



EXPLORING THE DRAFT SURROGACY (REGULATION) BILL 2016

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ABSTRACT

The Indian Council for Medical Research in 2002 had laid down favourable guidelines for surrogacy in India. In the year 2016, the Parliament passed the Surrogacy (Regulation) Bill 2016, aimed at reducing the exploitation of poor women at the hands of Infertility clinics and protecting surrogate child rights. This unprecedented Bill is a groundbreaking step taken by the Parliament towards regulating surrogacy laws in India. The Bill by banning commercial surrogacy opens floodgates for adoption and encourages women to look at employment opportunities not involving exploitation of their bodies. Further, the intending couple shall not abandon the child, born out of surrogacy procedure under any condition.

However, the proposed legislation talks about altruistic surrogacy only through a close relative. The Bill states that a couple, who already has a child either naturally or through adoption, cannot opt for surrogacy. Further it outlaws altruistic surrogacy for unmarried couples, foreigners, single parents, live in partners and homosexuals. This is a hypothetical situation where a couple who is unable to give birth has a willing relative to lend her womb without any compensation but based on kindness and noble intentions. The bill fails to provide for a precise definition of 'close relative'. This clause might coerce a woman to undertake surrogacy for relatives in the prevailing patriarchal society and also affect the privacy of the couple, the surrogate and the emotional well being of the child. Right to procreate should not depend on gender, family and sexuality and thus is in derogation of Article 14 of the Constitution by excluding people on the basis of nationality, marital status, age limit and equality. Section 377 criminalises certain types of intercourse and not identity. Surrogacy could be the only hope for LGBT community who want to parent genetically related children. The Bill requires the parents to give a 'Certificate of Essentiality' proving the infertility of either of the parents. This is in violation of Article 21 of the Constitution that restricts the personal choice of couples to choose the mode of parenthood, which is a natural and inalienable right, and requires individuals to declare a condition which is very private to them.

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A blanket ban on commercial surrogacy will not be helpful, instead it would encourage commercial surrogacy black market and result in deeper exploitation. A pragmatic solution would be to legalise commercial surrogacy but regulate it strictly. The aim of this Research paper is to analyse the provisions of the Surrogacy (Regulation) Bill 2016.

INTRODUCTION

The word ‘surrogate’ has been derived from a Latin word ‘*surrogatus*’ meaning a substitute, that is, a person appointed to act in the place of another. Thus a surrogate mother is a woman who bears a child on behalf of another woman, either from her own egg or from the implantation in her womb of a fertilized egg from other woman.

According to the **Black’s Law Dictionary**, surrogacy is defined as ‘the process of carrying and delivering a child for another person.’

The **New Encyclopedia Britannica** defines ‘surrogate motherhood’ as ‘the practice in which a woman bears a child for a couple unable to produce children in the usual way.’

The **ART** Bill has defined surrogacy as, ‘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 to her husband, with the intention to carry it to the term and hand over the child to the person or persons for whom she is acting as a surrogate’.²

The **Black’s Law Dictionary** categorizes surrogacy into two classes: ‘gestational surrogacy’ and ‘traditional surrogacy’.

Gestational surrogacy: A pregnancy in which one woman (the genetic mother) provides the egg, which is fertilized, and another woman (the surrogate mother) carries the fetus and gives birth to the child.

Traditional surrogacy: A pregnancy in which a woman provides her own egg, which is fertilized by artificial insemination, and carries the fetus and gives birth to a child for another person.

HISTORICAL BACKGROUND OF SURROGACY

In 1910 BC Hager was the first surrogate mother to the couple Abraham and Sarah suggesting it is a very ancient technique and with science and technological advancements

² Assisted Reproductive Technology (Regulation) Bill 2008.



has evolved further all over the world. Surrogacy was quite common in ancient Egypt. Many of the Egyptian Pharaohs asked their concubines to help them in producing an offspring.

