



# What is Altruistic Surrogacy?

This article is related to General Studies-  
Paper II ( Governance).

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**"India has to be wary of the kind of exploitation it is fostering."**

What is an altruistic surrogacy arrangement? According to the new Surrogacy (Regulation) Bill, approved by the Lok Sabha last week, it includes contracting a 'close relative' as a surrogate by a heterosexual married couple who have been childless for five years of their marriage. This line, in gist, separates altruism from the commercial tinge that surrogacy carries with it.

How is an act of selflessness translated into thinking about a pregnancy that is aimed towards relinquishing the child to a close relative? In the U.K., laws on surrogacy allow only altruistic arrangements where the surrogate can be paid only 'reasonable expenses'. The fluidity in defining reasonable expenses means that this should ideally include payment for medical treatment, and in-vitro fertilisation (IVF) but may include other 'expenses'. In most of Australia, altruistic surrogacy entails restricted — in different parts of the world, varying levels of legal restrictions, or complete bans are practised — pre-approved payments to the surrogate, including for diet during the pregnancy, and/or for the medical treatment. However, altruism also entails the provision that the surrogate is the legal mother of the child, which can be transferred to the parents through a legal process, including adoption. In many countries in Europe, the act of gestation defines motherhood, even though the egg used for the pregnancy through IVF may belong to the couple entering the arrangement.

## Role of the surrogate

As per the new Surrogacy Bill, the surrogate in India continues to fulfil her role as a gestate. In keeping with the insistence on gestational surrogacy, which makes the use of IVF and other assisted reproductive technologies mandatory, the current Bill is faithful to the Indian Council of Medical Research's Draft Assisted Reproductive Technology (Regulation) Bill, 2010. The latter has governed the practice of surrogacy till the Surrogacy Bill of 2016 banning commercial surrogacy comes into effect. Motherhood did not belong to the surrogate; she was trained to think of herself as a gestate, as research by Amrita Pande suggests, and the relinquishment of the child was an absolutely essential clause within the draft bills on commercial surrogacy, and in practice in the surrogacy contract.

The commercial surrogacy arrangement in India was an exchange of money for services: and yet, clinics and surrogacy agents went to great lengths to transform the commercial element of the surrogacy arrangement, primarily identified as the surrogate's fees, into gift-giving, and sacrifice. That motherhood could be for sale is a matter of distress and shock.

In that sense, altruistic surrogacy is not very different from its opposite commercial variant. Unlike the U.K., altruism in India is being defined through the tie of kinship, not through the exchange of payment for 'services rendered'. Here, kinship and family hide the commercial element entailed in seeking a surrogate from among close relatives. Thus, much of the criticism against the Surrogacy Bill in Parliament points toward the lack of definition that the category of the 'close relative' carries.

## A parallel

Let's look at the Transplantation of Human Organs Act (THOA), 1994, as a parallel to the conversation on altruism and its linkages with commercial surrogacy. The Act prescribes that organ donors are allowed to donate their organs before death only to 'near relatives'. Donating organs to 'strangers' or not near relatives before death is not allowed, and may be approved of only through the authorisation committee. The category of the 'near relative' appears again in a similar vein to the 'close relative'. But unlike the Surrogacy Bill, the THOA identifies 'near relatives' as 'spouse, son, daughter, father, mother, brother or sister'. It's a closed group of relatives — within the structure of the nuclear family unit — members who may not be eligible to be surrogates, unfortunately.

In my research, IVF specialists found the mother and sister of the infertile woman to be perfect as gestational carriers. In 2004, in Gujarat, Nayana Patel, who later became famous for her surrogacy clinic in Anand, facilitated the surrogate pregnancy of a 43-year-old woman seeking to help her childless daughter and son-in-law to have a child of their own. Yet, the women belonging to the father-to-be's family, such as his sister and mother as surrogates, carried associations with incest (even though gestational surrogacy is facilitated through technological interventions).

## Word of caution

By banning commercial surrogacy in favour of its altruistic avatar, the identification of 'close relatives' will take



on a murky turn. Just like in the case of organ donation, wherein 'strangers' were dressed up as 'near relatives', in altruistic surrogacy too, similar negotiations may be entered into. In an overtly patriarchal society, women are always at the receiving end of ostracism and exploitation. In facilitating altruistic surrogacy among close kin, we have to be wary of the kind of exploitation we are fostering.

