



Background
Guide



Orpheus MUN

SELECT COMMITTEE:
SURROGACY REGULATION
BILL, 2019

2023

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SELECT COMMITTEE

AGENDA- SURROGACY REGULATION BILL, 2019

1) LETTER FROM THE EXECUTIVE BOARD

Dear Delegates,

It is with great pleasure that we extend a warm welcome to you as you participate in the simulation of the Select Committee in Orpheus Mun 2022. The Executive Board eagerly anticipates the opportunity to learn alongside you through this committee simulation. To aid in your understanding and participation, we have provided you with this background guide. It is designed to give you a general overview of the committee and its objectives, but should not be considered as exhaustive or limiting. This guide should be viewed as a starting point for your research and exploration, rather than the endpoint. We encourage you to engage in thorough research and brainstorming and to present your findings and opinions in a clear and compelling manner. We are confident that, through your hard work and dedication, your contributions will be both informative and impactful.

If you have any questions or concerns, please do not hesitate to reach out to us. We will make every effort to respond to your inquiries promptly and satisfactorily.

Good luck!

Hoping to see you all!

Regards

Shilal Tandon

(Moderator)

Shreya Dubey

(Co Moderator)

2) INTRODUCTION TO THE COMMITTEE

2.1 Parliamentary Committees

Parliamentary Committees play a vital role in the Parliamentary System. They are a vibrant link between the Parliament, the Executive and the general public. The need for Committees arises out of two factors, the first one being the need for vigilance on the part of the Legislature over the actions of the Executive, while the second one is that the modern Legislature these days is over-burdened with a heavy volume of work with limited time at its disposal. It thus becomes impossible that every matter should be thoroughly and systematically scrutinised and considered on the floor of the House. If the work is to be done with reasonable care, naturally some Parliamentary responsibility has to be entrusted to an agency in which the whole House has confidence. Entrusting certain functions of the House to the Committees has, therefore, become a normal practice. This has become all the more necessary as a Committee provides the expertise on a matter

which is referred to it. In a Committee, the matter is deliberated at length, views are expressed freely, the matter is considered in depth, in a business-like manner and in a calmer atmosphere. In most of the Committees, public is directly or indirectly associated when memoranda containing suggestions are received, on-the-spot studies are conducted and oral evidence is taken which helps the Committees in arriving at the conclusions.

The Committees aid and assist the Legislature in discharging its duties and regulating its functions effectively, expeditiously and efficiently. Through committees, Parliament exercises its control and influence over administration. Parliamentary Committees have a salutary effect on the Executive. The Committees are not meant to weaken the administration, instead they prevent misuse of power exercisable by the Executive. It may, however, be remembered that Parliamentary control in the context of the functioning of the Committees may mean influence, not direct control; advice, not command; criticism, not obstruction; scrutiny, not initiative; and accountability, not prior approval. This, in brief, is the rationale of the Committee System. The Committees have functioned in a non-partisan manner and their deliberations and conclusions have been objective. This, in a large measure, accounts for the respect in which the recommendations of the Parliamentary Committees are held.

2.2 Select Committee

Chairman of the Select Committee on the Surrogacy (Regulation) Bill 2019 was authorised by the Committee to present the report. The Bill passed by the Lok Sabha on 5th August, 2019, was referred to the Select Committee, comprising of 23 Members of Rajya Sabha on a Motion adopted by the House on the 21st

November, 2019 for examination of the Bill and report thereon to the Rajya Sabha by the last day of the first week of the next Session. Further The committee issued a Press Release inviting memoranda/views from it.

In response to it, 54 memoranda from different organisations/associations and individuals were received. These were forwarded to the Department of Health Research for their comments.

The Committee also invited the views from the State Governments/ Governments of Union Territories and received responses from two State Governments only. The Select Committee held a total of 9 sittings for examination of the Bill.