The Indian mythology too is replete of surrogate incidences. In Bhagavata Purana, Vishnu heard Vasude's prayers beseeching Kansa not to kill all sons being born. Vishnu heard these prayers and had an embryo from Devaki's womb transferred to the womb of Rohini, another wife of Vasudev. Rohini gave birth to the baby Balaram, brother of Krishna, and secretly raised the child while Vasudev and Devki told Kansa that the child was born dead³. Trithankar Mahavira, was born after an embryo had been transferred from one woman's womb to another one's. Devananda, wife of a Brahmin named Rishabdeva conceived him. The gods, ingeniously, transferred the embryo to the womb of Trishala.⁴

The world's first IVF baby, Louise Brown, was born on July 25, 1978, in the UK through the efforts of Dr. Robert G. Edwards and Dr. Patrick Steptoe. The world's second and India's first IVF baby, Kanupriya, alias Durga was born 67 days later on October 3, 1978 through the efforts of Dr. Subhas Mukherjee and his two colleagues in Kolkata.⁵

INTRODUCTION OF THE BILL

From the ancient times, children are considered as a necessity for the continuation of the family lineage and a source of happiness for the parents. However due to various reasons, not all the couples are able to give birth to a child. Research has stated that one in six couples have such problems. The inability to have a child which is known as infertility in medical terms is a global problem. According to the **WHO** Report the incidence of infertility across the globe including India is around 10-15 percent⁶. The only option available to such couples was that of adoption. However with the marvel of scientific and technological advancement particularly in the field of Artificial Human Reproductive Technology (ART) has provided a range of solutions to parent a genetically related child. There are various options in ART like

³https://documen.tips/download/commercialization-of-surrogacy-in-india-a-critical-analysis-pdf_pdf

⁴ <https://surrogacy.ru/eng/history/>

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<https://books.google.co.in/books?id=QfK8AQAQBAJ&pg=PA878&lpg=PA878&dq=%22The+world%E2%80%99s+second+and+India%E2%80%99s+first+IVF+baby,+Kanupriya,+alias+Durga+was+born+67+days+later+on+October+3,+1978+through+the+efforts+of+Dr.+%22&source=bl&ots=hzbkj7ZUTW&sig=WDBovt3OCiGaOoreAaSXWopXBNw&hl=en&sa=X&ved=2ahUKEwj4eCtyJfbAhXCsY8KHBYbmD2AQ6AEwAHoECAEQJw>

⁶ (Annual Report 2008-2009 Ministry of Health and Family Welfare, Government of India available at http://monh.nic.in/FINAL_HEALTH_MINISTRY_ANNUAL_REPORT_2008_09.pdf)



artificial insemination, In-Vitro fertilization, embryo transfer etc. Among all the methods surrogacy has been widely recognized in the world.

The Indian Council for Medical Research in 2002 had laid down favorable guidelines for surrogacy in India. In **Baby Manji Yamada v. Union of India 2008**⁷ a baby was born through surrogacy to a Japanese couple. However the couple separated due to some marital problems and returned to Japan. The baby was under care of her paternal grandmother. The child was issued a birth certificate in name of her biological father. A petition was filed stating the illegality of surrogacy and lack of law on it which was challenged by the grandmother. The substantial question of law was that whether surrogacy should be treated as legal in India though there are no laws made on it. The decision went against the baby but it was appealed in the Supreme Court which held that there was no ground of filing petition in High Court as there was no question of Public Interest Litigation.

The draft bill of **Assisted Regulation Technology (Regulation) Bill, 2008**⁸ was proposed to provide for a national framework for the regulation and supervision of assisted reproductive technology and matters connected therewith or incidental thereto. Similar bills were proposed in the years 2010, 2014 and 2016.

The **228th Law Commission Report**⁹ published on 5th August 2009 focused on the need for Legislation to regulate Assisted Reproductive Technology Clinics as well as Rights and Obligations of Parties to surrogacy.

Destinations such as India became popular precisely because they offered surrogacy at bargain basement prices by paying surrogate mothers less. They offered preterm childbirth through cesarean surgeries in order to accommodate clients' availability to take time off from work. They created barriers between surrogate mothers and clients to minimize the emotional costs for clients. This allowed clients to leave India with their babies, no strings attached¹⁰.

When India first banned surrogacy for homosexual couples in 2012, various infertility businesses in Delhi continued to sign on gay clients from all over the world. Clients shipped their frozen sperm to Delhi, which was used to fertilize eggs from Indian donors. The resulting embryos, legally belonging to the gay men, were implanted into Indian surrogate

⁷ [2008] INSC 1656 (29 September 2008)

⁸ http://www.prsindia.org/uploads/media/vikas_doc/docs/1241500084~~DraftARTBill.pdf

⁹ <http://lawcommissionofindia.nic.in/reports/report228.pdf>

¹⁰ <http://theconversation.com/india-outlawed-commercial-surrogacy-clinics-are-finding-loopholes-81784>



mothers. To avoid the ban, infertility clinics then moved surrogate mothers across international borders into Nepal, where they gave birth and later the babies were picked up by the clients¹¹. This emerging trade route between Delhi and Kathmandu halted when an earthquake hit Nepal on April 25, 2015, killing 8,000 people and injuring more than 21,000. While various governments airlifted babies belonging to their citizens, the fate of the Indian mothers and how they got back home remains a mystery¹². These surrogate mothers were treated very remorselessly at the hands of clients and it is indeed an atrocious act to exploit one human to have another.

