

4. Surrogacy (Regulation) Bill, 2019

Prelims Level: Governance - Policies

Mains Level: GS-II Issues relating to development and management of Social Sector or Services relating to Health, Education, Human Resources.

Why in News?

- The **Rajya Sabha Select Committee on Surrogacy (Regulation) Bill, 2019** recently recommended that a **surrogate mother need not be a “close relative”**.
- It also advocated omission of the five-year time limit before seeking surrogacy.

Provisions of the Bill:

What is Prohibited?

- The Bill **prohibits commercial surrogacy, but allows Altruistic Surrogacy**.
 - ✓ **Altruistic surrogacy** involves **no monetary compensation** to the surrogate mother other than the medical expenses and insurance coverage during the pregnancy.
 - ✓ **Commercial surrogacy includes surrogacy** or its related procedures undertaken for a monetary benefit or reward (in cash or kind) exceeding the basic medical expenses and insurance coverage.

When Surrogacy is Permitted?

- Surrogacy is permitted when it is:
 - ✓ for intending couples who suffer from **Proven Infertility**;
 - ✓ altruistic;
 - ✓ not for commercial purposes;
 - ✓ not for producing children for sale, prostitution or other forms of exploitation; and
 - ✓ for any condition or disease specified through regulations.
- The intending couple should have a **‘certificate of essentiality’** and a **‘certificate of eligibility’** issued by the appropriate authority.

When the Certificate is Issued?

- A certificate of essentiality will be issued upon fulfilment of the following conditions:
 - ✓ a certificate of proven infertility of one or both members of the intending couple from a District Medical Board;
 - ✓ an order of parentage and custody of the surrogate child passed by a Magistrate’s court; and

- ✓ Insurance coverage for a period of 16 months covering postpartum delivery complications for the surrogate.
- The certificate of eligibility to the intending couple is issued upon fulfillment of the following conditions:
 - ✓ the couple being Indian citizens and married for at least five years;
 - ✓ between 23 to 50 years old (wife) and 26 to 55 years old (husband);
 - ✓ they do not have any surviving child (biological, adopted or surrogate); this would not include a child who is mentally or physically challenged or suffers from life threatening disorder or fatal illness; and
 - ✓ Other conditions that may be specified by regulations.

What are the Eligibility Criteria for Surrogate Mother?

- To obtain a certificate of eligibility from the appropriate authority, the surrogate mother has to be:
 - ✓ a close relative of the intending couple;
 - ✓ a married woman having a child of her own;
 - ✓ 25 to 35 years old;
 - ✓ a surrogate only once in her lifetime; and
 - ✓ Possess a certificate of medical and psychological fitness for surrogacy. Further, the surrogate mother cannot provide her own gametes for surrogacy.

What is the function of Appropriate Authority?

- The central and state governments shall appoint one or more appropriate authorities within 90 days of the Bill becoming an Act.
- The functions of the appropriate authority include;
 - ✓ granting, suspending or cancelling registration of surrogacy clinics;
 - ✓ enforcing standards for surrogacy clinics;
 - ✓ investigating and taking action against breach of the provisions of the Bill;
 - ✓ Recommending modifications to the rules and regulations.
- Surrogacy clinics cannot undertake surrogacy related procedures unless they are registered by the appropriate authority.
- Clinics must apply for registration within a period of 60 days from the date of appointment of the appropriate authority.

What is the function of the Surrogacy Boards?

- The central and the state governments shall constitute the National Surrogacy Board (NSB) and the State Surrogacy Boards (SSB), respectively.
- Functions of the NSB include, (i) advising the central government on policy matters relating to surrogacy; (ii) laying down the code of conduct of surrogacy clinics; and (iii) supervising the functioning of SSBs.

What is the procedure for the Parentage and abortion of surrogate child?

- A child born out of a surrogacy procedure will be deemed to be the biological child of the intending couple.
- An abortion of the surrogate child requires the written consent of the surrogate mother and the authorisation of the appropriate authority.
- This authorisation must be compliant with the Medical Termination of Pregnancy Act, 1971.
- Further, the surrogate mother will have an option to withdraw from surrogacy before the embryo is implanted in her womb.

What are the Offences and penalties?

- The offences under the Bill include:
 - ✓ undertaking or advertising commercial surrogacy;
 - ✓ exploiting the surrogate mother;
 - ✓ abandoning, exploiting or disowning a surrogate child; and
 - ✓ Selling or importing human embryo or gametes for surrogacy.
- The penalty for such offences is imprisonment up to 10 years and a fine up to 10 lakh rupees.
- The Bill specifies a range of offences and penalties for other contraventions of the provisions of the Bill.

What are the recommendations of the committee?

- The major changes recommended by the Committee include
- It recommended that a **surrogate mother need not be a “close relative”**.
- It also advocated omission of the five-year time limit before seeking surrogacy.
- allowing single women (widow or a divorcee and Persons of Indian Origin) to avail of surrogacy,

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- Increasing insurance cover for the surrogate mother from the 16 months proposed in the Bill to 36 months.

Why such Recommendations Needed?

- Requiring the surrogate mother to be a “close relative” potentially restricts the availability of surrogate mothers, affecting genuinely needy persons.
- Deleting the definition of “infertility” as “the inability to conceive after five years of unprotected intercourse” is because it is too long a period for a couple to wait for a child.
- However the Surrogacy (Regulation) Bill, 2019 is yet to be passed by the Rajya Sabha.

