

The Surrogacy (Regulation) Bill, 2016: Comparison of the 2016 Bill with the 2018 Amendments

The Surrogacy (Regulation) Bill, 2016 was introduced in Lok Sabha on November 21, 2016.¹ The Bill prohibits commercial surrogacy, allows altruistic surrogacy and specifies criteria for the intending couple and surrogate mother. Surrogacy is an arrangement whereby an intending couple commissions a surrogate mother to carry their child. The Standing Committee on Health and Family Welfare (Chairperson: Prof. Ram Gopal Yadav) examined the Bill and submitted its report on August 10, 2017.²

Certain amendments to the 2016 Bill were circulated in Lok Sabha on December 18, 2018. We compare provisions of the 2016 Bill with the proposed 2018 amendments.

Table 1: Comparison of the provisions of the 2016 Bill with the 2018 proposed amendments

The Surrogacy (Regulation) Bill, 2016	Amendments proposed to the Bill (2018)
Eligibility conditions for surrogate mother	
<ul style="list-style-type: none"> To obtain a certificate of eligibility from the appropriate authority, the surrogate mother has to: (i) be a close relative of the intending couple; (ii) be an ever married woman having a child of her own; (iii) be 25 to 35 years old; (iv) not have been a surrogate mother earlier; and (v) have a certificate of medical and psychological fitness. 	<ul style="list-style-type: none"> The amendments add that the surrogate mother cannot provide her own gametes for surrogacy.
Informed consent of surrogate mother	
<ul style="list-style-type: none"> The Bill states that no person can conduct surrogacy procedures, unless he has: (i) explained all side effects to the surrogate mother, and (ii) obtained written informed consent of the surrogate mother to undergo surrogacy procedures. 	<ul style="list-style-type: none"> The amendments add that the surrogate mother will have an option to withdraw from surrogacy before the embryo is implanted in her womb.
Sex selection	
<ul style="list-style-type: none"> The Bill regulates the functioning of surrogacy clinics and medical practitioners and prohibits various activities including: (i) undertaking commercial surrogacy, (ii) employing persons without requisite qualifications, and (iii) storing a human embryo, among others. 	<ul style="list-style-type: none"> The amendments add that any form of sex selection for surrogacy will also be prohibited.
Insurance coverage for surrogate mother	
<ul style="list-style-type: none"> The Bill requires the intending couple to have a 'certificate of essentiality' and a 'certificate of eligibility' issued by the appropriate authority to undertake surrogacy. One of the conditions to receive a certificate of essentiality is to provide insurance coverage for the surrogate mother. 	<ul style="list-style-type: none"> The amendments state that the insurance coverage will have to be provided for a period of 16 months covering postpartum delivery complications.
Time period for granting authorisation	
<ul style="list-style-type: none"> Under the Bill, in order to initiate a surrogacy procedure, the surrogate mother and the intending couple are required to obtain certificates of eligibility and essentiality from the relevant appropriate authorities. Further, to abort the surrogate child during the period of surrogacy, the appropriate authority has to grant authorisation along with the written consent of the surrogate mother. 	<ul style="list-style-type: none"> The amendments state that the appropriate authority should consider and grant or reject these applications within a period of 90 days.
Offences and penalties	
<ul style="list-style-type: none"> The Bill states that anyone who contravenes any provisions of the Bill will be punishable with imprisonment for a minimum term of five years, and a fine of up to 10 lakh rupees. If an intending couple or any person initiates commercial surrogacy, they will be punishable with imprisonment for a minimum term of five years, and a fine of up to 10 lakh rupees. 	<ul style="list-style-type: none"> The amendments replace imprisonment for a <i>minimum</i> term of five years with a <i>maximum</i> term of five years. The amendments replace imprisonment for a <i>minimum</i> term of five years with a <i>maximum</i> term of five years.

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| <ul style="list-style-type: none">▪ Further, if anyone contravenes any provision of the Bill for which no specific punishment is provided will be punishable with imprisonment for a minimum term of three years, and a fine of up to five lakh rupees.▪ The Bill states that any offenses related to commercial surrogacy, exploitation of surrogates, and importing of the human embryo will be punishable with a with imprisonment for a minimum term of ten years, and a fine of up to 10 lakh rupees. | <ul style="list-style-type: none">▪ The amendments replace imprisonment for a <i>minimum</i> term of three years with a <i>maximum</i> term of three years.▪ The amendments replace imprisonment for a <i>minimum</i> term of ten years with a <i>maximum</i> term of ten years. |
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Sources: The Surrogacy (Regulation) Bill, 2016; Notice of Amendments in Lok Sabha, December 18, 2018; PRS.

¹ The Surrogacy (Regulation) Bill, 2016, http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/257_LS_2016_Eng.pdf.

² Report No. 102, The Surrogacy (Regulation) Bill, 2016, Standing Committee on Health and Family Welfare, August 10, 2017, http://164.100.47.5/committee_web/ReportFile/14/100/102_2018_6_15.pdf.

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