Such instances were reported not only in urban but also in rural areas all over the country. Task Force Police and District Health Officials raided Sai Kiran Hospital on Road No. 14, Banjara Hills, and found over 40 women confined within for surrogacy. Also, they unearthed several irregularities at Kiran Fertility Centre at Sai Kiran Hospital. Shockingly, there were no records of birth from surrogacy or to whom newborns were handed over. And the illegal business flourished in the heart of the city for over four years without a hitch. The hospital would pay Rs. 2.5 lakh to surrogate mothers from Hyderabad, whereas those from Delhi and other locations could get up to Rs. 3.5 lakh. The money would be paid only after successful deliveries. From the time the surrogate is hired, all through nine months, she would be confined to a room. She would be provided food and had to take complete rest. She would not be allowed to venture out. Every month, the hospital would pay between Rs. 5,000 and Rs. 10,000, while the rest would be paid only after the surrogate mother delivers the baby. Task Force Police said they identified two brokers, who were in the business of supplying prospective surrogate mothers to fertility centers by exploiting poor women. The women were drawn to surrogacy as they could get huge money in less than a year however they used to be underpaid as per the contract. “There were no proper records to indicate to whom the babies born out of surrogacy were handed over. The hospital reportedly collects a minimum of Rs. 15 lakh for the service and the price could go up to Rs. 30 lakhs depending on the status of the baby seekers. In Hyderabad, only three surrogacy units were granted permission by the State Government,” Task Force Inspector told TOI¹³.

May 2017 revealed one of the most heinous and gruesome businesses where Adivasi girls were turned into baby- making machines for as low as Rs. 4 Lakh per child. The story

¹¹ <http://theconversation.com/india-outlawed-commercial-surrogacy-clinics-are-finding-loopholes-81784>

¹² <https://qz.com/1109531/surrogate-mothers-at-risk-in-india-after-the-commercial-surrogacy-ban-is-extended/>

¹³ <https://timesofindia.indiatimes.com/city/hyderabad/rent-a-womb-scam-brewing-for-four-years/articleshow/59209793.cms>



revolves around a 15 year old Soni, an Adivasi girl from an undisclosed location in Bihar. She along with four of her friends moved out from her village in Jharkhand following which she was isolated from her friends and forced into housework in a typical Delhi home. Days later an agent took her to a new house and offered her Rs. 10,000. Soni was made to sign papers she couldn't read as they were in English, followed by a strange routine of regular check-ups at a hospital, blood tests and strange injections. There were other girls at the house, all secluded. The curtains were always drawn and the house was heavily guarded by guards, agents and other staff members and caretakers. Three months after the ultra sound, she came to terms with the fact that a baby was growing inside of her. One night, she escaped the facility and managed to reach Ranchi. Later, back at her village a male friend arranged a doctor who aborted her baby at almost four months. Later she filed a FIR concealing her pregnancy, regarding agents selling girls for money. However nobody supported her including the police. She recalled incidents where the rebellious girls at the home were caught, brought back and beaten up while still being pregnant. She later met another girl from Jharkhand who told of having given birth six times until her body gave way and earning Rs. 50000 per child.¹⁴

As a reaction to above the Committee on Health and Family Welfare was reconstituted on the 1st September, 2016 under the chairmanship of Prof. Ram Gopal Yadav, which consisted of ten members in all.¹⁵

A Bill titled '**The Surrogacy (Regulation) Bill, 2016**'¹⁶ was referred to the Committee on the 12th January, 2017 for examination and report within three months. During the course of examination of the Bill, the Committee heard the views of the Secretary, Department of Health Research (Ministry of Health and Family Welfare). Besides, the Committee also heard the representatives of Ministries of Women and Child Development, Home Affairs, External Affairs, National Commission for Women; Federation of Obstetric and Gynecological Societies of India (FOGSI), Indian Society of Assisted Reproduction (ISAR) and Indian Society of Third Party Assisted Reproduction (INSTAR). The committee also took into considerations opinions of various professionals.¹⁷

¹⁴ <https://www.outlookindia.com/magazine/story/cops-call-it-forced-surrogacy/298841>