3) INTRODUCTION TO THE AGENDA

3.1 What is surrogacy?

Surrogacy is a legal agreement in which a woman agrees to carry and give birth to a child for another person or couple, who will become the child's parent(s) after birth. Surrogacy may be sought by couples who are unable to carry a pregnancy, have medical conditions that make pregnancy dangerous, or by single men or male couples who wish to have a child. The compensation for surrogacy may or may not be involved and is known as commercial surrogacy. The legality and cost of surrogacy varies widely across jurisdictions, leading to potential international or interstate issues. Couples who seek surrogacy in a country where it is banned,

may travel to a jurisdiction where it is permitted. In some countries, surrogacy is only legal if money does not exchange hands. Where commercial surrogacy is legal, couples may use the services of third-party agencies to assist in the surrogacy process by finding a surrogate and arranging the surrogacy contract. These agencies typically screen surrogates for psychological and medical tests to ensure a healthy pregnancy and delivery and facilitate all legal matters regarding the intended parents and the surrogate.

3.2 Historical background of surrogacy

Surrogacy is not a recent development, but rather has a long history dating back to ancient times. The first recorded instance of surrogacy is believed to have occurred in biblical times, with the story of Sarah and Hagar, in which Sarah, the infertile wife of Abraham, enlisted her maid Hagar to bear a child on her behalf by convincing Abraham to sleep with her. This is considered to be the first recorded instance of traditional surrogacy. The practice of surrogacy was also common in ancient Egypt, where many Pharaohs asked their concubines to bear children on their behalf. The study of artificial insemination has been ongoing for centuries, with the first artificial insemination recorded in 1790 by Scottish surgeon and venerologist John Hunter. In 1880, the first attempt at in vitro fertilisation (IVF) was recorded in guinea pigs, and in 1891, a French scientist successfully transferred an embryo from one guinea rabbit to another. Starting in the 1920s, artificial insemination by the husband's or a selected donor's sperm became widely used in infertility treatment. The world's first IVF baby, Louise Brown, was born in the UK in 1978, and the first gestational surrogacy program was implemented in the US in 1986. Additionally, the first surrogacy program among relatives was carried out in South Africa in 1987.

3.3 Indian History of Surrogacy

Surrogacy, the practice of a woman carrying a pregnancy for another person or couple, has been present in human history for centuries. In Hindu mythology, instances of surrogacy can be found in stories such as Bhagavata Purana and Mahabharat, and they reflect the secretive nature of surrogacy practices. In Bhagavata Purana, Vishnu transferred an embryo from Devaki's womb to Rohini's to avoid the killing of all sons born, and in Mahabharat, Maharishi Vyas divided a semi-solid material into 100 pieces and planted them in different pans to produce the 100 Kauravas. Similarly, Maharishi Bhardwaj deposited his semen in a pot used for yagna to produce Dronacharya.

In 599 AD, the 24th Trithankar, Mahavira, was born after an embryo had been transferred from one woman's womb to another one's. This act was carried out by the gods and was done ingeniously. He is one of the key figures of Jain mythology. The birth of the second IVF baby in the world and the first in India, Kanupriya, alias Durga, on October 3, 1978, through the efforts of Dr. Subhas Mukherjee and his two colleagues in Kolkata, was also marked by tremendous controversy.

3.3 AIMS

A) This bill proposes to set up a National Surrogacy Board at the central level, and State Surrogacy Boards at the state level. These boards will be responsible for regulating and supervising surrogacy in the country, and

will be responsible for issuing licences to surrogacy clinics and registered surrogacy centres.

B) One of the main provisions of the bill is that it only allows "altruistic surrogacy" which means the process will be allowed only for infertile, legally married Indian couples. The bill bans commercial surrogacy, which means that a surrogate mother will not be paid any compensation other than medical expenses.

C) Additionally, the bill also lays down strict eligibility criteria for couples seeking surrogacy, and for women willing to be surrogate mothers. The bill also includes provisions for the welfare of the surrogate mother and child, such as the requirement for medical insurance for the surrogate mother and the child, and the requirement for the intended parents to maintain a "surrogacy support account" to pay for the expenses of the surrogacy.

Methods

Surrogacy is a form of assisted reproduction that can take on several forms. Genetic or partial surrogacy, also known as traditional surrogacy, involves the fertilization of the surrogate's egg through artificial insemination or natural intercourse with the sperm of the male partner of the commissioning couple. In this type of surrogacy, the surrogate mother is the genetic mother of the child and

the commissioning mother serves as the social and legal mother. Total surrogacy, on the other hand, involves the fertilization of the surrogate's egg with the sperm of a donor or the commissioning father.

