



LEGAL ISSUES REGARDING SURROGACY

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ABSTRACT

Through this article title “Legal Issues regarding Surrogacy”, the authors have covered the various dilemmas related to Surrogacy and worked upon the laws being placed in the world.

The author has firstly defined what surrogacy is and what is not and defined various terms associated with Surrogacy such as **Donor, Fertility Clinic, In Vitro Fertilization, Intended Parent, Surrogacy Agency and Surrogate.**

The authors have briefly described the history of surrogacy from biblical times to 2008 and how it has developed and now the surrogate children are given legal status and citizenship of the country they are conceived in.

Then the authors have covered the four types of Surrogacy mainly:-

- i. Traditional Surrogacy
- ii. Gestational Surrogacy
- iii. Commercial Surrogacy
- iv. Altruistic Surrogacy

Also, the authors have covered all the reasons why people opt for surrogacy and why this form of reproduction is getting famous. They are mainly:-

- **LGBTQ Couples Looking to Become Parents**

- **Mother and Father are Faced with Genetic Challenges**
- **Complex Adoption Procedure**
- **Infertility Problems**

The authors have covered the legal issues related to the surrogacy and the trends in various parts of the world and special emphasis is given on the position in India.

The authors have covered the 2005 ICMR Guidelines, Assisted Reproductive Technology (Regulation) Bill, 2014 and India’s Draft Surrogacy (Regulation) Bill, 2016 to highlight the need of a legislative authority in the country to address the issue

of Surrogacy.

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I. WHAT IS SURROGACY?

Merriam-Webster Dictionary defines surrogacy as “the practice by which a woman (called a surrogate mother) becomes pregnant and gives birth to a baby to give it to someone who cannot have children.” In a nutshell, that’s your basic definition of surrogacy.

However, within that broad definition, there are many ways to define surrogacy — by the way the embryo is created, by whether the surrogate is compensated or not, by which professional you work with, and more.

In addition to understanding the definition of surrogacy, the various terms that are associated with the process are:

- **Egg or Sperm Donor:** In cases where the intended parent cannot create an embryo on their own, this is the person whose gamete they use to complete their embryo. This could be someone they know, or they may



find a donation from an anonymous person through a gamete bank or fertility clinic.

- **Fertility Clinic:** This is the medical organization that completes the IVF and embryo transfer processes. Both intended parents and surrogates will need to work closely with their fertility clinic to complete their surrogacy.
- **In Vitro Fertilization:** This is the medical process used to fertilize an egg outside of a woman's uterus. In surrogacy, a fertility specialist will collect eggs and sperm from the intended parents (or from a donor), fertilize the egg in a test tube or culture dish and then implant this embryo into the surrogate's uterus.
- **Intended Parent:** This is the person who cannot carry a baby to term and hires a surrogate instead. Their egg or sperm may be a part of the transferred embryo, and they may be a single parent or married.
- **Surrogacy Agency:** This is the organization that helps intended parents and prospective surrogates through every step of the surrogacy process, from screening to matching to mediating contact and more.
- **Surrogate:** This is the woman who carries a baby to term for the intended parents. Usually, she is between the ages of 21 and 35, has had a successful pregnancy and already has children. Surrogates are sometimes also called gestational carriers. "Surrogacy" is a word that can be applied to many other situations. Some of these other terms below:
- **Political Surrogate:** Also known as a campaign surrogate, this person acts on behalf of a candidate running for office — often by appearing at events on their behalf or using their influence to bolster the image of a candidate.

- **Health Care Surrogate:** In situations where a person cannot make medical decisions themselves, a health care surrogate will be the one to do so. Usually, this is a friend or relative of the person in medical distress.
- **Legal Surrogate:** This is another term for a health care surrogate.

However, when you hear the word "surrogacy" in regard to childbirth and pregnancy, you can be reasonably sure the surrogacy definition that applies is the first one listed in this article.

II. FROM THE BIBLE TO TODAY: THE HISTORY OF SURROGACY

Surrogacy as we know it today has only been around for the last 30 years. However, the idea of surrogacy has been around for a lot longer tracing back to Biblical times.

