



RSTV Big Picture: Surrogacy (Regulation) Bill, 2018(26December 2018)

Context

- The 'Surrogacy (Regulation) Bill', 2018 was passed recently by Lok Sabha.

Surrogacy and Surrogates mother

- Surrogacy is an arrangement, often supported by a legal agreement, whereby a woman agrees to become pregnant, carry the pregnancy to due term, and give birth to a child or children, all of this for another person or persons, who are or will ultimately become the parent of the newborn child or children.

Altruistic surrogacy

- Altruistic surrogacy refers to those surrogacy agreements where the surrogate does not receive monetary compensation.
- As per the bill, it includes contracting a 'close relative' as a surrogate by a heterosexual married couple who have been childless for five years of their marriage.

Why law on surrogacy is need of hour?

- There has been many cases of death of surrogate women associated with surrogacy.
- There has been the cases of abandoning the surrogate child by the couple.
- Problem of custody of children arises if twins/triplets are born in place of a single child.
- The surrogates are exploited by repeated impregnation without having a minimum gap between successive impregnations.
- Opaqueness in the operations of surrogacy clinics like the unethical practices, payment norms.
- 228th report of Law commission also proposed a ban on commercial surrogacy.

Provisions of the bill

- It is applicable to all the states of India except Jammu and Kashmir.
- The bill ensures regulation of surrogacy in India, prohibiting commercial surrogacy.
- It allows altruistic surrogacy to Indian married couple who cannot bear children.

BATTLE FOR THE WOMB

The Centre says it does not support commercial surrogacy, will make such exploitation of women punishable under the law, and limit the scope of surrogacy to Indian married infertile couples only, not to foreigners

What is commercial surrogacy?

A process by which an individual or couple pays a fee to a woman in exchange for her carrying and delivering a baby. At birth, the child is turned over to the individual or couple, either privately or through a legal adoption process



What is altruistic surrogacy?

A process by which a person bears a child for an infertile woman or couple without any sort of monetary gain in return

What makes India attractive for foreigners seeking a child?

- Cheaper than other countries
- Mushrooming of IVF clinics
- No regulatory framework
- Availability of willing women

Arguments against commercial surrogacy

- Womb seen as a market
- Commercial surrogates are exploited
- There are class divisions and racial divisions between surrogates, egg donors and the intended parents

Countries in which surrogacy is completely banned:

Germany, Norway, Italy, Sweden and Singapore

Countries in which only altruistic surrogacy is allowed:

Canada, New Zealand, the U.K., Greece, Denmark, some Australian states, the Netherlands



- The bill says the surrogate mother and the couple that wants to have her child must be close relatives.
- It provides for the formation of a National Surrogacy Board, State Surrogacy Boards and appointment of appropriate authorities for the regulation of the practice of surrogacy.
- The surrogate mother and the intending couple need eligibility certificates from the appropriate authority.
- The bill allows only Indian citizens to avail of surrogacy. Foreigners, non-resident Indians and persons of Indian origin are banned from seeking surrogate mothers in the country.
- Homosexuals, single parents, and live-in couples are also not allowed to have children via surrogacy in India.
- Couples that already have children will not be allowed to go for surrogacy, though they would be free to adopt children under a separate law.
- The couple adopting the child must also provide a 16-month insurance coverage for the surrogate mother including postpartum complications.

Pros of the bill

- It will help in preventing exploitation of women especially those from rural and tribal belts.
- It will improve the health of the surrogate mother as now only altruistic surrogacy is allowed and a woman can be a surrogate only once in her lifetime.
- Adoption, an underutilized option for having a child can be strengthened which would be beneficial to both prospecting parents and orphan children.

Cons of the bill

- The surrogacy business may go underground and exploitation may increase as women will not report the exploitation in fear of punishment.
- A close relative might be forced by the family to become a surrogate mother for an infertile couple in the family without her will.
- In some cases the couple may fail to find close relative as a surrogate mother, in these cases the couple will face difficulty in getting child.
- LGBT community, live-in relationship couples, single parents cannot opt for surrogacy.
- Altruism ignores physical and emotional labour of the surrogate mother, and does not take into account post-partum problems, whether mental or physical.
- Possible misuse of the act as seen in Organ transplantation where any person is paid to pretend as close relative.
- It also takes away the rights and the bodily autonomy of women who might consensually want to become surrogate mothers for some friends or like.

International Example:

- Complete ban on surrogacy in Germany, Norway, Italy, Sweden and Singapore.



- Altruistic surrogacy is allowed in Canada, UK, Australia, New Zealand, Greece, Denmark and Netherland.
- In Russia and Ukraine, surrogacy is legal.

Way forward:

- The Bill should define the term 'close relative'.
- There should be some choice given to couple who are unable to find close relatives as surrogates.
- Giving opportunity of surrogacy for single parents such as widow etc. should be given 2nd thought.
- A women involved in surrogacy is going through loss of wage and income so there must be some compensation and rewards and this not be confused with commercialization.
- Producing certificate of infertility by couple is invasion of their privacy which is against constitution.
- There should be provision of appeal for couple if their application for opting of surrogacy is rejected.

Discussion:link

https://www.youtube.com/watch?v=7UpQGxBjGFU&list=PLVOgwA_DiGzoqQsGjmamTu6f453RWpm_I&index=9