

# **SURROGACY**

January 1, 2019

## **Manifest Pedagogy**

Legislations in news become highly relevant for exam. The Parliamentary sessions of a year and so and the important bills passed even by a single house stand higher chances of being asked in the exam.

### **In news**

Lok Sabha passes Surrogacy Bill

### **Placing it in the syllabus**

1. Indian Society : Social Empowerment
2. Indian Polity :
  - Government policies and interventions for development in various sectors and issues arising out of their design and implementation.
  - Issues relating to development and management of Social Sector/Services relating to Health, Education, Human Resources.

### **Static Dimensions**

1. Problems related to surrogacy in India

### **Current Dimensions**

1. Surrogacy Bill – 2018 provisions
2. Criticisms
3. Solutions

# Surrogacy Bill

## Problems associated with surrogacy in India

- **Health related problems:** There are several health related problems faced by surrogates such as risk in assisted reproductive technology, psychological impact on the surrogate, genealogical bewilderment (it refers to the identity problems that are experienced by a child who was either fostered, adopted or conceived through surrogacy )and surrogate mother is treated as a biological commodity, as a place to protect child for money.
- **Gender selection:** Gender selection itself is illegal in India but if the intending parents do not get the desired sex then in many cases surrogate mother are either left with the baby or they get poor remuneration as compared to previously decided.
- **Emotional risks of surrogacy :** In addition to the gender selection, there are sometimes emotional challenges for potential surrogates to consider. While pregnancy in itself can be a difficult process, some women find surrogacy to be more emotionally challenging because, at the end, they will not be going home with the child they have lived with for nine months.
- The **citizenship and legal status** of the children resulting from surrogacy arrangements can be problematic.
- **Ethical issues:** It seems not to be ethical for someone to create a human life with the intention of relinquishing it.
- **Rights of the surrogate mother are not protected** and regulated by law in India and it is easy to exploit her.
- **The surrogates are recruited from rural villages and most ladies being poor and illiterate**
- **A surrogate mother in India is largely unaware of existing legal or medical procedures** and the risks

involved in the process. She is the lowest rung of the surrogacy chain and remains the most vulnerable.

## **Provisions of the Surrogacy (Regulation) Bill, 2016**

- The Bill defines surrogacy as a practice where a woman gives birth to a child for an intending couple and agrees to hand over the child after the birth to the intending couple.
  - Regulation of surrogacy: 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.
  - **The bill provides purposes for which surrogacy is permitted:** Surrogacy is permitted when it is, (i) for intending couples who suffer from proven infertility; and (ii) altruistic; and (iii) not for commercial purposes; and (iv) not for producing children for sale, prostitution or other forms of exploitation.
  - **The bill also provides eligibility criteria for intending couple:** The intending couple should have a 'certificate of essentiality' and a 'certificate of eligibility' issued by the appropriate authority.
1. **A certificate of essentiality** will be issued upon fulfilment of the following conditions: (i) a certificate of **proven infertility** of one or both members of the intending couple from a District Medical Board; (ii) an order of parentage and custody of the surrogate child passed by a Magistrate's court; and (iii) insurance coverage for the surrogate mother.

- **The certificate of eligibility** is issued upon fulfilment of the following conditions by the intending couple:
  - Indian citizens and are married for at least five years;
  - Between 23 to 50 years old female and 26 to 55 years old male;
  - 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. Other conditions may be specified by regulations.
  
- **Eligibility criteria for surrogate mother:** To obtain a certificate of eligibility from the appropriate authority, the surrogate mother has to:
  - (i) be a **close relative of the intending couple**;
  - (ii) be an **ever married woman having a child of her own**;
  - (iii) be 25 to 35 years old; (iv) be a **surrogate only once in her lifetime**; and (iv) possess a certificate of medical and psychological fitness for surrogacy.
- **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.
- **It provides for registration of surrogacy clinics:** Surrogacy clinics cannot undertake surrogacy related procedures unless they are registered by the appropriate authority.
- **National and State 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,

- advising the central government on policy matters relating to surrogacy;
  - laying down the code of conduct of surrogacy clinics; and
  - supervising the functioning of SSBs.
- **Offences and penalties:** The Bill states the following offences:
- 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 Bill specifies a range of offences and penalties for other contraventions of the provisions of the Bill and initiating commercial surrogacy.

## **Criticisms**

- The Bill permits surrogacy only for couples who cannot conceive a child. This procedure is not allowed in case of any other medical conditions which could prevent a woman from giving birth to a child.
- The Bill specifies eligibility conditions that need to be fulfilled by the intending couple in order to commission surrogacy. Further, it allows additional conditions to be prescribed by regulations. This may be a case for excessive delegation of legislative powers.
- The surrogate mother and the intending couple need eligibility certificates from the appropriate authority. The Bill does not specify a time limit within which such certificates will be granted. It also does not specify an appeal process in case the

application is rejected.

- The surrogate mother must be a 'close relative' of the intending couple. The Bill does not define the term 'close relative'. Further, the surrogate mother (close relative) may donate her own egg for the pregnancy. This may lead to negative health consequences for the surrogate baby

## **Solutions**

- There is a strong need to modify and make the adoption procedure simple for all. This will bring down the rates of surrogacy. *To protect surrogate mothers and children, it is necessary to provide a legal framework that restricts the exploitation of surrogates and their children, and penalize those who do not honor contracts.*

## **Test Yourself : Mould your thoughts**

Enumerate the provisions of the Surrogacy (Regulation) Bill, 2018. Briefly explain criticisms against it.