- ❖ **Biblical Times:** The first mention of surrogacy can be found in "The Book of Genesis" in the story of Sarah and Abraham. Sarah and Abraham were married but could not conceive a child of their own, so Sarah turned to her servant Hagar to be the mother of Abraham's child. This is a case of traditional surrogacy, where the surrogate uses her own egg in the child she's carrying for intended parents.
- ❖ **1884:** The first successful artificial insemination of a woman was completed, although in an ethically questionable way. This paved the way for future artificial inseminations used in the surrogacy process.
- ❖ **1975:** The first ethically completed IVF embryo transfer was successful.
- ❖ **1976:** The first legal surrogacy agreement in the history of surrogacy was brokered by lawyer Noel Keane. This



was a traditional surrogacy, and the surrogate did not receive any compensation for the pregnancy.

- ❖ **1978:** The first baby conceived through IVF transfer was born.
- ❖ **1980:** The first compensated surrogacy agreement was arranged between a traditional surrogate and the intended parents. Elizabeth Kane (a pseudonym) received \$10,000 to carry a baby for another couple.
- ❖ **1984–1986:** Perhaps the most famous case in surrogacy history is the “Baby M.” case, involving a traditional surrogacy. This case marked a huge turning point in the history of surrogacy, and, not surprisingly, many surrogacy professionals began to move toward the use of gestational surrogacy to avoid these legal entanglements.
- ❖ **1985:** While the “Baby M.” case was going on, the first successful gestational surrogacy was completed, paving the way for future gestational surrogacies to be the norm.
- ❖ **2004–2008:** Surrogacy agencies and surrogacy professionals also became more prominent and more experienced, making it easier for both intended parents and prospective surrogates to learn more and participate in the process. Almost 5,000 children were born via surrogacy in the United States.

Clearly, surrogacy has come a long way from where it was before the late twentieth century. Today, the combination of rapidly advancing medicine and the different types of surrogacy available make it easier than ever for intended parents to complete their family and for prospective

surrogates to change the lives of others forever.

III. WHAT ARE THE TYPES OF SURROGACY?

i. Traditional Surrogacy

In traditional surrogacy, the surrogate mother uses her own egg and is artificially inseminated using sperm from the intended father or a donor. The surrogate carries and delivers the baby, and then, because she is the child’s biological mother, must relinquish her parental rights so that the child can be raised by the intended parents. Traditional surrogacy is sometimes also called partial surrogacy or genetic surrogacy because of the surrogate’s biological link to the child she carries. Single men, same-sex male couples and women who cannot produce healthy eggs may choose traditional surrogacy because they will need a donor’s eggs anyway; in traditional surrogacy, the surrogate doubles as the egg donor. Because the surrogate is the child’s biological mother, many traditional surrogates are close friends or relatives of the intended parents.

The advantages are traditional surrogacy is usually less expensive than gestational surrogacy and intended mothers do not need to undergo medical procedures because their eggs will not be harvested to create the embryo.

The disadvantages are traditional surrogacy is banned in many states and the surrogate is the biological mother of her child, meaning she has parental rights and the power to change her mind and keep the baby. The intended parents would then need to go to



court to gain custody of the child. In some cases, intended parents will need to complete a stepparent adoption to both be recognized as the child's legal parents.

ii. Gestational Surrogacy

In Gestational Surrogacy, the surrogate is not related to the child she is carrying. It is the most common type of surrogacy today. In gestational surrogacy, the child is not biologically related to the surrogate mother, who is often referred to as a gestational carrier. Instead, the embryo is created via in vitro fertilization (IVF), using the eggs and sperm of the intended parents or donors, and is then transferred to the surrogate.

This form of surrogacy is sometimes also called "host surrogacy" or "full surrogacy."

In most cases, at least one intended parent is genetically related to the child, and the surrogate is not. The following people might consider gestational surrogacy who have struggled with infertility, hopeful single parents, same-sex couples, who don't want a genetic link between the surrogate and their child and who are unable to safely carry a pregnancy to term.

The advantages of Gestational surrogacy are it allows infertile couples, single parents and members of the LGBT community to complete their families. Gestational surrogacy allows intended parents to maintain a genetic link to their child. Surrogacy gives intended parents the opportunity to create a meaningful relationship with their surrogate. Gestational surrogacy is the least legally complicated form of surrogacy because the baby is not related to the gestational carrier.

The disadvantages are it is generally a legally complex and expensive process. It requires intended parents to relinquish some control as someone else carries the pregnancy for them. If the intended mother is using her own eggs in the surrogacy process, she will have to undergo fertility treatments and other medical procedures.

iii. Commercial Surrogacy

Commercial surrogacy refers to any surrogacy arrangement in which the surrogate mother is compensated for her services beyond reimbursement of medical expenses. Any surrogacy arrangement in which the surrogate mother is compensated for her services beyond reimbursement of medical expenses.

