BLOGS

Study the Surrogacy (Regulation) Act 2021 for CLAT PG 2022

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Introduction

Recently, the Parliament passed the Surrogacy (Regulation) Act and the Assisted Reproductive Technology (Regulation) Bill. These laws were in the loop to be passed by the Parliament for a very long time, and these intend to regulate the regime of assisted reproduction and surrogacy in India.

The Act and its Contents

The law doesn't allow commercial surrogacy, and no monetary compensation is allowed to the surrogate mother other than medical bills. The law also prescribes eligibility criteria for the intending couple and only after obtaining necessary certificates from the relevant authorities, shall they be permitted to engage a surrogate.

The requisite authorities, i.e., Boards shall be established by the Governments at the Central and State-levels. To become a surrogacy clinic, certain requirements/registrations are made to be necessary. Chapter VII of the Act also prescribes some offences and penalties for non-compliance of the Act, in addition to certain prohibitions.

The Surrogacy Act has been under criticism as well, for perpetuating limiting definitions of an "intending couple", and who can become a surrogate is also virtually restricted but to a few. Critics have questioned the constitutional validity of the law, given the expanding horizons of right of choice (especially, reproductive choice) evolved by the Courts.

A very blatant discrimination against same-sex couples (or any couple that is not heterosexual) can be noted.

Since it is a contemporary legal development, it becomes important with respect to upcoming examinations, like CLAT-PG, given that a major proportion of the Question Paper now caters to latest legal developments and judgments.

Sample Questions on Surrogacy (Regulation) Act, 2021 for CLAT PG 2022 Examination

Consider the following excerpt from Alok Prasanna Kumar's article *Denying Choice, Defying Precedent* ***[i]*** from Economic and Political Weekly.

"According to clause 4(iii)(b) of the 2021 bill, only an ever-married woman, who is a close relative of the intending couple, who is between the age of 25 and 35 as on date of implantation, and who already has a child of her own is permitted to be a "surrogate mother." Only an "intending woman" (a divorced or widowed woman between 35 and 45 years of age) or an "intending couple" are entitled to seek to have a child through surrogacy.

The term "intending couple" is defined narrowly—only a legally married man and woman above the age of 21 and 18 years of age, respectively, who have been medically certified to infertile, that is, one or both of the couple are suffering from "proven infertility." In addition, intending couples have to have been married for at least five years, not have any children through adoption, natural birth or surrogacy and be between the ages of 26 and 55 for the men, and 23 and 50 for the women.

The 2021 bill further limits the grounds on which a surrogate mother and intending couple can avail of surrogacy—it can only be availed on "altruistic grounds," that is the intending couple gives nothing more than medical expenses and insurance coverage to the surrogate mother.

While there are criminal sanctions (imprisonment and fine) on institutions, which offer commercial surrogacy, even intending couples or anyone who seek to have a child through any means that are not "altruistic surrogacy" are subject to criminal sanctions under Chapter VII of the bill.

The effect of these provisions is that even if a surrogacy clinic and a surrogate mother (who meet the conditions of the bill) were to be willing, they cannot lawfully offer surrogacy services, even altruistic surrogacy, to single people, those in a live in relationship or lesbian, gay, bisexual, transgender and queer (LGBTQ) couples, due to criminal sanction."

Sample Questions on the Surrogacy (Regulation) Act, 2021 for CLAT PG 2022

1. When did the Surrogacy (Regulation) Act, 2021 receive the assent of the President?

a. November 30, 2021

b. December 10, 2021

c. December 17, 2021

d. December 25, 2021

2. **Surrogacy in India is:**

a. Legal

b. Illegal

c. Regulated

d. None of These

3. **The key provision related to the *regulation of surrogacy and surrogacy procedures* is:**

a. Section 3

b. Section 4

c. Section 35

d. Section 5

4. **Identify the correct definition of surrogacy from among the following, as stipulated by the Act.**

a. “a practice whereby one woman bears and gives birth to a child for an intending couple with the intention of handing over such child to the intending couple after the birth”

b. “a practice whereby one woman bears and gives birth to a child for an intending couple without the intention of handing over such child to the intending couple after the birth”

c. “a practice whereby one woman offers a child for an intending couple with the intention of handing over such child to the intending couple after the birth”

d. “a practice whereby a person bears and gives birth to a child for an intending couple with the intention of handing over such child to the intending person after the birth”

5. **For which of the following purposes is surrogacy permitted?**

a. When an intending couple has a medical indication necessitating gestational surrogacy.

b. When it is only for altruistic surrogacy purposes.

c. When it is not for commercial purposes and also not for producing children for sale, prostitution or any other form of exploitation.

d. All of these.

Answer Key: 1-D, 2-C, 3-B, 4-A, 5-D

Reading Material

1. The Surrogacy (Regulation) Act, 2021[ii]
2. Key features of the Act[iii]
3. Critique of the Act[iv]
4. The Assisted Reproductive Technology (Regulation) Bill, 2021[v]

Took a lot of time reading the above passage? To improve your reading speed for CLAT Comprehension, click here.

[i] Available at https://www.epw.in/journal/2021/51/law-and-society/denying-choice-defying-precedent.html [last visited on 12.01.2021]

[ii] Available at: https://egazette.nic.in/WriteReadData/2021/232118.pdf [last visited on 12.01.2021]

[iii] Available at https://www.scconline.com/blog/post/2021/12/27/surrogacy-regulation-act-2021/ [last visited on 13.01.2021]

[iv] *See* EPW Article at *Supra note* 1

[v] Available at https://prsindia.org/files/bills_acts/bills_parliament/2020/Assisted%20Reproductive%20Technology%20Bill%2 [last visited on 12.01.2021]