Despite exempting gay couples, single men and women, and live-in couples from seeking surrogacy, not clearly defining the regulative mechanisms within altruistic surrogacy, and the very regressive approval for couples with differently-abled children to opt for surrogacy, the Bill does seek certain important changes. The push towards adoption is very welcome, as is the waiting period of five years. The popularity of IVF and other assisted reproductive technologies stems from a problematic conceptualisation of infertility itself, pushing couples to opt for invasive intervention within a year of unprotected coitus. Of importance now is to go back to understanding why and how the desire for children is socially mediated to help couples seeking surrogates, and vice versa.

**GS World Team...**

**Surrogacy (Regulation) Bill -2013**

**Why in the discussion**

- Recently, the Lok Sabha passed the Surrogacy (Regulation) Bill, 2013.
- In this Bill, provision has been made to prevent surrogacy related to commercial purposes in the country, prevent abuse of surrogacy, and to ensure disadvantaged couples attain child happiness.

**What is it?**

- Surrogacy means - rental womb. The progress of reproductive science has made it possible for the couples and other people to get natural child, who can not have their children due to some reasons.
- From this, the concept of 'surrogate mother' has originated. Surrogacy is a method of supporting breeding. Gestational surrogacy is its most common form. In this method, surrogate children are to genetically related father and surrogate mother.
- Apart from this, the surrogate children in in-vitro fertilization (IVF) are fully linked to socially recognized parents.

**Why is needed?**

- India has emerged as a surrogacy center for couples from different countries and exploitation of surrogate mothers, abandonment of children born with surrogacy, and unethical activities related to intermediaries racket related to purchase and sale of human embryos and chromosomes.
- In the 228th report of the Law Commission of India, it has also been recommended to set up appropriate laws and to ban commercial surrogacy and allow for ethical and philanthropic surrogacy for the needy Indian citizens.

**Objective**

- The objectives and reasons for the bill have been stated that in the last few years, India has emerged as the center of surrogacy for couples from different countries.

- Women of age 23 to 50 years and men of age 25 to 55 years of age (Indian married couple) who can not have child an retort to ethical surrogacy.
- The concerned couple should be legally married for at least five years and should be an Indian citizen for surrogacy procedures.
- The offspring of the surrogacy will not be abandoned in any situation and it will get the same rights as the biological born child.
- The surrogate mother should be close relative to the disadvantaged couple and should be married beforehand. Such a woman will be allowed to become a surrogate mother only once.
- Any person, organization, clinic and lab will not advertise any type of surrogacy.
- There will be prevention of childhood through surrogacy For the fashion and figure.

**Other key points**

- Those couples who want to choose the option of the surrogacy have to give an infertility certificate within 90 days.
- Rights of children born with surrogate mother and surrogacy will also be safe.
- Under the most vigorous provision of this bill, the ban on 'commercial surrogacy' and the convenience of disadvantaged couples in families has been kept in mind.
- NRI couples have been included in this bill, but there is no provision for foreign nationals.
- There are many clinics going on across the country which have become the hub of commercial surrogacy, but it will be stopped after the passage of the bill.
- 'Close Relative' has been clearly defined.
- Those who violate the rules have been given a jail term of up to 10 years and a fine of up to Rs 10 lakh.
- This bill will be applicable to entire India except the state of Jammu and Kashmir.



**Expected Questions (Prelims Exams)**

1. Consider the following statements-
1. The law of surrogacy only provisions for altruistic surrogacy in united kingdom.
  2. Surrogacy bill approves both commercial and altruistic surrogacy in India.

Which of the above statements is/are correct?

- (a) Only 1                      (b) Only 2  
(c) Both 1 and 2            (d) Neither 1 nor 2

**Expected Questions (Mains Exams)**

**Q.1:-**Elucidating the concept of altruistic surrogacy, explain how will it be beneficial for India? **(250 Words)**

**Note: Answer of Prelims Expected Question given on 22 Dec. is 1(b).**