The advantages of Commercial surrogacy are that it allows women to be compensated fairly for their yearlong commitment to intended parents as well as the physical and emotional demands of pregnancy. In states and countries with well-defined laws, commercial surrogacy is legally regulated to protect the rights of the surrogate as well as the intended parents.

The disadvantages of Commercial surrogacy are that it is more expensive than altruistic surrogacy because intended parents will be responsible for surrogate compensation in addition to medical and legal costs. Some opponents of commercial surrogacy argue that it exploits vulnerable women.

iv. Altruistic Surrogacy

Altruistic surrogacy is when a surrogate carries a child with no additional base compensation. Altruism is defined as "unselfish regard or devotion to the welfare



of others” — a quality that all surrogates arguably must possess to make the physical and emotional sacrifices demanded by surrogacy. Many surrogacy supporters argue that all surrogacy is altruistic in nature, which can make it somewhat difficult to truly define altruistic surrogacy.

However, the term “altruistic surrogacy” generally refers only to those arrangements in which the surrogate does not receive compensation for her services beyond reimbursement for medical costs and other reasonable pregnancy-related expenses.

Many of these arrangements are between family members or close friends and are completed as independent surrogacies. The alternative to altruistic surrogacy is commercial surrogacy, in which the surrogate is fairly compensated for her time and energy, the sacrifices she makes and the many physical and emotional challenges she faces throughout the surrogacy process.

IV. WHAT ARE THE REASONS BEHIND SURROGACY?

➤ LGBTQ Couples Looking to Become Parents

Surrogacy is a great option for gay couples that wish to have at least one parent biologically related to the baby. It is also a good option if you live in a state that prohibits adoption for same-sex couples. Gay couples seeking surrogacy have two options when deciding. the first option would be traditional surrogacy with artificial insemination. The second option would be using IVF, egg donation, and gestational surrogacy. Genetic research is advancing now to make it possible that in just two years a baby could have TWO biological

Dad’s or Mom’s meaning that both potential fathers could be related to the baby.

➤ Mother and Father are Faced with Genetic Challenges

In some couples one or both potential parents may struggle with a genetic disorder that they do not want to pass down to any of their children. This could be something like Huntington’s disease, Cystic Fibrosis, Sickle Cell, Muscular Dystrophy, or even certain types of dwarfism. For these couples, they would want to explore the option of a traditional surrogate. In traditional surrogacy, the surrogate would be carrying a baby that would be from her eggs and donor

sperm. **Adoption is a complex process**

Adoption is often mentioned to couples struggling to get pregnant as a means to an end. Adoption is also a very costly expense and comes with its own form of heartbreak. For a baby that is still *you* in a genetic sense looking for someone else to carry your baby may be exactly what you need to do.

➤ Infertility Problems

It is estimated that about 6.1 million couples in the US suffer from infertility. The causes of infertility can range from a number of different issues like a woman being unable to ovulate, hormonal disorders such as polycystic ovary syndrome, poor egg health, and blocked fallopian tubes. For some of these couples it is the man that struggles with a low sperm count or even poor sperm health. And it is estimated that 15% of these couples suffer from unexplained infertility. Typically, infertile couples have turned to IVF to get pregnant.

Other Reasons why the couple could opt for surrogacy might be: -



- ✓ Single Fathers/Mothers Who Want Babies
- ✓ Having Previous Miscarriages
- ✓ Legitimate Fear of Childbirth
- ✓ Trauma Surrounding a Previous Pregnancy or Birth
- ✓ Avoidance of Weight Gain
- ✓ Not Having a Womb or Womb Won't Carry Baby to Term
- ✓ Not Wanting to Stop Medical Treatments or The Physical Toll of Carrying a Baby
- ✓ Fear That Having a Baby Will Impact Her Career

V. WHAT IS THE LEGALITY OF SURROGACY?

The legal aspects surrounding surrogacy are complex, diverse and mostly unsettled. In most of the countries world over the woman giving birth to a child is considered as the Child's legal mother. However, in very few countries, the Intended Parents are being recognized as the legal parents from birth by the virtue of the fact that the Surrogate has contracted to give the birth of the Child for the commissioned Parents.

India is one country amongst the few, which recognize the Intended/ Commissioning Parent/s as the legal parents. Many states now issue pre-birth orders through the courts placing the name(s) of the intended parent(s) on the birth certificate from the start. In others, the possibility of surrogacy is either not recognized (all contracts specifying different legal parents are void), or is prohibited.

