



Lok Sabha Passes Surrogacy Bill

The Lok Sabha passed Surrogacy (Regulation) Bill 2016, **banning commercial renting of wombs** and allowing only “**altruistic surrogacy**”.

- The Bill was approved by the Cabinet in August 2016. It was introduced in the Lok Sabha in November 2016 and was later referred to a parliamentary standing committee on health and family welfare in January 2017.

Key Provisions

- The Bill seeks to regulate the surrogacy part of a **flourishing infertility industry** in the country.
- It defines ‘surrogacy’ as a practice in which a woman undertakes to give birth to a child for another couple and agrees to hand over the child to them after birth.
- It allows ‘altruistic surrogacy’ — wherein **only the medical expenses and insurance coverage** is provided by the couple to the surrogate mother during pregnancy. **No other monetary consideration will be allowed.**
- It allows surrogacy for **infertile married (at least five years) Indian couples only**. The female must be **between 23 and 50 years and the male 26 and 55 years**; and they cannot 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.’
- Only a **close relative of the couple**, who is able to provide a medical fitness certificate, can be a surrogate mother. She should have been married, having a child of her own, and must be between 25 and 35 years, but can be a surrogate mother only once.
- The stated objective of the new Bill is to constitute a **National Surrogacy Board, State Surrogacy Board** and appointment of authorities for regulation of practice and process of surrogacy. In short, the law is meant to end commercial surrogacy or, as the Supreme Court had once in 2009, termed “fertility tourism” in the country

Challenges

- It does **not allow** single women or men, or gay couples to go in for surrogacy.
- Despite a similar stringent law, the Transplantation of Human Organs Act, illegal organ commerce continues to thrive. Clearly, the issue will have to be handled firmly, even as the sensitivities of people are factored in.
- Adoption of a child borne out of surrogacy: An **unhealthy child borne** out of surrogacy is often not accepted by the parents, due to the lack of legal safeguards for the child and the surrogate mother. The bill has **not addressed** this issue comprehensively.
- The **Parliamentary Standing Committee (PSC)** has rejected a blanket ban on commercial surrogacy proposed in the Bill. It said that commercial surrogacy could trigger a **black market for surrogacy** services in India.
 - The whole surrogacy service could **go underground** and it would lead to increased exploitation with no mechanism for protection of any of the parties involved in the surrogacy arrangement.
 - It could result in **trafficking of surrogate mothers** to foreign nations or safe surrogacy havens around the globe for monetary returns.
 - The provision of no monetary incentive in the proposed Bill except medical expenses can

make surrogacy **similar to “forced labour”** which is prohibited under Article-23 of the Constitution.

- Endorsing altruistic surrogacy will enforce **emotional and social pressure on close female relatives** without any compensation for immense emotional and bodily labour of gestation involved in surrogacy as well as loss of livelihood.

Why the Need for a Surrogacy Bill

- **Fertility tourism:** India has emerged as a hub for infertility treatment, attracting people from the world over with its state-of-the-art technology and competitive prices to treat infertility.
- **End exploitation:** India has emerged as a surrogacy hub for couples from different countries and there have been reports of unethical practices such as exploitation of surrogate mothers, abandonment of children born out of surrogacy and cases of intermediaries importing human embryos and gametes.
- Commercial surrogacy has been legal in India since 2002 under the **guidelines of the Indian Council of Medical Research (ICMR)**. The **Law Commission of India** had also recommended prohibiting commercial surrogacy and allowing only ethical altruistic surrogacy to the needy Indian citizens by enacting a suitable legislation.

Surrogacy

- When a couple wants a baby but is unable to have a child because either or both partners are medically unfit to conceive, another woman (surrogate mother) is **artificially inseminated** with the sperm of the father. She then carries the child full term and delivers it for the couple.
- In such a case, the **surrogate mother is the biological mother of the child**. In instances when the father’s sperm cannot be used, a donor sperm can also be used. This is traditional surrogacy.
- In **gestational surrogacy**, eggs from the mother are fertilised with the father’s/donor’s sperm and then the embryo is placed into the uterus of the surrogate, who carries the child to term and delivers it. In this case, the biological mother is still the woman whose eggs are used, while the surrogate is called the birth mother.