

Surrogacy (Regulation) Bill, 2020

March 3, 2020

Source: *The Hindu*

Manifest pedagogy: Surrogacy has been a long debated topic in India. The ethicality of borrowing a womb the moral and legal complexities surrounding it have always been matters of concern. The surrogacy regulation bill tries to regulate the practice of Surrogacy by banning practices like womb hiring. It tries to establish a delicate balance between Rights of Infertile couple and the Human rights of Surrogate mothers.

In news: Union Cabinet approved the Surrogacy (Regulation) Bill after incorporating recommendations of a Rajya Sabha Select Committee.

Placing it in syllabus: Health

Dimensions:

- Changes made to the old bill
- Global practice
- Importance of the changes

Content: Surrogacy is an arrangement where a woman (the surrogate) offers to carry a baby through pregnancy on behalf of a couple, and then return the baby to the intended parent(s) once it is born.

The Surrogacy (Regulation) Bill, 2019, was passed by the Lok Sabha on August 5, 2019. The Rajya Sabha, in its meeting held on November 21, 2019, adopted a motion to refer the bill to a Select Committee.

Changes made to the old bill by the select committee:

- It **allows any “willing” woman** to be a surrogate mother. (2019 bill had proposed that only a close relative of a couple can be a surrogate mother).
- **Deleting the definition of “infertility”** as the inability to conceive after five years of unprotected intercourse on the ground that it was too long a period for a couple to wait for a child.
- It proposes to regulate surrogacy by establishing a **National Surrogacy Board at the central level and State Surrogacy Board** and appropriate authorities in states and Union Territories respectively.
- The proposed **insurance cover** for surrogate mothers has now been **increased to 36 months from 16 months** provided in the earlier version.
- **Commercial surrogacy will be prohibited** including sale and purchase of human embryo and gametes.
- Only ethical surrogacy to **Indian married couples, Indian-origin married couples and Indian single woman** (*only widow or divorcee between the age of 35 and 45 years*) will be allowed on fulfilment of certain conditions.

Global practice on Surrogacy:

- In the **United States and Argentina**, surrogacy requests are decided by independent surrogacy committees.
- In the **United Kingdom, Denmark, South Africa, Australia, Canada and Greece**, only altruistic surrogacy is allowed.
- Commercial surrogacy is legally allowed in countries like **Russia, Ukraine, and Thailand**.
- In **France, Germany, Spain, Sweden, Italy and Iceland**, surrogacy is banned in all forms.

Importance of the changes:

The practice of surrogacy has persisted in India without any legal framework, working only on the basis of vague guidelines. Now with the changes in the bill, a **regulatory**

framework will be adopted to monitor surrogacy.

In recent times, **unethical practices** including the **exploitation of surrogate mothers, abandonment of children born out of surrogacy and the import of human embryos and gametes** have been reported. Many poor women in India took to becoming surrogate mothers repeatedly despite grave implications to their health.

With the banning of commercial surrogacy and with the provision of insurance for 36 months, the exploitation of surrogate mothers will be checked as well as there will be improvements in their health.

((**Law commission in its 228th report (2009)** had recommended that surrogacy be regulated through suitable legislation. The Law Commission had recommended that only altruistic surrogacy be legalised and commercial surrogacy be totally banned)).

Restricting the surrogate mother to a “close relative” potentially affected the availability of surrogate mothers. Now with the new bill, a “willing woman” shall act as a surrogate mother.

Now widows and divorced women can also benefit from the provisions, besides infertile Indian couples.

Hence the Surrogacy (Regulation) Bill, 2020 is an **ethical, moral and social legislation** as it protects the reproductive rights of a surrogate mother as well as protects the rights of the child born through surrogacy.