

Comparison between Surrogacy (Regulation) Bill, 2019 (as passed by Lok Sabha) and Surrogacy (Regulation) Bill, 2021 (as passed by Rajya Sabha)

The Surrogacy (Regulation) Bill, 2019 was introduced in Lok Sabha on July 15, 2019 and passed by the House on August 5, 2019. The 2019 Bill was referred to a Select Committee which submitted its report on February 5, 2020.¹ The 2019 Bill was passed in Rajya Sabha on December 8, 2021 with certain amendments (as suggested by the Select Committee). Table 1 compares the key changes between the 2019 Bill (passed by Lok Sabha in 2019) with the 2021 Bill (passed by Rajya Sabha in 2021). The Bill will have to be passed by Lok Sabha again since Rajya Sabha passed the Bill with amendments.

Table 1: Comparison between the Surrogacy (Regulation) Bills as passed by Lok Sabha and Rajya Sabha

	Surrogacy (Regulation) Bill, 2019, as passed by Lok Sabha	Surrogacy (Regulation) Bill, 2021, as passed by Rajya Sabha
Eligibility to commission surrogacy	<ul style="list-style-type: none"> In order to undertake surrogacy, the intending couple should have a 'certificate of essentiality' and a 'certificate of eligibility' issued by the appropriate authority. The certificate of essentiality will be given if they fulfil specified conditions including possession of a certificate of proven infertility of one or both members of the intending couple from a District Medical Board. Infertility is the inability to conceive after five years of unprotected coitus or other medical condition preventing a couple from conception. The certificate of eligibility to the intending couple is issued upon fulfilment of the following conditions: (i) the couple being Indian citizens and married for at least five years; (ii) between 23 to 50 years old (wife) and 26 to 55 years old (husband); and (iii) they do not have any surviving child (biological, adopted or surrogate); this would not include a child who is mentally or physically challenged or suffers from life threatening disorder or fatal illness. The Board may prescribe additional eligibility conditions. 	<ul style="list-style-type: none"> An intending couple is one who have a medical indication necessitating gestational surrogacy. An intending woman can also commission surrogacy. Such woman must be an Indian citizen, and a widow or divorcee between the age of 35 to 45 years. The intending couple and woman must obtain a letter of recommendation from the Board, as prescribed (in addition to the certificate of essentiality, and eligibility). The certificate of essentiality will be given if the intending couple or intending woman fulfil specified conditions including possessing a certificate of the medical indication necessitating gestational surrogacy from the District Medical Board. The requirement of certificate of proven infertility has been removed. Conditions for the eligibility certificate for the intending couple have been changed to remove the five-year marriage requirement.
Eligibility to be a surrogate	<ul style="list-style-type: none"> The surrogate mother must be: (i) a close relative of the intending couple; (ii) a married woman having a child of her own; (iii) 25 to 35 years old; (iv) a surrogate only once in her lifetime; and (v) possess a certificate of medical and psychological fitness for surrogacy. The surrogate mother cannot provide her own gametes for surrogacy. 	<ul style="list-style-type: none"> The requirement of the surrogate to be a close relative of the intending couple has been removed. The 2021 Bill states that a willing woman can act as a surrogate mother. The intending couple or woman must approach the appropriate authority with a willing woman when applying for surrogacy. All other conditions remain the same.
Compensation for surrogate	<ul style="list-style-type: none"> No expenses or monetary incentive will be provided to the surrogate, except the medical expenses incurred on and the insurance coverage for the surrogate mother. Insurance is defined as an arrangement by which a company, individual or intending couple undertake to provide a guarantee of compensation for specified loss, damage, illness or death of surrogate mother during the process of surrogacy. The central government will prescribe the insurance coverage. The insurance coverage for the surrogate mother should be for a period of 16 months. 	<ul style="list-style-type: none"> The 2021 Bill provides that in addition to medical expenses and insurance, other prescribed expenses incurred on the surrogate will also be paid. The definition of insurance has been expanded to include medical expenses, health issues, and other prescribed expenses incurred on the surrogate mother during the process of surrogacy. The central government will prescribe the manner of providing such insurance as well. The insurance coverage for the surrogate mother has been extended to a period of 36 months.
Surrogacy Boards	<ul style="list-style-type: none"> The central and state government shall constitute the National Surrogacy Board (NSB) and State Surrogacy Boards respectively (SSB). Functions of the NSB include, (i) advising the central government on policy matters relating to surrogacy, (ii) laying down the code of conduct of surrogacy clinics, and (iii) supervising the functioning of SSBs. 	<ul style="list-style-type: none"> The National Surrogacy Board and State Surrogacy Boards have been renamed to the National Assisted Reproductive Technology and Surrogacy Board, and State Assisted Reproductive Technology and Surrogacy Boards, respectively. Their functions remain the same.