Gestational or full surrogacy, also known as host surrogacy, involves the transfer of an embryo created through in vitro fertilization (IVF) using the egg and sperm of the commissioning couple or anonymous donors to the surrogate. In this type of surrogacy, the surrogate mother has no genetic link to the child.

Surrogacy can also be divided into two types based on financial compensation: altruistic surrogacy and commercial surrogacy. In altruistic surrogacy, the surrogate mother does not receive financial compensation, though the commissioning parents may cover expenses related to the pregnancy. This type of surrogacy is usually carried out among family members or close friends. On the other hand, commercial surrogacy involves financial compensation to the surrogate mother for her gestational services.

Commercialization of surrogacy in India

Commercialization Of Surrogacy

This has given rise to many questions and political debate. Critics have described the growing popularity of surrogacy arrangements as a "baby booming business" and "womb on hire." The market for surrogacy is large and is growing, with thousands of potential parents across the world seeking to hire another woman to bear their children. In India, commercial surrogacy has become a booming industry due to the availability of surrogate mothers and the lower cost compared to other countries. However, concerns have been raised about the exploitation of poor women, the possibility of a black market and baby-selling, and the lack of regulation and oversight. The rising demand for surrogacy services in India has

led to a growing number of private clinics acting as intermediaries between foreign couples and willing surrogate mothers. Childless couples from all over the world are coming to India in search of surrogate mothers, which has led to a rise of more than 150% in surrogacy cases in the past few years. The commercialization of surrogacy raises many ethical and moral questions about the use of a woman's body for profit and the potential exploitation of vulnerable individuals.

3.4 Risks related to surrogacy

Gestational surrogacy, which involves the implantation of an embryo created through in vitro fertilisation (IVF), carries the same risks as any IVF procedure. These risks include unintended epigenetic effects, potential influence of the culture media on the embryo, and potential negative consequences from invasive manipulation of the embryo. Additionally, the transfer of multiple embryos to increase the chance of implantation can result in higher risks of complications for both the surrogate and the embryos if multiple gestations occur. However, gestational surrogates have a lower chance of developing hypertensive disorders during pregnancy compared to mothers pregnant through oocyte donation, as gestational carriers tend to be healthier and more fertile. They also have low rates of placenta previa/abruptions. Research has shown that children born through singleton IVF surrogacy do not have physical or mental abnormalities compared to those born through natural conception. However, children born through multiple gestations in gestational carriers often result in preterm labour and delivery, leading to prematurity and potential physical and/or mental anomalies.

Critics

1. The bill has been criticised by some for being restrictive and not inclusive, as it excludes single persons, divorced persons, and live-in couples from accessing surrogacy services.
2. It is also criticised for not properly addressing the issue of surrogacy exploitation, and for neglecting the rights and welfare of the surrogate mothers.

It is worth noting that the Bill is not yet passed, and it is still in the process of being discussed and reviewed by the Indian parliament before it can become a law.

The proposed legislation on surrogacy in India has been criticised for preventing same-sex couples from having surrogate children, despite credible scientific research showing that same-sex parents are equally capable as heterosexual parents. This has been argued as a violation of Article 14 of the Constitution, which guarantees equality before the law. Additionally, the bill has been criticised for violating the Puttaswamy judgement of the Supreme Court, which recognized the right to privacy as a fundamental right. The eligibility criteria outlined in the bill have also been argued as an unreasonable restriction on the reproductive rights of married Indian couples, and a violation of Article 21 of the Constitution, which guarantees the right to life and personal liberty.

3.4 Challenges Ahead

According to the Statement of Objects and Reasons of the Bill as introduced in Lok Sabha, India has emerged as a Surrogacy hub for couples from different countries for the past few years.

There have been reported incidents of unethical practices, exploitation of surrogate mothers, abandonment of children born out of Surrogacy and import of human embryos and gametes.

Widespread condemnation of commercial Surrogacy in India has been regularly reflected in different print and electronic media for the last few years.

Due to lack of legislation to regulate Surrogacy, the practice of Surrogacy has been misused by the Surrogacy clinics, which leads to rampant commercial Surrogacy and unethical practices in the said area of Surrogacy. It had, therefore, become necessary to enact legislation to regulate Surrogacy services in the country, to prohibit the potential exploitation of surrogate mothers and to protect the rights of children born through surrogacy.