Australia

In all the states of Australia, the surrogate mother is regarded/considered by the law to

be the legal mother of the child and any surrogacy agreement giving custody to others is void and unenforceable in the courts of Law. In addition, in all states and the Australian Capital Territory arranging commercial surrogacy is a criminal offence. Usually couples who make surrogacy arrangements in Australia must adopt the child rather than being recognized as birth parents, particularly if the surrogate mother is married.

Israel

Israel the first country in the world to implement a form of state-controlled surrogacy in which each and every contract must be approved directly by the state. In March 1996, the Israeli government legalized gestational surrogacy under the "Embryo Carrying Agreements Law." Surrogacy arrangements are permitted only to Israeli citizens who share the same religion. Surrogates must be single, widowed, or divorced and only infertile heterosexual couples are allowed to hire surrogates.

United Kingdom

Surrogacy arrangements have been legal in the United Kingdom since 2009. Whilst it is illegal in the UK to pay more than expenses for a surrogacy, the relationship can be recognized under Section 30 of the Human Fertilization and Embryology Act, 1990 under which a court may make parental orders similar to adoption orders. How this came about is one of those occasions when an ordinary person can change the law.

United States

Many states have their own state laws written regarding the legality of surrogate



parenting. It is most common for surrogates to reside in Florida and California due to the surrogacy-accommodating laws in these states. With the accommodating laws of the State of California and the long overseas deployments of husbands, wives have found surrogacy to be a means to supplement military incomes and to provide a needed service. It is illegal to hire a surrogate in New York, and even embryonic transfers may not be done in New York. At this point, the laws surrounding surrogacy are well defined in the State of Pennsylvania, and surrogacy is beginning to become common in the state of Delaware.

Commercial surrogacy is illegal in Belgium, Canada, France, Hungary, Japan and Netherlands.

VI. WHAT ARE THE LEGAL ISSUES RELATED TO SURROGACY?

(i) What would be the remedy available to biological parent/s to obtain inclusive legal custody of surrogate children?

It can be stated that the biological parents would be the legal parents of the children by the surrogacy agreement executed between the parties and the surrogate mother. Under para 3.16.1 of the ICMR Guidelines, 2005, dealing with legitimacy of the child born through ART, it is stated that “a child born through ART shall be presumed to be the legitimate child of the couple, born within wedlock, with consent of both the spouses, and with all the attendant rights of parentage, support and inheritance”.

(ii) How can the rights of the surrogate mother be waived off completely?

A surrogate shall relinquish all parental rights over the child or children. The rights

of a surrogate mother over the custody of the child can be waived off after 6 weeks of the birth of the child but she does enjoy the following rights which can't be waived off completely.

This category includes following rights:

- Right of the husband of Surrogate Mother to give consent for Surrogacy
- Right of Surrogate to health
- Right to have legal advice for entering into Surrogacy Arrangement
- Right to resolve the disputes arising out of Surrogacy Arrangement at Pre-Litigation Stage
- Right to resolve the disputes arising out of Surrogacy Arrangement by Arbitration and Conciliation
- Right to companionship/visiting rights of surrogate mother to the child
- Right of surrogate mother to be aware of the psychological and medical risks involved in the surrogacy arrangement
- Right of surrogate mother not to refund any funds paid by the intended parents in event of miscarriage or abortion at the instance of the intended parents or by the attending expert physician
- Right of surrogate mother to fair compensation

(iii) How can the rights of the ovum or sperm donor be restricted?

A child or children born to a married couple using assisted reproductive technology(ART) shall be presumed to be the legitimate child of the couple, and the donor of both the sperm or ovum shall



relinquish all parental rights in relation to such child or children.

(iv) How can the genetic constitution of the surrogate baby be established and recorded with authenticity.

All information about the surrogate shall be kept confidential and information about the surrogacy shall not be disclosed to anyone other than the National Registry of Assisted Reproductive Technology Clinics and Banks in India of the Indian Council of Medical Research except by an order of a court of competent jurisdiction.

(v) Whether a single or a gay parent can be the custodial parent of a surrogate child.

It may be stated that a single or a gay parent can be the custodial parent by being the genetic or biological father of the surrogate child born out of a surrogacy arrangement. Japanese Baby Manji Yamada's case, and the Israeli gay couple case who fathered the child in India are clear examples to establish that this is possible. However, the new Medical Visa Regulations, 2012 will not permit any entry to a foreign national as a single parent, gay couple or unmarried partners for commissioning fresh surrogacy arrangements in India.