¹⁵ https://rajyasabha.nic.in/rsnew/committee_bodies/committees_bodies_2016.pdf

¹⁶ <http://www.prsindia.org/uploads/media/Surrogacy/Surrogacy%20%28Regulation%29%20Bill,%202016.pdf>

¹⁷ https://rajyasabha.nic.in/rsnew/annual_report/2016/bill.pdf



Although commercial surrogacy had been legalized since 2002 there was no legal status given to it. With this the commercial surrogacy market flourished and today India has a thriving surrogacy market with an estimated valuation of over **2 billion USD** mainly due to low costs and procedures. However this unregulated industry will be witnessing a drastic change due to introduction of the Surrogacy Regulation Bill, 2016 aimed at reducing the exploitation of poor women and protecting surrogate child rights.

PROS OF THE BILL

1. The highlighting feature of the bill is that Surrogacy Boards on National and State level will serve as both policy making bodies and as Appropriate Authorities. The surrogacy clinics shall be registered under this Act after the Appropriate Authority is satisfied that such clinics are in a position to provide facilities and can maintain equipments and standards including specialized manpower, physical infrastructure and diagnostic facilities as may be prescribed in the rules and regulations. This measure would curb the malpractices of clinics.
2. Moreover, an order concerning the parentage and custody of the child to be born through surrogacy is to be passed by a court of Magistrate of the First Class which will act as a proper method of redressal to both the couple and the surrogate mother.
3. The bill not only ensures for an insurance coverage of reasonable and adequate amount in favor of the surrogate mother but also establishes that the terms, conditions and various other provisions of surrogacy procedure to be explained to the surrogate mother in vernacular language i.e. the one she understands and should duly sign the required documents without any coercion on part of her husband or any other relative.
4. The draft Surrogacy Bill recommends under section 3(vi) that no surrogacy clinic, registered medical practitioner, gynecologist, pediatrician, human embryologist, intending couple or any other person shall conduct or cause abortion during the period of surrogacy without the written consent of the surrogate mother and on authorization of the same by the Appropriate Authority concerned, provided that the authorization of the Appropriate Authority shall be subject to, and in compliance with, the provisions of the Medical Termination of Pregnancy Act, 1971¹⁸. This safeguards the health and safety of the surrogate mother as well as child and saves them from the whims and caprices of the controlling authorities. A control over the power in the

¹⁸ Act No. 34 of 1971



hands of the couple as well as surrogacy clinics, acts as a system of checks and balances. Provisions like such will in turn help in reducing the rate of female foeticide and pregnancy deaths.

5. By proposing a substantial amount of penalty, the act ensures that the victims are not left unaccounted for. Illegal commercial surrogacy or any matters connected thereto are punishable with imprisonment for a term which shall not be less than ten years and with fine which may extend to ten lakh rupees and shall also be held under relevant sections of Indian Penal Code¹⁹. The name of the registered medical practitioner shall also be reported by the appropriate authority to the State Medical Council concerned for taking necessary action including suspension of registration for a period of five years. The provisions of Code of Criminal Procedure, 1973²⁰ are also proposed to be made applicable to the act. Penalties so strong, definitely create a deterrence in the minds of prospective offenders and there by promise greater adherence to law.
6. The intending couple is forbidden from abandoning the child, born out of a surrogacy procedure, whether within India or outside, for any reason whatsoever, including but not restricted to, any genetic defect, birth defect, any other medical condition, the defects developing subsequently, sex of the child or conception of more than one baby and the like. At least two babies are abandoned in Delhi every day²¹. With such alarming statistics, a substantial provision is what the country needs to assure a safe future to the children.
7. The Bill by banning commercial surrogacy opens floodgates for adoption and encourages women to look at employment opportunities not involving exploitation of their bodies. By imposing such strict requirements on procurement of surrogate baby, the Bill proposes to increase the adoption rate. The In-country adoption number has come down from 5693 in 2010 to 3011 in 2015-16²². This decline could be remedied by this Bill. Further the women can opt for occupations requiring their potential and talent instead of sheer use of their bodies, which is in fact a progressive development.

¹⁹ Act No. 45 of Year 1860

²⁰ Act No. 2 of Year 1974

²¹ <https://www.firstpost.com/delhi/in-delhi-2-babies-are-abandoned-every-day-203107.html>

²² <https://factly.in/number-children-available-adoption-less-14th-demand-despite-simplification-adoption-process/>



Article 19(1) (g) of the Constitution of India²³ guarantees the freedom to practice any profession, or to carry on any occupation, trade or business subject to reasonable restriction imposed by the State under Article 19(6). Restrictions as to trade may be imposed in interest of the general public, by prescribing qualifications necessary or carrying on the trade by itself to the whole or part exclusion of the private citizens. The proposed legislation falls perfectly into the criteria of reasonable restrictions as the Surrogacy clinics are not intended to be closed down, but are proposed to be regulated strictly.