Moral And Ethical Issues Related To Surrogacy

The underlying idea behind surrogacy is a noble one as it is based on the altruistic principle of doing good to others i.e. one woman helping another woman. The religious texts of Hinduism and Christianity highlight the practice of surrogacy in ancient times. Some of the moral and ethical issues relating to surrogacy are as follows:

1. **Harm to Surrogate Mother-** The lack of legal regulations in India also raises concerns about the exploitation of vulnerable women who may not fully understand the implications of surrogacy, and may not have access to adequate medical care or legal protection. The absence of proper oversight and regulations also raises concerns about the potential for abuse, such as in cases of forced surrogacy or exploitation of women for financial gain. Overall, the use of surrogacy technology as a means of creating a family raises a number of ethical, legal and social issues that need to be carefully considered and addressed.

2. Interest of the Child- The practice of surrogacy, in which a woman carries and delivers a child for another individual or couple, has been the subject of ongoing ethical and moral debate. Critics have raised concerns about the commercialization of surrogacy and the potential for exploitation of women, particularly those with limited economic means. Some have likened surrogacy to prostitution, arguing that it involves the sale of a woman's reproductive capacity for monetary compensation. Others have criticised surrogacy for potentially degrading the inherent dignity of women and reducing them to "incubator or breeder machines." Additionally, concerns have been raised about the potential for the creation of "designer babies" through the selection of sex and traits, as well as the determination of parentage and custody of the child in situations where multiple adults are involved.

3. 3.Surrogacy Degrades the Dignity of Woman- Critics argue that surrogacy devalues the inherent dignity of a woman by treating her body as a commodity to be used for the sole purpose of producing a child for commissioning parents. The conditions laid out in the surrogacy contract, which the surrogate mother must abide by, are seen as a restriction on her autonomy and control over her own body. Additionally, the surrogacy process is viewed as a commercial transaction, rather than a natural bond, which can lead to the suppression or absence of the natural mother-child relationship. This, in turn, is seen as a degradation of the inherent dignity of womanhood.

4. 4.Surrogacy has been equated with Prostitution- The comparison between surrogacy and prostitution has been a topic of much debate among authors and critics. Some argue that surrogacy involves the commodification of a woman's reproductive capacity and the use of her body for financial gain, similar to the way in which a prostitute offers physical services in exchange for payment. In both cases, the individual providing the service may have little choice or control over the terms and conditions imposed by the person or entity paying for their services

5. Surrogacy has been compared to Exploitation of Poor Women- The practice of surrogacy has gained widespread popularity in India, due to the availability of affordable and high-quality medical facilities, as well as a large pool of willing surrogates who are motivated by the opportunity to earn quick money and support their families. This has led to India becoming a destination of choice for childless couples from around the world seeking to have a child through surrogacy at a fraction of the cost compared to other countries. However, this phenomenon has also been met with significant criticism, with concerns raised about the exploitation of women, neocolonialism, and the commercialization of a natural biological process.

6. Surrogacy is Playing the Role of God- The advent of medical technology has brought about a significant change in the traditional understanding of procreation and parenthood. The options available to childless couples have expanded beyond adoption and acceptance of childlessness, with the emergence of assisted reproduction techniques such as surrogacy. However, the growing use of these techniques to create babies with specific traits and characteristics has sparked ethical debates, with critics

arguing that it amounts to playing God and interfering with the natural reproductive process. This has led to moral, ethical, and religious concerns about the implications of such practices.

7. Attachment with the Gestational Mother – This can raise important legal questions in regards to the surrogate mother's level of involvement with the child post-birth. Additionally, the ethical considerations surrounding surrogacy are complex, and include questions about the rights of women to make contracts regarding the use of their bodies, the definition of motherhood, and the possibility of multiple modes of motherhood and/or recognition of multiple mothers.

8. Involvement with the Gestational Mother – There are a number of ethical concerns that have been raised in relation to surrogacy, including the legal and emotional involvement of the gestational mother with the child once it is born, as well as the societal and legal implications of allowing women to make contracts regarding the use of their bodies. Some of the other ethical issues that have been discussed include the relationship between genetic, gestational, and social motherhood and the potential for multiple modes of motherhood to be recognized. Additionally, questions have been raised about the morality of surrogacy contracts, with some comparing them to employment, prostitution, or slavery and whether or not they should be legally enforceable. There are also concerns about the state potentially forcing a woman to carry out a surrogacy contract even if it goes against her wishes, such as being forced to give birth to an embryo she would like to abort or to abort an embryo she would like to carry to term.

