



India Law Offices

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Mumbai Chennai Bangalore Hyderabad Kolkata Pune Chandigarh and other

Legalizing Surrogate Baby Business in India

Surrogacy and its Types

Surrogacy is a method of assisted reproduction. More common form is IVF/ Gestational surrogacy in which the surrogate child biologically belongs completely to the social parents. The other type is gestational surrogacy where the surrogate child is genetically related to the male parent and the surrogate mother.

Surrogacy Status in Different Countries

- In France, Germany, Italy and many states of the United States surrogacy is illegal while in the UK, no surrogacy contract or agreement is legally binding and the surrogate mother remains the legal mother of the child till a parental / adoption order is framed. So is more or less the case with Sweden.
- Commercial surrogacy is illegal in Belgium and Netherlands.
- In Canada and New Zealand, commercial surrogacy is illegal, but 'altruistic' surrogacy (without any payment) is permitted.

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- In Saudi Arabia religious authorities do not permit surrogate mothers.
- Israel, however, became the first country in the world to implement a form of state-controlled surrogacy when in March 1996 Israeli government legalized gestational surrogacy with numerous restrictions that have prompted some intended parents to look elsewhere.
- Recently, altruistic surrogacy has been legalized in most of Australia while commercial surrogacy is not permitted; India too has plans to frame a legislation to protect the genetic parents, surrogate mother and the child.

India, a hot favorite for surrogacy- Why?

- India has emerged as a favorable destination for surrogacy for reasons of being cheap, socially accepted and more importantly, the government being kindly disposed towards it.
- One of the other reasons favoring surrogacy is the complicated adoption procedures. Infertile couples and even others seeking surrogacy for various reasons, both medical and personal, have turned to India from within the country and abroad. At present, the Indian surrogacy has reportedly become a 25-billion rupee business annually, with Law Commission describing it as "a golden pot".

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India's First Surrogate Baby

In India surrogacy heralded with the delivery of its first surrogate baby on June 23rd, 1994, but it took as many as eight years to draw the world's attention when an Indian woman in 2004 delivered a surrogate child for her daughter in the U.K. Surrogacy as a medical process has matured over the years.

Surrogacy Boom in India

- India has become a booming centre of a fertility market, partly surreptitiously, and today there are an estimated 200,000 clinics across the country offering artificial insemination, IVF and surrogacy. They call it Assisted Reproductive Technology (ART). The entire process needs regulation through legislation.
- There is at present no law governing surrogacy in India, eventually the activity including renting a womb (commercial surrogacy) is considered legitimate.
- In the absence of any law the Indian Council of Medical Research (ICMR) in 2005 issued guidelines for accreditation, supervision and regulation of ART clinics in India. But the need for legislation became pressing with ICMR guidelines being often violated and reportedly rampant exploitation of surrogate mothers and even cases of extortion.

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- Moreover, easy availability and renting of wombs at comparatively cheaper rates in India has been attracting foreigners as well as NRIs for surrogacy.
- As most of the countries do not permit surrogacy by law, legal battles had to be fought in some cases for legitimacy and citizenship rights of the surrogate children.
- Nikolas and Leonard born of an Indian surrogate mother to a German couple in January 2008, were stateless, the Supreme Court of India came to their rescue by getting them exit permits in May 2010. Similarly, Itai and Liron born to an Israeli gay couple through a surrogate Indian mother got stranded in Mumbai and were granted Israeli passports on compassionate grounds by an Israeli Court only after a DNA test established their paternity.

Bill for Legalizing Surrogacy in India

- At the instance of the Indian government an expert committee has drafted a Bill known as Assisted Reproductive Technology (Regulation) Bill, 2010 for legalizing surrogacy.
- The proposed legislation earlier floated in 2008 envisages legalizing commercial surrogacy as well. It defines a 'couple' as two persons living together and having a sexual relationship and as such, following Delhi High Court's verdict on homosexuality, gives gays besides the singles the legal right to have surrogate babies.
- It also stipulates the age of surrogate mother to be within 21-35 years and limits her deliveries to five, including her own children.

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- The surrogate mother will have to enter into a legally enforceable surrogacy agreement.
- Under the proposed law, Foreign couples, including NRIs seeking surrogacy in India will have to submit certificates that their country recognizes surrogacy as legal and also that the surrogate child after birth would get their country's citizenship. This, perhaps, is in view of the legal battles mentioned earlier in the article.

The Law Commission of India in its Report on "Need for legislation to regulate assisted reproductive technology clinics as well as rights and obligations of parties to a surrogacy" has by and large supported Surrogacy in India, but seems to have not favored commercial surrogacy.

Many legal experts are of the view that the draft Bill is a step in the right direction as it will help regulate the functioning of the IVF centres and ensure quality check and accountability of ART bank.

Documents required for taking surrogated child outside India

Depending on the facts of the case, if the country of the intended parents does not recognize the concept of surrogacy and the intended mother is ready to put the name of the surrogated Indian mother as the "MOTHER" of the surrogated

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child on the relevant paper work, the child will be considered as Indian and an Indian Passport will be issued. (Supported by the court ruling)

If the country of the intended parents of the surrogated child recognizes the law of surrogacy and the intended parents want to remain the parents of the child on the paper work then the passport authority can issue an identity certificate to the child for travelling outside India. (apex court ruling)

The main documents required while taking the child outside India are:

1. Agreement along with the affidavit is required in case on of the parents is the biological parent of the child and also when the intended parent is recognized as the legal parent and the surrogated mother and her partner have waived their parental rights over the child
2. Birth Certificate of the child
3. Adoption certificate of the child in the name of the intended parents
4. Original Passport of the intended parents and their original marriage certificate
5. Surrogacy contract/agreement
6. Passport size photographs of the child with eyes open
7. The documents and procedures might vary depending upon the facts and the circumstances of each case

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