

**Bill No. 117 of 2014**

**THE SURROGACY (REGULATION) BILL, 2014**

By

SHRI BHARTRUHARI MAHTAB, M.P.

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BILL

*to provide for regulation of the practice of surrogacy and for matters connected  
therewith or incidental thereto*

BE it enacted by Parliament in the Sixty-fifth Year of the Republic of India as follows:—

**1.** (1) This Act may be called the Surrogacy (Regulation) Act, 2014.

Short title,  
extent and  
commencement.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notifi-  
5 cation in the Official Gazette, appoint.

**2.** (1) In this Act, unless the context otherwise requires,—

Definitions.

(a) "appropriate Board" means a State Supervisory Board or a Union territory  
Supervisory Board, as the case may be, constituted under section 16A of the  
Pre-conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection)  
Act, 1994;

(b) "assisted reproductive techniques" mean techniques that attempt to obtain a pregnancy by handling or manipulating the sperm or the oocyte outside the human body, and transferring the gamete or the embryo into the reproductive tract;

(c) "commissioning parents" mean a legally wedded couple who enters into a surrogacy agreement with a surrogate mother; 5

(d) "prescribed" means prescribed by rules made under this Act;

(e) "surrogacy" means an arrangement in which a woman agrees to a pregnancy, achieved through assisted reproductive techniques, in which neither of the gametes belong to her or her husband, with the intention to carry it and handover the child to the commissioning parents for whom she is acting as a surrogate and the expression 'surrogacy agreement' shall be construed accordingly; and 10

(f) "surrogate mother" means a woman who enters into an agreement with commissioning parents to deliver their child through assisted reproductive techniques.

(2) The terms and expressions used but not defined in this Act shall have the meaning assigned to them in the Pre-conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. 15  
57 of 1994.

Pre-requisites for surrogacy agreement.

**3.** A surrogacy agreement shall not be valid if the following conditions are not fulfilled, namely:—

(a) the surrogate mother is not less than twenty-five years of age and has not completed thirty-five years of age; 20

(b) the commissioning parents are married for not less than two years;

(c) the commissioning parents are not already in a surrogacy agreement with any person, whether in India or in any other country;

(d) the commissioning parents are incapable, due to sufficient medical grounds, of giving birth to a child through natural pregnancy; 25

(e) the surrogate mother has given birth to not more than four children, including still born children, either through natural pregnancy or through assisted reproductive techniques; and

(f) a period of at least two years has elapsed since an assisted reproductive procedure was conducted on the surrogate mother. 30

*Explanation.*—For the purpose of this section, where a natural pregnancy poses a threat to the life or health of the mother or there is little possibility of carrying the pregnancy to full term, it shall be considered a sufficient ground for surrogacy agreement.

Rights of a surrogate mother.

**4.** (1) A surrogate mother shall have the following rights,—

(a) right to medical treatment during the course of assisted reproductive procedure and till such further period after the full term of pregnancy as may be advised by a physician; and 35

(b) right to compensation in case of delay on the part of commissioning parents in taking the child into their care.

(2) All expenditure incurred on medical treatment under sub-section (1) shall be borne by the commissioning parents. 40

Alternate guardian.

**5.** (1) The commissioning parents shall appoint an individual to be an alternate guardian of the child to be born through surrogacy.

(2) The alternate guardian shall look after the child if the commissioning parents are unable or fail to take the child under their care due to their divorce, death or any other reason. 45

**6.** Any foreign couple, not resident of India, seeking surrogacy in India, shall—

(i) appoint a local guardian who shall be responsible for—

(a) taking care of surrogate mother during and after pregnancy; and

(b) taking care of child till the child is taken over by the commissioning parents;

(ii) produce a letter from either the embassy of their country in India or from the Foreign Ministry of their country to the effect that—

(a) the country of foreign couple permits surrogacy; and

(b) the child born through surrogacy in India shall be permitted entry in their country as their biological child.

Special provisions in respect of foreign couple.

**7.** (1) Every commissioning parent shall register the surrogacy agreement with the appropriate Board within such time as may be prescribed.

(2) The appropriate Board shall, subject to such guideline, as may be prescribed, protect the identity of the commissioning parents, the surrogate child and the surrogate mother.

Commissioning parents to register the surrogacy agreement.

**8.** If any person performing the assisted reproductive procedure conducts sex selection test of the embryo before implantation or at any time after that or otherwise selects the sex of the child to be born through surrogacy, such person shall be deemed to be guilty of an offence under the Pre-conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994.

Prohibition of sex selection in surrogacy.

**9.** (1) If the commissioning parents refuse to take delivery of the child born through surrogacy due to any congenital disorder or disease in such child, they shall be punished with simple imprisonment which shall not be less than two years or with fine or fifty thousand rupees or both.

(2) Any person who enters into surrogacy agreement without fulfilling the conditions laid down in section 3 or by concealment or misrepresentation of facts shall be punished with simple imprisonment which shall not be less than two years or with a fine of fifty thousand rupees or both.

Offences and penalties.

**10.** The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Act to have overriding effect.

**11.** (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of the Act.

Power to make rules.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both the Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

## STATEMENT OF OBJECTS AND REASONS

India is increasingly emerging as a hub for surrogacy services due to a comparative cost advantage. While surrogacy techniques have brought happiness in the lives of many despairing couples, it has often been subject to criticism due to extensive misuse and various ethical issues involved. Important among them are sex selection, excessive use in cases even where normal pregnancy is possible, etc. The lack of any legal framework to regulate the practice of surrogacy has accentuated the concerns over surrogacy. Besides, there are many grey areas which are to be addressed, such as citizenship of the child in case of involvement of foreign nationals in surrogacy, the fate of the child born through surrogacy in the case of divorce or death of commissioning parents, rights of the surrogate mother and the like.

2. The Bill, therefore, seeks *inter alia* to:—

- (i) lay down the conditions under which surrogacy may be resorted to;
- (ii) provide for compulsory registration of surrogacy;
- (iii) make provision for safeguarding the interest of the surrogate mother and the child born through surrogacy; and
- (iv) make sex selection in surrogacy an offence.

NEW DELHI;  
August 5, 2014.

BHARTRUHARI MAHTAB

#### MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 11 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Bill. As the rules will relate to matters of detail only, the delegation of legislative power is, therefore, of a normal character.

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*(Shri Bhartruhari Mahtab, M.P.)*