THE SURROGACY (REGULATION) BILL, 2014

BY

DR. KIRIT PREMJIBHAI SOLANKI, M.P.

A

BILL

to provide for regulation 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.

(2) It extends to the whole of India.

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

2. In this Act, unless the context otherwise requires,—

(a) "assisted reproductive technology" means 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;
(b) "assisted reproductive technology clinic" means any premises used for procedures related to assisted reproductive technology;

c) "child" means a child born through the use of assisted reproductive technology;

d) "couple" means two persons living together and having a sexual relationship that is legal in India;

e) "prescribed" means prescribed by rules made under this Act;

f) "surrogacy" means an arrangement in which a woman agrees to a pregnancy, achieved through assisted reproductive technology, in which neither of the gametes belong to her or her husband, with the intention to carry it and hand over the child to the person or persons for whom she is acting as a surrogate; and

g) "surrogacy agreement" means a contract between the person availing the assisted reproductive technology and the surrogate mother.

3. (1) The Central Government shall, in consultation with the State Governments, establish a Board to be known as the National Board for Regulation of Surrogacy (hereinafter referred to as the National Board) to exercise such powers and discharge such functions and duties conferred or imposed on the Board by or under this Act.

(2) The National Board shall consist of—

(i) the Secretary to the Government of India, in-charge of the Department of Health Research; Chairperson, ex-officio;

(ii) one person each representing,—

(a) the Ministry of Health and Family Welfare; and Members;

(b) the Indian Council of Medical Research.

(iii) ten women representatives who shall have special knowledge or practical experience in the field of assisted reproduction, gynaecology, embryology, andrology, bioethics, mammalian reproduction, medical genetics, social science, law or human rights, to be nominated by the Central Government in such manner as may be prescribed. Members

(3) The National Board shall meet as and when necessary, and at such place as the Chairperson of the National Board may think fit.

(4) The National Board shall establish its offices in every district.

(5) The salary and allowances payable to, and other terms and conditions of service of the Chairperson and other members of the Board shall be such as may be prescribed.

(6) The Central Government shall provide to the Board such number of officers and staff, as is necessary for the efficient functioning of the Board.

4. The National Board shall—

(i) lay minimum requirements related to staff and physical infrastructure for various categories of assisted reproductive clinics;

(ii) lay regulation in respect of permissible assisted reproductive technology procedure;

(iii) lay regulation in respect of selection of patients for assisted reproductive technology procedure;

(iv) encourage and promote research in the field of assisted reproductive technology;
(v) issue guidelines for counselling and providing patients with all necessary information and advice on various aspects of surrogacy and assisted reproductive technology procedures;

(vi) maintain national database in respect of infertility;

(vii) prescribe proforma for obtaining information from donor of gametes and surrogate mothers, consent forms for various procedure, and contracts or agreements between parties involved in surrogacy; and

(viii) frame policies, from time to time, on surrogacy and assisted reproductive technology procedures.

5. (1) Every assisted reproductive technology clinic shall, within such period and in such form and manner as may be prescribed, apply for registration to the office of the National Board established in the district.

(2) The National Board may, subject to such terms and conditions as may be prescribed, register any assisted reproductive technology clinic on the basis of the techniques, procedures and assisted reproductive technology practiced, including surrogacy procedures, at such clinic.

(3) The surrogacy procedures referred to in sub-section (2) includes—

(a) infertility treatment, including Intra-Uterine Insemination (IUI), Artificial Insemination with Husband's semen (AIH), and Artificial Insemination using Donor Semen (AID), involving the use of donated or collected gametes;

(b) infertility treatment involving the use and creation of embryos outside the human body;

(c) processing or storage of embryos; and

(d) research.

(4) No assisted reproductive technology clinic performing any of the functions under sub-section (2) or any other advanced diagnostic, therapeutic or research functions, shall practice any aspect of such diagnosis, therapy or research without obtaining a Registration Certificate from the office of the National Board.

(5) Every assisted reproductive technology clinic registered under this Act shall be deemed to have satisfied the provisions of the Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994, and shall not be required to seek a separate registration under that Act.

(6) Every assisted reproductive technology clinic shall forward every month to the office of the National Board in the district the details of services provided to every patient for surrogacy purpose, in such form, as may be prescribed.