	Surrogacy (Regulation) Bill, 2019, as passed by Lok Sabha	Surrogacy (Regulation) Bill, 2021, as passed by Rajya Sabha
Experts in the National and State Board	<ul style="list-style-type: none"> The National and State Boards will consist of 10 expert members appointed by the appropriate government. This includes two members each from eminent gynaecologists and obstetricians or experts of stri-roga or prasuti-tantra. These expert members will have a term of one year. 	<ul style="list-style-type: none"> The 2021 Bill removes experts of stri-roga or prasuti-tantra from the list of expert members. The term of the expert members has been increased to three years.
Appropriate Authorities	<ul style="list-style-type: none"> The central and state governments will appoint one or more appropriate authorities. Functions of the appropriate authority include (i) granting, suspending or cancelling registration of surrogacy clinics; (ii) enforcing standards for surrogacy clinics; (iii) investigating and taking action against breach of the provisions of the Bill; and (iv) recommending modifications to the rules and regulations. The appropriate authority should maintain the details of registration of surrogacy clinics, cancellation of registration, renewal of registration, grant of certificates to the intending couple and surrogate mothers or any other matter pertaining to grant of license of the surrogacy clinics as may be prescribed. An appropriate authority for a state/UT will be chaired by an officer of or above the rank of the Joint Director of Health and Family Welfare Department. 	<ul style="list-style-type: none"> The appropriate authorities will be set up by the central and state government for the purposes of this Bill as well as the Assisted Reproductive Technology Act. Their functions remain the same. The National Assisted Reproductive Technology and Surrogacy Registry set up under the Assisted Reproductive Technology Act will act as the registry for the registration of surrogacy clinics. Details maintained by the appropriate authority must be submitted to the National Surrogacy Board. An appropriate authority for a state/UT will be chaired (ex-officio) by an officer of or above the rank of the Joint Secretary of the Health and Family Welfare Department. The Joint Director of Health and Family Welfare Department will be the vice-chairperson (ex-officio).
Appeals	<ul style="list-style-type: none"> The surrogacy clinic could appeal against and order of rejection of application, suspension or cancellation of registration passed by the appropriate authority to the state or central government (as the case may be). 	<ul style="list-style-type: none"> The 2021 Bill adds that the intending couple or woman can appeal against a communication relating to rejection of the certificates of recommendation, essentiality, or medical indication necessitating gestational surrogacy.
Punishment for commercial surrogacy	<ul style="list-style-type: none"> The Bill provides for punishment to intending couples and other persons for seeking aid of any surrogacy clinic or specified medical practitioners for “commercial surrogacy”. Punishment includes imprisonment for a term of up to five years, and fine of up to five lakh rupees (for the first offence). 	<ul style="list-style-type: none"> The 2021 Bill removes “commercial surrogacy” and instead penalises “not following altruistic surrogacy” for intending couples, intending women, and other persons.
Qualification of an embryologist	<ul style="list-style-type: none"> Embryologist is defined as a person with any post-graduate medical qualification in the field of human embryology recognised under the Indian Medical Council Act, 1956, or a post-graduate degree in human embryology from a recognised university with at least two years of clinical experience. 	<ul style="list-style-type: none"> The definition of an embryologist is changed to include a person who possesses any post-graduate medical qualification or doctoral degree in the field of embryology or clinical embryology from a recognised University with at least two years of clinical experience.

Sources: Surrogacy (Regulation) Bill, 2019; Rajya Sabha Debate transcript from December 8, 2021; Report of the Select Committee on the Surrogacy Bill, 2019.

¹ Report of the Select Committee on the Surrogacy Bill, 2019, February 5, 2020, https://prsindia.org/files/bills_acts/bills_parliament/2019/Select%20Comm%20Report-%20Surrogacy%20Bill.pdf.

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