

Surrogacy in India

Surrogacy in India and Indian surrogates became increasingly popular amongst intended parents in industrialised nations because of the relatively low costs and easy access offered by Indian surrogacy agencies.^[1] Clinics charged patients between \$10,000 and \$28,000 for the complete package, including fertilization, the surrogate's fee, and delivery of the baby at a hospital.^[2] Including the costs of flight tickets, medical procedures and hotels, this represented roughly a third of the price of the procedure in the UK and a fifth of that in the US.^{[3][4]} Surrogate mothers received medical, nutritional and overall health care through surrogacy agreements.^{[5][6]}

In 2005, the government approved the 2002 draft of the National Guidelines for the Accreditation, Supervision and Regulation of ART Clinics in India, in 2002.^[7] Before commercial surrogacy was banned in 2015, India was a popular destination for surrogacy. The economic scale of surrogacy in India is unknown, but study backed by the United Nations in July 2012 estimated the business at more than \$400 million a year, with over 3,000 fertility clinics across India.^[8]

In 2013, surrogacy by foreign homosexual couples and single parents was banned.^[9] In 2015, the government banned commercial surrogacy in India and permitted entry of embryos only for research purposes.^[7] Shortly thereafter in 2016, a Surrogacy (Regulation) Bill^[10] was introduced and passed by Lok Sabha, the lower house of the Indian parliament, proposing to permit only heterosexual Indian couples married for at least five years with infertility problems to access altruistic or unpaid surrogacy and thereby further banning commercial surrogacy.^[11] The 2016 bill lapsed owing to the adjournment *sine die* of the parliament session.^[12] The bill was reintroduced and passed by the Lok Sabha in 2019.^{[13][14]} The bill would require to be passed by the Rajya Sabha, upper house of the Indian parliament and presidential assent before it becomes an act and thereby a law.^[15]

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Judicial pronouncements

Baby Manji Yamada v. Union of India (2008)

In 2008, a baby (Manji Yamada) born through surrogacy was unable to leave India for three months after her birth because she held neither Indian nor Japanese nationality. The case came before the Supreme Court of India.^[16] The issue was resolved after the Japanese government issued a one-year visa to her on humanitarian grounds. The Japanese government issued the visa after the Indian government granted the baby a travel certificate in September 2008 in line with a Supreme Court direction.^[17]

Jan Balaz v. Anand Municipality and ors. (2009)

In 2009 in *Jan Balaz v. Anand Municipality and ors.*,^[18] the Gujarat High Court conferred Indian citizenship on two twin babies fathered through compensated surrogacy by a German national in Anand district.^[19] The court observed: "We are primarily concerned with the rights of two newborn, innocent babies, much more than the rights of the biological parents, surrogate mother, or the donor of the ova. Emotional and legal relationship of the babies with the surrogate mother and the donor of the ova is also of vital importance." The court considered the surrogacy laws of countries like Ukraine, Japan, and the United States.

Because India does not offer dual citizenship,^[20] the children will have to convert to Overseas Citizenship of India if they also hold non-Indian citizenship.^[21] Balaz, the petitioner, submitted before the Supreme Court that he shall be submitting his passports before the Indian Consulate in Berlin. He also agreed that a NGO in Germany shall respond back to India on the status of the children and their welfare. The Union of India responded that India shall make all attempts to have the children sent to Germany. German authorities have also agreed to reconsider the case if approached by the Indian.^[22]

In May 2010, the Balaz twins were provided the exit and entry documents that allowed them to leave India for Germany. The parents agreed to adopt them in Germany according to German rules.^[23]

Surrogacy risk and conditions in

According to *The Guardian*, a surrogate mother died because she didn't get the proper medical attention.^[24] Conservative estimates show that more than 25,000 children are now being born through surrogates in India every year in an industry worth \$2 billion.^[24] Domestic demand is increasing, but as fertility levels drop elsewhere, at least 50% of these are "commissioned" by overseas, mainly western, couples.^[24] Most of the industry is operating unchecked. India's medical research watchdog drafted regulations more than two years ago, yet they still await presentation in parliament, leaving the surrogates and baby factories open to abuse.^[24] According to Dr. Manish Banker, from the Pulse Women's Hospital and Dr. Yugal Kishore Upadhyay from IAS Medicare reported to come back on a patient, "She suddenly had a convulsion and fell on the floor," he said. "We immediately took her for treatment. Since she was showing signs of distress, we conducted an emergency cesarean section delivery."^[24]

Indian Council for Medical Research guidelines

The Indian Council for Medical Research has given guidelines in the year 2002, approved by the government in 2005, regulating Assisted Reproductive Technology procedures.^[7] The Law Commission of India submitted the 228th report on Assisted Reproductive Technology procedures discussing the

importance and need for surrogacy, and also the steps taken to control surrogacy arrangements. The following observations had been made by the Law Commission:

- Surrogacy arrangement will continue to be governed by contract amongst parties, which will contain all the terms requiring consent of surrogate mother to bear child, agreement of her husband and other family members for the same, medical procedures of artificial insemination, reimbursement of all reasonable expenses for carrying child to full term, willingness to hand over the child born to the commissioning parent(s), etc. But such an arrangement should not be for commercial purposes.
- A surrogacy arrangement should provide for financial support for surrogate child in the event of death of the commissioning couple or individual before delivery of the child, or divorce between the intended parents and subsequent willingness of none to take delivery of the child.
- A surrogacy contract should necessarily take care of life insurance cover for surrogate mother.
- One of the intended parents should be a donor as well, because the bond of love and affection with a child primarily emanates from biological relationship. Also, the chances of various kinds of child-abuse, which have been noticed in cases of adoptions, will be reduced. In case the intended parent is single, he or she should be a donor to be able to have a surrogate child. Otherwise, adoption is the way to have a child which is resorted to if biological (natural) parents and adoptive parents are different.
- Legislation itself should recognize a surrogate child to be the legitimate child of the commissioning parent(s) without there being any need for adoption or even declaration of guardian.
- The birth certificate of the surrogate child should contain the name(s) of the commissioning parent(s) only.
- Right to privacy of donor as well as surrogate mother should be protected.
- Sex-selective surrogacy should be prohibited.
- Cases of abortion should be governed by the Medical Termination of Pregnancy Act 1971 only.

Proposed legislations

Assisted Reproductive Technology Bill, 2013

The Assisted Reproductive Technology Bill, 2013 has been pending for quite a while and it has not been presented in the Indian Parliament. It will not allow commercial surrogacy that involves exchange of money for anything other than paying for medical expenses for the mother and the child.^[25]

The bill would prohibit these from surrogacy: couples already having one child, foreigners or Overseas Citizens of India (OCI), holders as well as live-in-Partners, single people, homosexuals and widows. There has been significant criticism of the bill.^[26]

Surrogacy (Regulation) Bill, 2016 and 2019

In 2016, a Surrogacy (Regulation) Bill^[10] was introduced and passed by Lok Sabha, the lower house of the Indian parliament, proposing to permit only Indian heterosexual couples married for at least five years with infertility problems to access altruistic or unpaid surrogacy and thereby banning commercial surrogacy.^{[13][11]} The 2016 bill lapsed owing to the adjournment *sine die* of the parliament session.^[12] The bill was reintroduced and passed by the Lok Sabha in 2019.^{[13][14]} The bill would require to be passed by the Rajya Sabha, upper house of the Indian parliament and presidential assent before it becomes an act and thereby a law.^[15]

See also

- [Adrienne Arieff](#)
- [Fertility tourism](#)
- [Medical tourism in India](#)
- [Surrogacy](#)

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