3.5 LEGAL ISSUES RELATED TO SURROGACY

1. Access to Surrogacy-The right to procreation is a fundamental basic human right. However the increasing use of technology raises the important question as to whether surrogacy can also be used as a right and who can avail this right? Traditionally, surrogacy is considered as the last option available for procuring a child by married infertile couples. However use of surrogacy has become a contentious issue due to the use of surrogacy by other persons also like divorced, widowed, single, same sex couples, aged, disabled who are interested in having a child. Increased use of technology by these people to beget a child would have a great impact on the social structure, meaning of family, institution of marriage and it will affect the social norms, morals and ethics in the society. Further, the use of surrogacy by aged and disabled persons will raise the issues of maintenance and welfare of the child. Therefore it is necessary to determine the criteria regarding the use of surrogacy by individuals other than married infertile couples.

1. 2 . Validity of Surrogate Contracts- The law relating to surrogacy is vague and uncertain. Different countries have different laws with respect to validity and enforceability of surrogacy contracts. Some of the countries consider these contracts as illegal while some others have their own laws for their regulation. In India, it is generally criticised that surrogacy contracts are opposed to public policy because they involve the use of womb by a woman for begetting a child to be handed over to the other party on payment of money, which is like renting a womb and selling the child. It is to be noted that a contract opposed to public policy is void

contract according to the Indian Contract Act, 1872. Thus the legality of surrogacy contracts is uncertain.

2. Child's Right to Know his Origin-

Article 7(1) of the Convention on the Rights of the Child (CRC), 1992 emphasises that a child has the right to know about his or her origin. This means that the authorities have to maintain proper records pertaining to the origin of the child. A duty is also cast on the doctors, hospitals and the parents to provide necessary information as and when required. The genetic information is necessary for diagnosing and treating certain diseases as well as to avoid consanguineous and incest marriages. It is to be noted here that, in case of surrogacy the disclosure of such information may have adverse consequences on the child as well as surrogate mother and commissioning parents. It is argued that once the child knows about the history of his or her birth, the child may go back to the genetic mother or surrogate mother as the case may be. It may also affect the child psychologically and it can cause mental harm to the surrogate mother as well as the commissioning parents. However, there is no specific law which regulates the disclosure of genetic information to the child in India. Some of the other questions which are often posed professionally are: as to what would be the remedy available to biological parent/s to obtain exclusive legal custody of surrogate children; how can the rights of the surrogate mother be waived off completely; how can the rights of the ovum or sperm donor be restricted; and how can the genetic constitution of the surrogate baby be established and recorded with authenticity.

Laws relating to surrogacy in India

The legal aspect of surrogacy varies from one jurisdiction to another jurisdiction. The international approach to surrogacy has been divided into three aspects- Free market, regulated and prohibited. Some jurisdictions completely bans surrogacy declaring commercial surrogacy as a criminal offence, while on the other hand some jurisdictions allow surrogacy on limited grounds of altruism. The law relating to surrogacy differs from one jurisdiction to another. Some jurisdictions completely bans surrogacy declaring commercial surrogacy as a criminal offence, while on the other hand some jurisdictions allow surrogacy on limited grounds of altruism. India is the only country where surrogacy is neither banned nor completely regulated. Currently there is no law in India for regulating surrogacy. As it is not directly declared as unenforceable by law, it is deemed to be enforceable and fully valid. After several years of discussion and debate, primarily among the ICMR, the National Academy of Medical Sciences, and practitioners of ART, the Ministry of Health and Family Welfare published the non-binding National Guidelines for Accreditation, Supervision & Regulation of ART Clinics in India in 2005.²¹ In the absence of any codified law as the situation exists only, in respect of surrogacy arrangements, the ordinary civil law of the land would be applicable in respect of surrogacy, also, since there is no specific law on the subject to govern such arrangements. The Indian Council of Medical Research has drafted the Assisted Reproductive Technology Bill, 2008 to regularise and legitimate different forms of reproductive technologies, including commercial surrogacy. The Law Commission of India in its 228th Report has reasoned as to why surrogacy laws are needed. The ART Bill, even though it made an effort to regulate surrogacy, has been criticised by a large number of scholars on the ground that it promotes the interest of the medico-business lobby and does not provide adequate protection to the rights of the surrogate mothers and children.

