

Issues for Consideration: The Surrogacy (Regulation) Bill, 2016

The Surrogacy (Regulation) Bill, 2016 was introduced in Lok Sabha on November 21, 2016.¹ Some issues in the Bill are presented below:

1. Purpose for conducting surrogacy procedure and eligibility criteria of intending couples may be further specified through regulations

Clause 4 (ii) of the Bill: *no surrogacy or surrogacy procedures shall be conducted, undertaken, performed or availed of, except for the following purposes, namely: -*

- (a) *when either or both members of the couple is suffering from proven infertility;*
- (b) *when it is only for altruistic surrogacy purposes;*
- (c) *when it is not for commercial purposes or for commercialisation of surrogacy or surrogacy procedures;*
- (d) *when it is not for producing children for sale, prostitution or any other form of exploitation; and*
- (e) *any other condition or disease as may be specified by regulations made by the Board.*

Clause 4 (iii)(c) of the Bill: *An eligibility certificate for intending couple is issued by the appropriate authority on fulfilment of the following conditions, namely: -*

- (I) *the age of the intending couple is between 23 to 50 years for the female and between 26 to 55 years for the male;*
- (II) *the intending couple are married for at least five years and are Indian citizens;*
- (III) *the intending couple have no surviving child (biologically or adopted or surrogate); with the exception of a child who is mentally or physically challenged or suffers from a life threatening disorder, as certified by a District Medical Board;*
- (IV) *such other conditions as may be specified by the regulations.*

Clause 48(a) of the Bill: *The National Surrogacy Board with the prior approval of the central government may make regulations to provide for the fulfilment of any other condition under which the eligibility certificate for intending couples may be issued by the appropriate authority.*

Issue: Clause 4 of the Bill specifies the purposes for which a surrogacy procedure may be undertaken and the eligibility conditions that need to be fulfilled by the couple intending to commission a surrogacy. Further, the Bill allows the National Surrogacy Board to specify (i) other condition or disease as grounds for allowing a surrogacy procedure, and (ii) other eligibility conditions that need to be fulfilled by the couple intending to commission a surrogacy procedure.² It could be argued that the qualifying conditions for surrogacy should be specified in the Bill and not be delegated to regulations.

2. 'Close relative' not defined

Clause 4 (iii)(b)(II) of the Bill: *No person, other than a close relative of the intending couple, shall act as a surrogate mother and be permitted to undergo surrogacy procedures as per the provisions of this Act.*

Issue: The Bill specifies various conditions that need to be fulfilled by a surrogate mother in order to be eligible for a surrogacy procedure. Upon fulfilling these conditions, the surrogate mother may obtain an eligibility certificate from an appropriate authority appointed by the government. One of the conditions to be proved by the surrogate mother is that she is a 'close relative' of the intending couple who commissions the surrogacy. However, the Bill does not define the term 'close relative'.

3. Review process for application of for surrogacy not specified

Issue: The Bill specifies that in order to initiate a surrogacy procedure, the surrogate mother and the couple intending to commission the surrogacy are required to obtain certificates of eligibility and essentiality from the relevant appropriate authorities at the centre or state. However, the Bill does not specify a time period by which the appropriate authority will grant these certificates.

Further, the Bill does not specify a review or appeal procedure in case the application for the certificates is rejected.

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1. The Surrogacy (Regulation) Bill, 2016,
[http://www.prsindia.org/uploads/media/Surrogacy/Surrogacy%20\(Regulation\)%20Bill.%202016.pdf](http://www.prsindia.org/uploads/media/Surrogacy/Surrogacy%20(Regulation)%20Bill.%202016.pdf).
 2. Clause 4(ii)(e) and 4(iii)(c)(IV) of the Surrogacy (Regulation) Bill, 2016.

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