

## Surrogacy Regulation Bill [UPSC Notes for GS I]

### Surrogacy Regulation Bill

#### Context

- Recently Surrogacy (Regulation) Bill was passed in Lok Sabha.
- There are ethical concerns surrounding this issue that has been rekindled due to the passage of the bill.
- The Surrogacy (Regulation) Bill, 2019 was introduced by the Minister of Health and Family Welfare in Lok Sabha on July 15, 2019. It was passed in Lok Sabha on August 5, 2019.

#### Analysis of the Surrogacy (Regulation) Bill

- The Bill defines surrogacy as a practice in which a woman gives birth to a child for an intending couple with the intention of handing over the child after birth to the intending couple.
- The Bill bans commercial surrogacy, but it does allow altruistic surrogacy. Altruistic surrogacy does not involve monetary compensation to the surrogate mother other than the medical expenses and insurance coverage during the course of the pregnancy. Commercial surrogacy is surrogacy or such related procedures undertaken for a monetary reward or benefit (in cash or in kind) apart from the basic medical expenses and insurance coverage.
- Surrogacy is allowed when it is: (i) for intending couples who suffer from proven infertility; (ii) altruistic; (iii) not for commercial purposes; (iv) not for producing children for sale, prostitution or other forms of exploitation; and (v) for any disease or condition specified through regulations.
- The intending couple should have the following issued by the appropriate authority:
  - Certificate of essentiality
  - Certificate of eligibility
- A **certificate of essentiality** will be issued if the following conditions are fulfilled:
  - A certificate of proven infertility of 1 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 sixteen months that cover postpartum delivery complications for the surrogate mother.
- The **certificate of eligibility** to the intending couple will be issued upon fulfilment of the following conditions:
  - The couple should be Indian citizens and married for at least 5 years;
  - the wife should be between 23 and 50 years old and the husband should be between 26 and 55 years old;
  - The couple does 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.
- 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 with her own child;
  - 25 to 35 years old;
  - A surrogate only once in her lifetime; and
  - Having a certificate of medical and psychological fitness for surrogacy.
  - Further, the surrogate mother cannot offer her own gametes for surrogacy.
- Surrogacy clinics can undertake surrogacy procedures only if they are registered by the appropriate authority. Clinics must apply for registration within sixty days from the date of appointment of the appropriate authority.
- The central government shall constitute the National Surrogacy Board (NSB) and the state governments shall constitute the State Surrogacy Boards (SSB).
- Functions of the NSB include the following:

- Advising the union govt. on policy matters relating to surrogacy;
  - Establishing a code of conduct for surrogacy clinics; and
  - Supervising the functioning of SSBs.
- The offences under the Bill include: (i) undertaking or advertising commercial surrogacy; (ii) exploiting the surrogate mother; (iii) abandoning, exploiting or disowning a surrogate child; and (iv) selling or importing human embryo or gametes for surrogacy. The penalty for such offences is imprisonment up to ten years and a fine up to ten lakh rupees. The Bill also specifies a range of offences and penalties for other contraventions of its provisions.

### Concerns

- A UN-backed study conducted in July 2012 put the surrogacy business at over \$400 million with more than 3000 fertility clinics all over the country. Foreign nationals, who want to escape tough surrogacy laws in their own countries, come to India in search of poor vulnerable women, who can be used for renting their wombs to produce a baby for a petty amount of money very easily in the absence of regulations. The global surrogacy trade has become embroiled in many scandals.
- This regulation tries to put an end to some of the problems related to surrogacy. However, concerns remain that due to these regulations a black market might be created of willing women who may not have received approval from any appropriate authority.