

## International comparison of surrogacy laws

The Surrogacy (Regulation) Bill, 2016 proposes to regulate surrogacy in India. The Bill (i) allows altruistic surrogacy to certain Indian couples; (ii) prohibits commercial surrogacy; (iii) specifies the eligibility conditions to be fulfilled by surrogate mothers and couples intending to initiate a surrogacy procedure; and (iv) protects the rights of children born through surrogacy.

The table below compares the provisions in the Bill with surrogacy laws in various countries such as Netherlands, UK, South Africa, Greece, and Russia.

**Table 1: International comparison of surrogacy laws**

Country	India Surrogacy Bill, 2016	Netherlands	United Kingdom	South Africa	Greece	Russia
<b>Type of surrogacy allowed (altruistic or commercial)</b>	<ul style="list-style-type: none"> <li>Altruistic (Commercial surrogacy prohibited).</li> </ul>	<ul style="list-style-type: none"> <li>Altruistic (Commercial surrogacy prohibited).</li> </ul>	<ul style="list-style-type: none"> <li>Altruistic (Commercial surrogacy prohibited).</li> </ul>	<ul style="list-style-type: none"> <li>Altruistic (Commercial surrogacy prohibited).</li> </ul>	<ul style="list-style-type: none"> <li>Altruistic (Commercial surrogacy prohibited).</li> </ul>	<ul style="list-style-type: none"> <li>Commercial surrogacy allowed.</li> </ul>
<b>Payment to the surrogate</b>	<ul style="list-style-type: none"> <li>Medical expenses and insurance coverage.</li> </ul>	<ul style="list-style-type: none"> <li>Reasonable expenses related to IVF, the pregnancy, delivery, those expenses not covered by insurance, adoption, insurance and legal charges.</li> </ul>	<ul style="list-style-type: none"> <li>Reasonable expenses excluding payment for the benefit of the surrogate mother.</li> </ul>	<ul style="list-style-type: none"> <li>Medical expenses and insurance coverage;</li> <li>Any loss of earnings for the surrogate mother due to the pregnancy.</li> </ul>	<ul style="list-style-type: none"> <li>Expenses related to the pregnancy, the gestation, delivery and the post-partum period;</li> <li>Any loss of earnings for the surrogate mother due to the pregnancy.</li> </ul>	<ul style="list-style-type: none"> <li>No limit.</li> </ul>
<b>Eligibility criteria for commissioning parent(s)</b>						
<b>Requirement of being married</b>	<ul style="list-style-type: none"> <li>Yes</li> </ul>	<ul style="list-style-type: none"> <li>No (Single male/female allowed)</li> </ul>	<ul style="list-style-type: none"> <li>No (Includes intending parents living in a civil partnership or living simply as partners)</li> </ul>	<ul style="list-style-type: none"> <li>No (Single male/female allowed)</li> </ul>	<ul style="list-style-type: none"> <li>No (Single woman allowed)</li> </ul>	<ul style="list-style-type: none"> <li>No (Single woman allowed)</li> </ul>
<b>Citizenship and/or residency</b>	<ul style="list-style-type: none"> <li>Citizenship.</li> </ul>	<ul style="list-style-type: none"> <li>Citizenship.</li> </ul>	<ul style="list-style-type: none"> <li>Permanent residence.</li> </ul>	<ul style="list-style-type: none"> <li>At least one of the commissioning parents needs to be domiciled in the country.</li> </ul>	<ul style="list-style-type: none"> <li>Domicile.</li> </ul>	<ul style="list-style-type: none"> <li>No requirement.</li> </ul>
<b>Existence of a medical reason</b>	<ul style="list-style-type: none"> <li>Must prove infertility i.e. inability to conceive.</li> </ul>	<ul style="list-style-type: none"> <li>Congenital absence of a uterus or a hysterectomy and any other condition which makes it difficult for the intending mother to have a child.</li> </ul>	<ul style="list-style-type: none"> <li>No requirement.</li> </ul>	<ul style="list-style-type: none"> <li>Not able to give birth to a child and such a condition is permanent and irreversible.</li> </ul>	<ul style="list-style-type: none"> <li>Intending mother is unable (for medical reasons) to bear a child.</li> </ul>	<ul style="list-style-type: none"> <li>Gestation and birth of a child is impossible due to medical reasons.</li> </ul>

	India Surrogacy Bill, 2016	Netherlands	United Kingdom	South Africa	Greece	Russia
<i>Eligibility criteria for surrogate mother</i>						
<b>Age</b>	▪ 25-35 years.	▪ <44 years.	▪ Not specified.	▪ Not specified.	▪ Not specified.	▪ 20-35 years.
<b>Relation to commissioning parent(s)</b>	▪ Close relative.	▪ No.	▪ No.	▪ No.	▪ No.	▪ No.
<b>Requirement of being married</b>	▪ Yes.	▪ No.	▪ No.	▪ No.	▪ No.	▪ No.
<b>Number of own children</b>	▪ At least one.	▪ At least one.	▪ No requirement.	▪ At least one.	▪ No requirement.	▪ At least one.
<b>Number of times one can be a surrogate</b>	▪ Once.	▪ No restriction.	▪ No restriction.	▪ No restriction.	▪ No restriction.	▪ No restriction.
<b>Consent of the partner</b>	▪ No provision.	▪ Not required.	▪ Not required.	▪ Required.	▪ Required.	▪ Required.
<b>Legal guardian of the surrogate child</b>	▪ Intending couple.	▪ Surrogate (Transfer of guardianship through adoption)	▪ Surrogate. (Transfer of guardianship through adoption if the intending parents are genetically related to the surrogate baby; otherwise through a court order)	▪ Intending parent(s).	▪ Intending parent(s).	▪ The surrogate mother, if she has provided her egg. ▪ Intending parent(s) if surrogate mother has not provided her egg.
<b>Imprisonment for engaging in commercial surrogacy</b>	▪ Minimum 10 years.	▪ Maximum one year.	▪ Maximum three months.	▪ Maximum 10 years.	▪ Minimum two years.	▪ No provision.

Sources: A comparative study on the regime of surrogacy in EU member states, European Parliament, 2013; **India:** The Surrogacy (Regulation) Bill, 2016; **Netherlands:** Dutch Society of Obstetrics and Gynaecology guidelines; **United Kingdom:** Surrogacy Arrangements Act, 1985; **South Africa:** Chapter 19, Children's Act, 2005; **Greece:** Article 1458 of the Greek Civil Code; **Russia:** Article 51-52, Family Code, 1995; Federal Law on the Fundamentals of Protection of Citizens' Health in Russian Federation 2011; PRS.

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