(vi) What would be the status of divorced biological parents in respect of the custody of a surrogate child.

This will require determination in accordance with the surrogacy agreement between the parties. There would be apparently no bar to either of the divorced parents claiming custody of a surrogate child if the other parent does not claim the same. However, if the custody is contested, it may require adjudication by a Court of competent jurisdiction.

VII. WHAT IS THE POSITION OF INDIA ON LAWS ON SURROGACY?

Commercial surrogacy has been legal in India since 2002. Surrogacy in India is legitimate because no Indian law prohibits surrogacy. To determine the legality of surrogacy agreements, the Indian Contract Act would apply and thereafter the enforceability of any such agreement would be within the domain of Section 9 of the Code of Civil Procedure, 1908 (CPC).

Alternatively, the biological parent/s can also move an application under the Guardian and Wards Act for seeking an order of appointment to be declared as the guardian of the surrogate children.

Under Section 10 of the Indian Contract Act, 1872, all agreements are contracts, if they are made by free consent of parties competent to contract, are for a lawful consideration, are with a lawful object, and are not expressly declared to be void. Therefore, if any surrogacy agreement satisfies these conditions, it is an enforceable contract.

Thereafter, under Section 9, CPC, it can be the subject of a Civil Suit before a Civil Court to establish all/ any issues relating to the surrogacy agreement and for a declaration / injunction for the reliefs prayed for.

Surrogacy in India is relatively low cost and the legal environment is favourable. In 2008, the Supreme Court of India in the Manji's case (Japanese Baby) has held that commercial surrogacy is permitted in India with a direction to the Legislature to pass an



appropriate Law governing Surrogacy in India. At present the Surrogacy Contract between the parties and the Assisted Reproductive Technique (ART) Clinics guidelines are the guiding force. Giving due regard to the apex court directions, the Legislature has enacted ART BILL, 2008 which is still pending and is expected to come in force somewhere in the next coming year. The law commission of India has specifically reviewed the Surrogacy Law keeping in mind that in India that India is an International Surrogacy destination.

In the absence of any law to govern surrogacy, the 2005 ICMR Guidelines apply. But, being non-statutory, they are not enforceable or justiciable in a Court of Law. Under para 3.10.1 of the 2005 ICMR guidelines, a child born through surrogacy must be adopted by the genetic (biological parents). However, this may not be possible in case of non-Hindu foreign parents who cannot adopt in India.

India is emerging as a leader in international surrogacy and a sought-after destination in surrogacy-related fertility tourism. Indian surrogates have been increasingly popular with fertile couples in industrialized nations because of the relatively low cost. Indian clinics are at the same time becoming more competitive, not just in the pricing, but in the hiring and retention of Indian females as surrogates. Clinics charge patients roughly a third of the price compared with going through the procedure in the UK.

The Report has come largely in support of the Surrogacy in India, highlighting a proper way of operating surrogacy in Indian conditions. Exploitation of the women

through surrogacy is another worrying factor, which the law must address. The Law Commission has strongly recommended against Commercial Surrogacy. However, this is a great step forward to the present situation. We can expect a legislation to come by early 2011 with the passing of the Assisted Reproductive Technology Bill aiming to regulate the surrogacy business. However, soon, the business of surrogacy will plummet and boomerang. As per latest and new Indian Visa Regulations, effective 15 November 2012, onwards, all foreigners visiting India for commissioning surrogacy will be required to apply for “Medical Visas” and cannot avail of simple tourist visas for surrogacy purposes. Only a foreign man and woman duly married for at least 2 years can visit India on a medical visa for commissioning surrogacy. Thus, single persons, gay couples or unmarried partners will not get medical visas for surrogacy in India.

The treatment will be done only at registered ART Clinics in India recognized by ICMR and the foreign commissioning couple must produce a duly notarized agreement between them and the prospective surrogate Indian mother. After the surrogate baby is born, an exit permission by a commissioning couple before leaving India will be required from the Indian Foreigners Regional Registration Office (FRRO) to verify issuance of a certificate from the ART Clinic confirming discharge of liabilities of the Indian Surrogate mother and ensuring custody of the child with the commissioning parents.

India’s Draft Surrogacy (Regulation) Bill, 2016



The draft bill provides for surrogacy as an option to parents who have been married for five years can't naturally have children, lack access to other reproductive technologies, want biological children and can find a willing participant among their relatives. This would come as a major blow to fertility clinics in India, as most of them have thriving commercial surrogacy practices, which would be outlawed under the current form of the bill. Commercial surrogacy will result in 10 years' imprisonment.

