

# SURROGACY LAW FACES CHALLENGE IN COURT

Relevant for: Developmental Issues | Topic: Rights & Welfare of Women - Schemes & their Performance, Mechanisms, Laws Institutions and Bodies

The trauma and fatigue of her first pregnancy coinciding with the second wave of COVID-19 last year, juggling multiple responsibilities as a new mother and a desire to resume her practice as a psychologist, are the reasons why a 31-year-old married woman wishes to “outsource” the birth of her second child and “live freely”.

She has approached the Delhi High Court, along with another male petitioner, to question why marital status, age or gender should be the criteria for prohibiting someone from commissioning a surrogacy.

Under the Surrogacy (Regulation) Act, 2021 a married couple can opt for surrogacy only on medical grounds. The law defines a couple as a married Indian “man and woman” and prescribes an age band of 23 to 50 for the woman and 26 to 55 for the man to opt for surrogacy.

The couple should not have a child of their own. Though the law allows single women to choose surrogacy, she has to be a widow or a divorcee between the age of 35 and 45. Single men are not eligible. The woman petitioner, who does not want to be identified, and Delhi-based lawyer Karan Balraj Mehta, who is a single male, have challenged in the court the surrogacy law and the Assisted Reproductive Technology (Regulation) Act, 2021 which provides a regulatory framework for surrogacy.

They have also challenged the ban on commercial surrogacy. Last week, the court sought a response from the Centre to their petition.

“My first pregnancy was not a cakewalk. No pregnancy is, but mine came after a miscarriage and during COVID-19 so it was a particularly stressful and traumatic time for me, and therefore, if I want a second child I would rather outsource it,” the petitioner told *The Hindu* on the phone. The mother of a nine-month-old says women like her who are in a marriage and medically fit should also be allowed the option of surrogacy.

She believes that a second child is “necessary for the well-being of the first child”, but the decision for her to have one is a “hard no” because the “thought of a second pregnancy scares me” and “to navigate my pregnancy, my first child, my house is just not conceivable at the moment”.

She also does not want to put off her career any more. After spending six years completing her Ph.D., she now yearns to return to her practice as a clinical psychologist. “My immediate concern is to get back to work, but if I have to go through the rigmarole of pregnancy again, you have to let go of a lot of things. ”

## Denial of choice

What agitates her is the denial of choice under the law.

“We should be able to live the way we want, have the choice to make the choices we want to. Such decisions should not be contingent on medical situation, marital status or sexuality. If you want to have a biological child, you should have the option to do it via surrogacy to live freely,” she says.

Her co-petitioner, who is a 32-year-old single man, says that the two laws deny the “freedom given to us under the Constitution to exercise our reproductive choice”.

“I have always had a deep desire to have a child of my own. Although I am not married yet, I wish to have the choice irrespective. These laws discriminate against men like me,” he says. He feels that perhaps his profession which exposes him to cases of marital discord could have played a role in his decision.

Since the news of his petition broke, he has been inundated with messages from all over the country from single men who have similar stories and say they are watching the case with bated breath. He says that under the current law, there is hardly any privacy.

“I will obviously not go to my sister or my aunt, which means I have to go looking for the right person in my extended family but discussing such an issue can be awkward.”

The law requires that the surrogate mother should be genetically related to those seeking a child as it permits only altruistic surrogacy and bans commercial surrogacy where there is exchange of money.

Mr. Balraj says he has been interested in surrogacy for a long time.

But his 82-year-old grandmother is a little worried about such reproductive choices. “What will happen to marriages,” she wonders.

[Our code of editorial values](#)

**END**

Downloaded from **crackIAS.com**

© **Zuccess App** by crackIAS.com

Crack