CONS OF THE BILL

1. The legislation through this bill is trying to stop the exploitation of surrogate mothers through altruistic surrogacy. The proposed legislation talks about altruistic surrogacy only through a close relative. Now, this is a hypothetical situation where a couple who is unable to give birth has a willing relative to lend her womb without any compensation but based on kindness and noble intentions. Orphans with no relatives, nuclear families unconnected to their relatives, are left unaccounted for. There are about 20 million orphans²⁴ and 172 million nuclear families²⁵ in India who are left unnoticed.
2. The bill fails to provide for a precise definition of 'close relative'. However, the definition of 'relative' has been given in two of the Indian laws namely Income Tax Act, 1961²⁶ and Companies Act, 2013²⁷. The Companies Act, 2013 defines relative as 'relative with reference to a person, means anyone who is related to another, if they are members of HUF, they are husband and wife; or they relate as Father, Mother, Son, Son's wife, Daughter, Daughter's husband, Brother, Sister.

Sushma Swaraj while addressing a press conference held that 'a close relative could include a sister, a sister-in-law or a daughter-in-law'²⁸.

It is necessary to provide for a precise definition as this, as it forms an important clause of the bill.

²³ The Constitution of India, 1949.

²⁴ <https://www.soschildrensvillages.ca/india-now-home-20-million-orphans-study-finds>

²⁵ <https://qz.com/228405/india-is-urbanizing-rapidly-but-the-nuclear-family-is-actually-shrinking/>

²⁶ Act No. 43 of 1961

²⁷ No. 18 of 2013

²⁸ <https://www.hindustantimes.com/india-news/india-proposes-ban-on-commercial-surrogacy-homosexuals-live-ins-worst-hit/story-Vb1fKz0XSJPdCT7GbympkO.html>



3. Although the Act prohibits any relative or husband from encouraging the woman to conduct surrogacy procedures on her, she might fall prey to the emotional needs and helplessness of her relatives in the prevailing patriarchal society.
4. This in turn also affects the privacy of the couple, the surrogate and the emotional wellbeing of the child, not to mention the natural bond that the surrogate mother and the child are bound to develop during gestational period of nine months. The child while growing up might constantly face his/her surrogate mother, which could create an identity crisis as well as confusion regarding the complex family ties. Gita Aravamudan, the writer of the book 'Baby Makers', based on her two-year long detailed research on commercial surrogacy in India, very pertinently points out, "It is difficult to find a surrogate within the family. A poor relation could be pressured into acting as a surrogate against her will. A child would find it emotionally very confusing to have a genetic mother and a birth mother in proximity. This surrogate could also end up not being compensated for the physical and emotional labour she has put into bearing a child for another woman. She in turn could also use emotional blackmail by claiming the child is hers²⁹."
5. The Bill requires the parents to give a 'Certificate of Essentiality' **proving** the infertility of either of the parents. This restricts the personal choice of couples to choose the mode of parenthood, which is a natural and inalienable right, and requires individuals to declare a condition which is very private to them. As it is, a considerable amount of speculation is attached to processes like adoption and surrogacy and making this condition known to the general public, the couples might invite unnecessary criticism and ridicule from the society. This could also create an impact on their professional lives and act as a loss of reputation for them.
6. The bill under section 2(g) defines couple as, 'couple means a legally married Indian man and woman above the age of 21 years and 18 years respectively.' The bill seeks to discriminate on the basis of nationality, marital status, age and sexual orientation. In order that a classification be reasonable under Article 14 of the Constitution of India the Supreme Court had held that, "In order to pass the test of permissible classification two conditions must be fulfilled viz.

²⁹ <http://www.atimes.com/altruistic-surrogacy-impossible-india/>



- i. that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others left out of the group,³⁰ and
- ii. that the differentia must have a rational relation to the objects sought to be achieved by the Act. The differentia which is the basis of the classification and the object of the Act are distinct and what is necessary is that there must be nexus between them."³¹

Thus, here, there appears no rational relation and nexus between preventing a specific class of couple that is foreigners, homosexuals; single as well as unmarried individuals from exercising their rights of reproduction through surrogacy and the object sought by the act namely the exploitation of women. It is against the rule of law as there is a refusal of genetic and familial continuity and further that of Homo sapiens. Right to procreate should not depend on gender, family and sexuality and thus violates Art 14 of the Constitution by excluding people on the basis of nationality, marital status, age and equality.

