacy.

- If surrogate pregnancy has to be medically terminated, the written consent of the surrogate and approval of the appropriate authority will be required, in addition to complying with the Medical termination of Pregnancy Act, 1971.

In the absence of any law, the rights to equality, life, liberty and dignity – all stand protected. The Surrogacy (Regulation) Bill, 2018 was passed by Lok Sabha on 19.12.2018. The Law has not yet been formulated.