6. Any couple who intends to seek surrogacy through the use of assisted reproductive technology shall—

(i) inform the office of the National Board in the district about assisted reproductive technology clinic where he intends to seek surrogacy through the use of assisted reproductive technology;

(ii) declare about the woman who has agreed to act as a surrogate mother or potential surrogate mother;

(iii) enter into an agreement with the woman who has agreed to act as a surrogate mother and who is otherwise eligible to enter into an agreement for the purpose of surrogacy;
(iv) bear all expenditure incurred on medical tests and treatment, food, health insurance, compensation and other requirements of the surrogate mother from the date of agreement, during the period of pregnancy and after delivery as per medical advice and till the child is ready to be delivered as per medical advice, to the biological parents.

7. (1) Notwithstanding anything contained in section 3, and subject to the surrogacy agreement, every woman seeking to or agreeing to act as a surrogate mother,—

(i) may also receive monetary compensation from the couple for agreeing to act as surrogate mother;

(ii) shall be medically tested for all communicable diseases including sexually transmitted disease; and

(iii) shall be declared medically fit to act as a surrogate mother by the assisted reproductive technology clinic where she intends to take medical treatment for the purpose on the date she enters into an agreement to act as a surrogate mother.

(2) All expenditure to be incurred on medical tests under sub-section (1) shall be borne by the couple seeking surrogacy through the use of assisted reproductive technology.

8. Any married woman, who intends to act as a surrogate mother for a couple, shall be eligible to enter into an agreement for surrogacy, if she has—

(i) attained the age of 21 years but is not above the age of 35 years;

(ii) procreated not less than two children from her marriage; and

(iii) obtained consent of her spouse for acting as a surrogate mother.

9. No woman shall act as a surrogate for more than four live births in her life, including her own children.

10. A surrogate mother shall, in respect of all medical treatments or procedures in relation to the concerned child, register at the hospital or such medical facility in her own name, clearly declare herself to be a surrogate mother and provide name or names and addresses of the persons, as the case may be, for whom she is acting as a surrogate.

11. A surrogate mother shall relinquish all parental rights over the child.

12. A child born to a woman through surrogacy may, upon reaching the age of eighteen years, ask for any information, excluding personal identification about his/ her genetic parent or parents or surrogate mother.

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

(i) appoint a local guardian who shall be legally responsible for taking care of the surrogate during and after pregnancy of such woman;

(ii) pay premium for insurance cover to the surrogate mother and the child she delivers until the time the child is handed over to the commissioning
parents or any other person as per agreement and till the surrogate mother is free of all health complications arising out of surrogacy.

(ii) produce a letter from either the embassy of the country in India or from the Foreign Ministry of that country clearly stating—

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

(b) the child born through surrogacy in India will be permitted entry in the country as a biological child of the commissioning couple.

14. The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force.

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

(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

In recent years, the cases of child births through the use of advanced medical technologies in surrogacy have been increasing. Not only common people but also celebrities are taking recourse to assisted reproductive technologies to become parents. As the cost in our country is lower in comparison to other countries, even foreign couples are coming to India for this purpose. In view of ever larger number of people taking recourse to this new technology, a number of legal issues have arisen which needs urgent attention. Accordingly regulation of surrogacy is the need of the hour.

The primary concern in surrogacy cases is the plight of women who agree to act as surrogate mother. Mostly, such women are poor and belong to marginalized sections of society who easily agree to act as surrogate mother for monetary reasons. To protect such women and also to address certain legal and ethical issues concerning surrogacy, it is proposed to regulate functioning of such clinics to ensure that the services provided are ethical and the medical, social and legal rights of all concerned are protected.

Hence this Bill.

NEW DELHI;
June 27, 2014.

KIRIT PREMJIBHAI SOLANKI
FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for establishment of a National Board for Regulation of Surrogacy. The Bill, therefore, if enacted, would involve expenditure from the Consolidated Fund of India. It is likely to involve a recurring expenditure of about rupees one thousand crore per annum.

A non-recurring expenditure of about rupees one hundred crore is also likely to be involved.
MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 15 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 powers is of a normal character.
A BILL to provide for regulation of surrogacy and for matters connected therewith or incidental thereto.

(Dr. Kirit Premjibhai Solanki, M.P.)