7. Section 377 of the Indian Penal Code³² criminalizes certain types of intercourse and not identity. Only heterosexuals are allowed to marry in India. It should also be taken into consideration that surrogacy is the only hope for both a single, unmarried individual and the LGBT community who want to parent genetically related children. The Government of India submitted figures to the Supreme Court in 2012, according to which, there were about 2.5 million gay people recorded in India³³. Considering that Section 377 makes sexual intercourse with persons of the same gender punishable by law, there is nothing to prevent them from having children of their own. Parenting a child and way of reproduction cannot be made a subject of politics. Sushma Swaraj on this issue held, that ‘you can say it (allowing surrogacy for homosexual couples) is looking forward and we can say this doesn’t go with our ethos³⁴.’ This shows the inattentiveness of the government towards the queer community and implies that the government is

³⁰ State of W.B. v. Anwar Ali Sarkar, AIR 1952 SC 75.

³¹ State of W.B. v. Anwar Ali Sarkar, AIR 1952 SC 75.

³² The Indian penal code, 1980

³³ <http://www.bbc.com/news/world-asia-india-17363200>

³⁴ <https://www.thequint.com/news/india/union-cabinet-surrogacy-regulation-bill-2016-sushma-swaraj-against-our-ethos-commercial-surrogacy>



unconcerned towards giving legal recognition to the LGBT community let alone their children.

Lastly, the Bill also proposes to restrict surrogacy for those couples who already have a child, biological or adopted unless the child is mentally or physically challenged or suffers from life threatening disorder or fatal illness with no permanent cure. This blatant disregard for the special children and prohibition on having a second child is definitely worrisome.

CONCLUSION

This one of its kind piece of legislation is definitely a must needed legal requirement on the Surrogacy front. By giving legal backing to the Surrogacy system, it provides for a proper redressal mechanism and thus organizes the business and attempts to eradicate malpractices on women and their exploitation. Having said that, altruistic surrogacy is extreme and entails high expectations from women without any compensation or reward but decisions based on kindness and noble intentions³⁵. The 'close relative' clause is absurd and sue to it surrogacy might remain a farfetched dream for some. A blanket ban on commercial surrogacy will not be helpful. Rather people (infertility clinics and agents) would jump through legal loopholes which would result in deeper mistreatment and exploitation of the surrogate mothers and would open floodgates for commercial surrogacy black market. History is witness to many successful surrogacy clinics with no exploitation of women and pure benefit to them. One such is Dr. Patel's Surrogacy home. India's milk capital, Anand is now converted into a surrogacy hub by Dr. Nayana Patel and her husband Hitesh, who run the Sat Kaival Hospital and Akanksha Infertility Clinic. Indian Medical Research drew up guidelines based on Dr. Patel's 2001 Baby Manji case. Until now 680 babies have been delivered here. Dr. Patel's Surrogate House is a complex of two two-storied bungalows. It allows the surrogate mothers anonymity from prying neighbors or relatives. The controlled environment provides them with nutritional food and the chance to enroll in vocational classes. Owing to this facility, Suman a surrogate mother who was earning Rs. 2000 per month by doing housework was able to build her own house and support her family. Another mother, Kaushal treated her alcoholic husband's cirrhosis and heart condition complicated by diabetes with the surrogate money. Dr. Patel is now building a 100,000 sq ft hospital on the outskirts of the city that

³⁵ <https://www.thebetterindia.com/114683/parliamentary-committees-report-surrogacy-regulation-bill/>



will accommodate would-be parents, surrogates, IVF facilities and neonatal units next to a vocational institute.³⁶

The proposed bill though having bona fide legal and moral points, fails the test of constitutionality as is against Article 14 and 21 of the Constitution. Government should consider laws that uphold surrogate mother's dignity, physical and mental wellbeing. A pragmatic solution would be to legalize commercial surrogacy but regulate it strictly keeping examples like Dr. Patel, clinic in mind. It would provide the women means to economically uplift themselves and their families with dignity and without falling into the traps of prostitution and thievery.

³⁶ <https://www.indiatoday.in/magazine/cover-story/story/20130902-surrogacy-blooming-business-in-gujarat-shah-rukh-aamir-khan-765351-2013-08-23>