The Draft Assisted Reproductive Technology Bill and Rules 2010, is the latest draft following the incorporation of additions and modifications to the Draft of 2008. While the previous Draft was an effort to include issues concerning Assisted Reproductive Technologies (ARTs), it had several limitations, and it was expected that the new Draft would address these gaps. The present Draft with additions and modifications has tried to take into consideration some of the concerns with the previous document. While some of these are welcome changes, the Draft in its present form is far from being an inclusive document. If the proposed legislation is expected to effectively regulate the proliferating ART and surrogacy industry in India, these lacunae will have to be addressed. New Indian Medical Visa Regulations, 2012 provides that only duly married men and women with a subsisting marriage for at least 2 years will be allowed medical visas for surrogacy. According to the Assisted Reproductive Technology (Regulation) Bill, 2013 provisions, no woman less than 21 years of age and over 35 years can act as a surrogate mother. The bill for the first time, states conditions for foreign couples seeking to hire surrogates in India. The compensation for surrogacy as per the 2013 draft will be private negotiation between the surrogate mother and commissioning parents. IVF clinics or ART banks have no role to play in it. This Bill disqualifies homosexual couples, foreign single individuals and the couples in live-in-relationships from having children through surrogate mothers in India. In the present form, it is inadequate in protecting and safeguarding the rights and health of women going for IVF techniques, recruited as surrogates and children born through commercial surrogacy. It also lacks setting the standards for medical practice and completely ignores the regulation of the third party agents who play a pivotal role in arranging surrogates such as surrogacy agents, tourism operators and surrogacy home operators.

SURROGACY REGULATION BILL 2019

The Surrogacy Bill 2019, officially known as the "The Surrogacy (Regulation) Bill, 2019" is a proposed legislation in India that aims to regulate surrogacy in the country. The bill was introduced in the Lok Sabha, the lower house of the Indian parliament, in December Background

Background Of The Bill

» The Surrogacy Bill 2019 was introduced in the Lok Sabha, the lower house of the Indian parliament, in December 2019. The bill was proposed with the goal of regulating surrogacy in India, which had previously been governed by the Indian Council of Medical Research (ICMR) Guidelines of 2005.

» The need for a surrogacy bill arose due to the increasing commercialization of surrogacy in India, which led to the exploitation of surrogate mothers and other ethical issues. In addition, India had become a popular destination for foreign couples seeking surrogacy services, leading to concerns about the regulation of surrogacy clinics and the rights of all parties involved.

» The bill was proposed by the Ministry of Health and Family Welfare, and was drafted after taking into account recommendations from various government bodies and organisations, as well as feedback from the public. The bill is intended to provide a legal framework for the regulation of surrogacy in India, and aims to protect the rights and welfare of all parties involved. It is worth noting that the concept of Surrogacy in India is a sensitive topic, with a lot of debates and discussions happening at the societal and legislative level. The present bill is an attempt to balance the rights of surrogates, intended parents and the child, while also addressing the practical challenges such as exploitation and abuse

In recent years, India has become a popular destination for surrogacy among couples from other countries. However, there have been multiple reports of unethical practices, exploitation of surrogate mothers, and abandonment of

children born through surrogacy, as well as illegal activities involving intermediaries importing human embryos and gametes. These issues have led to calls for stricter laws governing surrogacy in India.

Many surrogates are poor, uneducated rural women who are persuaded by their partners or middlemen to enter into surrogacy agreements for financial gain. These women often have little control over their bodies and lives during the surrogacy process and may be moved to hostels to avoid social stigma. They may not be compensated or receive medical or psychological support in case of complications.

Due to the lack of proper legislation, both surrogate mothers and intended parents may be exploited, with only intermediaries profiting from the arrangement. The child born through surrogacy is often the most affected party, and there have been cases where the child is not genetically related to the intended parents and is abandoned.

