



## Surrogacy (Regulation) Bill 2019

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This article is based on “How to make the Surrogacy Bill more inclusive?” that appeared in The Hindu on 26<sup>th</sup> July 2019, it talks about the issues in Surrogacy (Regulation) Bill 2019.

**The Surrogacy (Regulation) Bill 2019** was introduced in the Lok Sabha with to facilitate altruistic surrogacy in the country. The government claims that regulating surrogacy will put an end to rampant commercialisation of the practice.

The commercialisation of surrogacy has left a lot of women from underprivileged backgrounds, who lend their wombs, in a vulnerable condition.

### Features of the Surrogacy (Regulation) Bill, 2019

- It provides for **constitution of surrogacy boards** at the national as well as state levels to ensure effective regulation.
- It **seeks to allow ethical altruistic surrogacy** to the intending infertile Indian married couple between the age of 23-50 years for female and 26-55 years for male.
- **Only Indian couples** who have been **legally married for at least 5 years** would be allowed to opt for surrogacy.
- It makes it mandatory for the couple to **obtain a certificate of essentiality** and also a **certificate of eligibility** before going ahead with surrogacy. It also provides that intending couples should not abandon the child born out of surrogacy under any condition.
- It also stipulates a separate eligibility criterion for the surrogate mother.
  - The surrogate must be a close relative of the intending couple and be a married woman having a child of her own.
  - She should be between the age of 25-35 years, not have been surrogate earlier and must be certifiably mentally and physically fit.
- On the legal status of a surrogate child, the Bill states that any child born out of a surrogacy procedure shall be the biological child of the intending couple.

The new born child shall be entitled to all rights and privileges that are available to a natural child.

- The Bill also **seeks to regulate functioning of surrogacy clinics**. All surrogacy clinics in the country need to be registered by the appropriate authority in order to undertake surrogacy or its related procedures.
- The Bill provides for various safeguards for surrogate mothers. One of them is **insurance coverage** for sometime to cover not only the period of pregnancy but after that also.
- It also specifies that **no sex selection** can be done when it comes to surrogacy.

## Surrogacy in India and Need for Regulation

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- **According to the Black's Law Dictionary, surrogacy means the process of carrying and delivering a child for another person.**
- Thus, a surrogate mother is a woman who bears a child on behalf of another woman, either from her own egg or from the implantation in her womb of a fertilized egg from another woman.
- **The world's second and India's first IVF (in vitro fertilization) baby, Kanupriya alias Durga was born in Kolkata on October 3, 1978.** Since then, the field of assisted reproductive technology (ART) has developed rapidly.
- Increasing infertility as a medical condition is a huge impediment in the overall well-being of couples and cannot be overlooked especially in a patriarchal society like India. Herein, surrogacy comes as a supreme saviour.
- In India, while **the parents construct the child biologically, the child constructs the parents socially.**
  - Woman in India is respected as a wife if she is the mother of a child so that her husband's masculinity and sexual potency are proved and the lineage continues.
  - That's why surrogacy in India rather being a choice but is also a compulsion in Indian society.
- **Low cost:** Surrogacy cost in India is around 1/3rd of that in developed countries like the USA.
  - This had made India a favourable destination for foreign couples who look for **cost-effective treatment for infertility** and a whole branch of **medical tourism** has flourished on the surrogate practice.
  - Citing this malpractice of "renting the womb", the government of India banned the surrogacy for foreign nationals in 2015.
- Due to all these factors surrogacy leads to **commoditization of the child**. Renting of the womb **breaks the bond between a mother and the child, interferes with nature** and in many cases leads to exploitation of both poor women and the child Born.
- **Middlemen and clinics:** Surrogates have been reported to be exploited by the agents or the middlemen. There has not been any process to monitor the clinics or any law to ensure that the mothers are not defrauded by the clinics or the intending couples.
- **Negligence and lack of care:** The surrogates mothers are not given good food or

medical treatment and postpartum care are non-existent.

### **What are the issues related to Surrogacy (Regulation) Bill 2019?**

- Currently, Surrogacy in India is legitimate because no Indian law prohibits surrogacy. **However, Surrogacy (Regulation) Bill 2019 seeks to prohibit commercial surrogacy and provide only for Altruistic surrogacy.**
- Altruistic surrogacy includes contracting a 'close relative' as a surrogate by a heterosexual married couple who have been childless for five years of their marriage. However, the Bill lacks the definition of the 'close relative'.

### **Altruistic surrogacy vs commercial surrogacy**

Commercial surrogacy involves an agreement, which includes monetary compensation to the surrogate mother along with medical expenses associated with the pregnancy. Altruistic surrogacy focuses on providing no monetary compensation to the surrogate mother

- The Bill specifies that the intending couples should be **married Indian couples**. There is no mention of Non-Resident Indians working or studying abroad who may want to come back home to have a baby.
- **Exclusionary:** The Bill leaves out a lot of people who might want to have a baby through surrogacy, **including unmarried couples, homosexual couples and single men and women.**
  - Having a child is a basic human right. **Declaration of Human Rights 1948** says, inter alia, that "men and women of full age without any limitation due to race, nationality or religion have the right to marry and found a family".
  - The Judiciary in India also has recognized the reproductive right of humans as a basic right.
  - **If the reproductive right is basic constitution right then the right to have a child through surrogacy should also be a basic constitutional right.**
- The Bill further clarifies that any form of monetary **compensation or advertising about the act of surrogacy is a punishable criminal offence.**

But due to this, the livelihood of poor women who are engaged in commercial surrogacy will get compromised.
- There is a mention of regulation on 'donor eggs' in the Surrogacy Bill, however, there is no concrete law regulating assisted reproductive technologies.
- **Due to the prevalence of clandestine ART clinic, it is hard to regulate commercial surrogacy, this accompanied by prohibited commercial surrogacy will further lead to the exploitation of women.**
- Bill also prohibits '**fashion surrogacy**' as only the couple who are infertile can opt for surrogacy.

Way Forward

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- For surrogacy to happen, we need embryos, and embryos are cultured in various In-Vitro Fertilisation (IVF) laboratories. **So regulation of surrogacy must be preceded by law on Assisted Reproductive Technology (ART).**
  - Rather than penalising surrogacy, the person providing a womb for surrogacy must be secured with a contract, ensuring proper, insurance and medical checks.
  - Right to privacy of donor as well as surrogate mother should be protected.
  - Surrogacy should be made inclusive for all class of people irrespective of their sexuality

The Surrogacy (Regulation) Bill 2019 cements the ban on commercial surrogacy, but it fails to effectively tackle the larger social, physical, psychological, emotional and economic issues that continue to challenge the welfare and safety of both the surrogate mother and the child.

Just the removal of the commercial aspects in the current surrogacy arrangements does not remove the chances of exploitation. So the rights of surrogate mother and child born must comprehensively be formulated, along with that ART must be regulated thoroughly.

### ***Drishti input***

Just the removal of the commercial aspects in the current surrogacy arrangements does not remove the chances of exploitation. Discuss the statement in the context of recently proposed Surrogacy (Regulation) Bill 2019?