



# No Legal Right on Child for Sperm/Egg Donors

Source: [TH](#)

Recently, The **Bombay High Court** ruled that a **sperm or egg donor** does not have **legal rights** over a child and cannot claim to be the biological parent.

- Surrogacy is an **arrangement in which a woman (the surrogate)** agrees to carry and give birth to a child on behalf of another person or couple (the intended parent/s).
  - A surrogate, **sometimes also called a gestational carrier**, is a woman who conceives, carries and gives birth to a child for another person or couple (intended parent/s).
- Under [the Surrogacy \(Regulation\) Act, 2021](#) a **widow or divorcee aged 35-45 or a legally married couple can avail of surrogacy** if they have a medical condition necessitating this option.
  - The intended **couple shall be legally married for at least 5 years**. Indian **man** aged **26-55 years** and a **woman aged 25-50 years**, who have no previous biological, adopted, or surrogate child.
- It also bans commercial surrogacy, which is punishable with a **jail term of 10 years and a fine of up to Rs 10 lakhs**.
- The **law permits only altruistic surrogacy**, where no money is exchanged, and the **surrogate mother must be genetically related to the intended parents**.
- Upon birth, the **child is legally recognised as the biological child of the intended couple**.

## // Understanding Surrogacy and its Regulation

### SURROGACY

- Having another woman bear a child for a couple (or single women or men) to raise.
- The surrogate offers to carry a baby through pregnancy and then return the baby to the intended parent(s) once it is born.
- Surrogacy is an option to fulfill the desire to have a child of a couple for whom it is physically or medically impossible or undesirable to carry a baby to term on their own.
- There are two types of surrogacy – traditional surrogacy and gestational surrogacy.
- In Traditional Surrogacy, a surrogate mother is artificially inseminated, either by the intended father or an anonymous donor. The surrogate mother provides the egg and is thus genetically related to the child.
- In Gestational Surrogacy, an embryo is created using an egg and sperm produced by the intended couple and is transferred into the surrogate's uterus. The surrogate has no genetic link to the child. Her eggs cannot be used to conceive the child.
- The Surrogacy (Regulation) Bill seeks to allow and regulate Gestational Surrogacy.
- Surrogacy can be altruistic or commercial. In altruistic surrogacy, the surrogate is not paid for her services, except for medical expenses and insurance. In commercial surrogacy, the surrogate is paid over and above these expenses.
- The Surrogacy (Regulation) Bill seeks to ban commercial surrogacy but protect the altruistic surrogate through enhanced, prescribed payments (for medical expenses, food and care, longer-duration insurance).

### INDICATIONS FOR SURROGACY

- Opting for surrogacy is often a choice made when women are unable to carry children on their own.
- This can be for a number of reasons, including an abnormal uterus or a complete absence of a uterus either congenitally or post-hysterectomy.
- Women may have a hysterectomy due to complications in childbirth, medical diseases such as cervical cancer or endometrial cancer, or heart and renal conditions, etc

### WHAT DO OTHER COUNTRIES DO?

- Russia, Georgia, Ukraine, Columbia, Iran, and some states of the US allow commercial surrogacy
- France, Finland, Italy, Japan, Spain, Sweden, Switzerland, Hungary, Ireland, etc. have banned all forms of surrogacy.
- India seeks a middle path between these extremes, by banning commercial surrogacy (including for foreigners) while allowing and regulating altruistic surrogacy for all persons of Indian origin.
- Australia, Canada, Israel, Netherlands, New Zealand, South Africa, UK, Vietnam, Thailand, Cambodia, Nepal, Mexico have similar surrogacy practices as India seeks to establish.

Read more: [Assisted Reproductive Technology](#)

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