

"A Select Committee has given its report on the Surrogacy Regulation Bill, recommending that surrogacy should not be restricted to close relatives. A look at the provisions and journey of the Bill since 2016."

In a recent report, a Select Committee of Parliament has recommended that the contentious clause limiting surrogacy only to "close relatives" be removed from the Surrogacy (Regulation) Bill, 2019, to make the benefits of modern technology more easily available to infertile couples. A look at the genesis of the Bill, its provisions and why the current report could signal some progressive amendments in the Bill:

What are the provisions of the Surrogacy (Regulation) Bill?

The Surrogacy Bill proposes to allow altruistic ethical surrogacy to intending infertile Indian married couples in the age groups 23-50 years (women) and 26-55 years (men). The couple should have been legally married for at least five years and should be Indian citizens. They cannot have a surviving child, either biological or adopted, except when they have a child who is mentally or physically challenged or suffers from a life-threatening disorder with no permanent cure. The Bill has already been scrutinised once earlier by the Standing Committee on Health and Family Welfare. It requires surrogacy clinics to be registered, and national and state surrogacy boards to be formed, and makes commercial surrogacy, and abandoning or disowning a surrogate child punishable by imprisonment up to 10 years and a fine up to Rs 10 lakh.

It was first mooted in 2016 in the wake of repeated reports of exploitation of women who were confined to hostels, not provided adequate post-pregnancy medical care and paid a pittance for repeatedly becoming surrogate mothers to supplement family income.

What changes has the Select Committee suggested?

The Select Committee chaired by BJP Rajya Sabha MP Bhupender Yadav recommended that the "close relatives" clause should be removed, and any "willing" woman should be allowed to become a surrogate mother provided all other requirements are met and the appropriate authority has cleared the surrogacy. It has strongly backed the ban on commercial surrogacy.

It has also recommended that divorced and widowed women aged between 35 and 45 years should be able to be a single commissioning parent, and the need for a five-year waiting period for childless married couples could be waived if there is a medical certificate that shows that they cannot possibly conceive. It has recommended that persons of Indian origin should be allowed to avail surrogacy services.

The committee has not, however, recommended expanding the definition of commissioning parent to include singles, either men or women. This means people like Tusshar Kapoor, Karan Johar and Ekta Kapoor, all from the entertainment industry, would still not qualify for using the surrogacy route for children. All of them have already used that route.

The Select Committee also recommended that the ART Bill (which deals with assisted reproductive technologies) should be brought before the Surrogacy (Regulation) Bill, 2019, so that all the highly technical and medical aspects could be properly addressed in the Surrogacy (Regulation) Bill, 2019.

What is the ART Bill?

The Assisted Reproductive Technology (Regulation) Bill has been in the making since 2008. It aims to regulate the field through registration of all IVF clinics and sperm banks, segregation of ART clinics and gamete banks etc. It also requires national and state boards to be established for the purpose of regulation of the fertility market.

The Select Committee report says: “Surrogacy is a part and parcel of Assisted Reproductive Technology (ART) and hence the Surrogacy Bill should come into force only after the enactment of ART Bill. Bringing Surrogacy Bill before the ART will be irrelevant and also create duplication of Boards. Suggestions have been received to incorporate Surrogacy Bill within the ART Bill as proposed earlier in the draft ART Bill.” The Standing Committee on Health and Family Welfare, too has “strongly recommended” to the government that the two Bills should be brought together and not in isolation.

How big is India’s surrogacy market?

Ballpark estimations by the Indian Council of Medical Research (ICMR) put it around 2,000-odd babies per year through commercial surrogacy — when a woman is paid an agreed sum for renting her womb. CII figures say surrogacy is a \$2.3-billion industry fed by a lack of regulations and poverty.

What happened the last time the Bill was scrutinised by a parliamentary panel?

The Bill was earlier scrutinised by the Parliamentary Standing Committee on Health and Family Welfare. That committee had recommended that compensation should be the norm and the word “altruistic” should be replaced with “compensated”. Couples — including those in live-in relationships — should be allowed to choose surrogates from both within and outside the family. Altruistic surrogacy, it observed, is tantamount to exploitation.

The “close relative” condition is open to misuse in a patriarchal setup, the committee had observed. “Given the patriarchal familial structure and power equations within families, not every member of a family has the ability to resist a demand that she be a surrogate for another family member. A close relative of the intending couple may be forced to become a surrogate which might become even more exploitative than commercial surrogacy.” Those recommendations were not accepted by the government.

So, the Select Committee has made a recommendation that the government has rejected earlier?

As in the case of the Standing Committee, the government is free to accept or reject the recommendations of the Select Committee. Many who have criticised the original Bill as archaic, however, are hopeful that the Bill may finally see some progressive amendments.

Bhupender Yadav, who chaired the Select Committee that made these recommendations, has been part of several other crucial Parliamentary Committees, including the Joint Committee on Insolvency and Bankruptcy Code, 2015, Select Committee of Rajya Sabha on the Constitution (One Hundred and Twenty Third Amendment) Bill, 2017, Select Committee of Rajya Sabha on the Enemy Property (Amendment and Validation) Bill, 2016, Select Committee on the GST Bill etc.

Expected Questions (Prelims Exams)

Q. Consider the following statements.

1. Under the Assisted Reproductive Technology (Regulation) Bill 2008, IVF clinics and sperm banks are registered.
2. On abandoning a surrogate child includes imprisonment for 10 years and fine of up to Rs 5 lakh.

Which of the above statements is / are correct?

- (a) Only 1 (b) Only 2
(c) Both 1 and 2 (d) None of these

Note: Answer of Prelims Expected Question given on 10 Feb., is 1 (b)

Expected Questions (Mains Exams)

Mention the relevance of the new recommendations of the Parliamentary Committee on Surrogacy Regulation Bill in the context of the major provisions of the bill. (250 words)

Note: - The question of the main examination given for practice is designed keeping in mind the upcoming UPSC main examination. Therefore, to get an answer to this question, you can take the help of this source as well as other sources related to this topic.

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