The Law Commission of India has recognized the need for stricter laws governing surrogacy, and in its 208th report, recommended prohibiting commercial surrogacy due to concerns over exploitation and the lack of a proper legal framework

4) DEBATES AROUND SURROGACY

4.1 Viewpoints

A) For instance, the couple must be Indian citizens and married for at least five years; the wife should be between 23 to 50 years of age and the husband between 26 to 55-years-old. They must not have any surviving child (biological, adopted or surrogate). However, this would not include a child who is mentally or physically challenged or suffers from life-

threatening disorder or fatal illness. This apart, the couple must also fulfil other conditions that may be specified by regulations.

B) Another sticking point is that surrogacy remains only for the married heterosexual couples and completely excludes singles, live-in partners and same-sex couples.

4.2 Arguments and Critical Analysis

The other problem that various sections of women groups and activists have with this Bill is that the following aspects are missing from it and must be addressed.

- First, the reason for not having a common position on surrogacy as outlined in the Assisted Reproductive Technology (Regulation) Bill, 2017 is not having an integrated approach towards the use of assisted reproductive technologies.
- Second, as per the definition of “infertility”, the Bill excludes women who conceive but are unable to carry a child through the period of the pregnancy due to miscarriage, fibroids, hypertension and diabetes. In some countries like The Netherlands, South Africa and Greece medical conditions that permit altruistic surrogacy are well-defined.
- Third, the Bill includes a sub-clause for the National Surrogacy Board to define “any other condition or disease” for which surrogacy may be

allowed. For a robust implementation, the eligibility criteria should not be left to regulations but be part of the law.

- Fourth, as part of the certificate of essentiality, the Bill outlines the following conditions, a certificate of proven infertility of one or both the partners from a District Medical Board; an order of parentage and custody of the surrogate child passed by a magistrate's court. However, the Bill lacks any review or appeal procedure in case of rejection of the application.
- Fifth, the surrogate mother is required to be a close relative of the intending couple. However, the "close relative" or the nature of this relationship is not defined
- Sixth, the eligibility criterion that specifies that the couple should be married for at least five years stops the couple from deciding the size of their family as per their requirement. It's not clear that once infertility is established, why a couple should be made to wait for five years.
- Seven, the criteria of not having "been a surrogate mother earlier" cannot be monitored until there's a centralised system to record pregnancies in the country.
- Eight, the purpose of imposing a focus on "altruistic surrogacy" is an assumption that it will not be exploitative or coercive. With commercial

surrogacy, there is at least an option for stringent contract and legal provisions but it will be difficult to monitor altruistic surrogacy. There is enough evidence that families can also be exploitative towards women who may be coerced to become surrogates for close relatives. Thus, the argument that altruistic surrogacy cannot be an exploitative arrangement does not stand.

5) STANDING COMMITTEE

5.1 Report

In the Parliament on 21st of November, 2016. The Bill was referred to the Parliamentary Standing Committee on Health and Family Welfare on the 12th January, 2017. The 102nd report of the Departmental Related Parliamentary Standing Committee on Health and Family Welfare on Surrogacy (Regulation) Bill, 2016 was presented in the Rajya Sabha and simultaneously laid on the table of the Lok Sabha on 10th of August, 2017.

5.2 RECOMMENDATIONS BY STANDING COMMITTEE

a) Committee was of the view that the altruistic Surrogacy be replaced with Compensated Surrogacy and Surrogacy procedures should also be available to PIO, NRI, OCI, live in couples, divorced women and widows.

b) The Committee was of the view that limiting the practice of Surrogacy to close relatives is not only non pragmatic and unworkable but also has no connection with the object to stop exploitation of surrogates envisaged in the proposed legislation. The Committee, therefore, recommended that this Clause of “close relative” should be removed to widen the scope of getting surrogate mothers from outside the close confines of the family of the intended couple.

c) Insurance coverage for a longer period of 6 years for the Surrogate mother be provided

d)The Committee recommended prohibiting sex selective Surrogacy.

e)The Committee also endorsed the suggestion of the Ministry of Women and child Development that a surrogate mother should have an option to withdraw from the surrogacy arrangement if she chooses to do so before the start of the procedure.

f)The Committee recommended prescribing time-limit for issuing an essentiality certificate by the District Medical Board and any appeal or review procedure, in case the application for Surrogacy is rejected.

6) TRUSTED SOURCES

1. Select Committee Report <https://1drv.ms/w/s!ApjeAa5qeU-pesKNgYIpWZ46tgA>
2. Official sites Of Rajya Sabha and Lok Sabha
3. Government Published articles