The bill also seeks to clarify the legal position of such a child and ensures that a child born of surrogacy will have all legal rights as a citizen. It would also restrict overseas Indians, foreigners, unmarried couples, homosexuals, and live-in couples from entering into a surrogacy arrangement. The surrogate mother must be a married woman who has herself borne a child and is neither a non-resident Indian (NRI) nor a foreigner. Couples who already have biological or adopted children cannot commission a surrogate child.

As expected, the bill has generated a lot of debate around the country. Opponents have argued that by allowing surrogacy for select classes of citizens based on their lifestyle, sexual orientation, and life choices, the bill would violate citizens' Fundamental Rights as laid down in Article 14 of the Indian Constitution.

However, the bill seeks to be in step with the legal issues now. Gay rights are still an evolving issue in India. While the Supreme Court is sitting on a review petition on Section 377 of the Indian Penal Code, pertaining to the status of gay rights, no

clear legal stand on the issue has emerged. Hence at this point, conferring legal rights to a surrogate child to gay parents would endanger the rights of the child itself. The Surrogacy (Regulation) bill can clarify the rights for India's gay population only once these larger legal questions (about the status of gay marriage, for instance) have been answered. Hence at this point, restricting surrogacy to relationships which have a clear standing in the eyes of law protects the rights of the child and ensures consonance with Article 14 of the Indian Constitution rather than doing disservice to

it. The second major issue relates to the question of disallowing commercial surrogacy and restricting foreigners from availing themselves of surrogacy in India. Since the inception of commercial surrogacy, many incidents have sparked unpleasant legal questions surrounding commercial surrogacy involving foreigners.

Meanwhile, the banning of commercial surrogacy can perhaps open doors for adoption as well. In a country like India, where one encounters frequent stories of children being abandoned by their parents out of poverty or social stigma, especially girls, banning commercial surrogacy could encourage parents to look toward adoption as a means of fulfilling their dreams of parenthood.

The draft Surrogate (Regulation) Bill seeks to comprehensively address the issue of surrogacy in India. While there are provisions that will evolve with time, the heart of the bill is undoubtedly banning



commercial surrogacy. This is indeed a step in the right direction. Profiting commercially from a woman's womb by exploiting her helplessness is a terrible crime. An evolved society is one that seeks to protect the right of all. A poor woman is undoubtedly among the most voiceless of India's citizens, and the draft Surrogacy Bill 2016 seeks to protect her.

CONCLUSION

The Indian Parliament catching up to make a law to regulate the unscrupulous surrogacy trade, the new Medical Visa Regulations have stepped in temporarily to do what the law ought to have done. But, they also infringe on the rights of single foreign parents. Instead of permitting surrogate children to be born in India with the risk of being stateless persons and being denied entry into foreign countries where their commissioning parents reside, it is apt and necessary that such unethical practices leading to such disastrous situations must be pre-empted and prevented.

Recent instances of surrogate children from Germany, Japan and Israel born in India and leaving upon court intervention should well make legislators think of enacting a strict surrogacy monitoring law. The Assisted Reproductive Technology (Regulation) Bill, 2014 itself has legal lacuna, lacks creation of a specialist legal authority for determination and adjudication of legal rights of parties, in addition to falling in conflict with existing family laws. These pitfalls should not become a graveyard for a law which is yet to be born. Surrogacy needs to be checked and regulated by a proper statutory law.

Piecemeal administrative decisions cannot substitute legislation to override settled

statutory rights conferred by laws made for inter-country adoptions to foreigners and non-resident Indians who have acquired foreign nationalities. The law makers must enact a law to put checks, controls and regulatory steps in place through a legislative mechanism. Surrogacy should be controlled by proper legislative methods as existing in the case of inter-country adoptions.

Anomalies in matters of foreign parents and single foreign parent surrogacy compared to foreign couple and single parent adoptions by foreigners must be resolved to be made consistent and uniform. The Assisted Reproductive Technology (Regulation) Bill, 2014 must be overhauled in the proper perspective for providing mechanisms to regulate, check and control unethical practices as also to grant protection to rights of parties who are at a disadvantage. The ART Bill, 2014 put in public domain to general public and stake holders needs to be discussed threadbare. Public opinion must be espoused and views of stakeholders should be deliberated upon.

Hence, the proper course would be a statutory law which looks at all perspectives and protects the rights of all parties without infringing on the claims of others. A fresh perspective is the call of the day for introspection.
