

Select Committee Report Summary

The Surrogacy (Regulation) Bill, 2019

- The Select Committee on the Surrogacy (Regulation) Bill, 2019 (Chairperson: Mr. Bhupender Yadav) submitted its report on February 5, 2020. Key observations and recommendations of the Committee are:
 - **Commercial vs. altruistic surrogacy:** Surrogacy is the practice where one woman carries the child for another with the intention of handing over the child after birth. The Bill prohibits commercial surrogacy and allows altruistic surrogacy. Altruistic surrogacy involves no compensation to the surrogate mother other than the medical and insurance expenses related to the pregnancy.
 - The Committee recommended a surrogacy model based on compensation rather than altruistic surrogacy. The compensation must take care of the losses suffered by the surrogate mother in terms of health and wages. The Committee observed that surrogacy has been considered as an economic opportunity by the women from economically weak backgrounds. By banning commercial surrogacy, the Bill ignores the fact that altruistic surrogacy is also exploitative.
 - In this regard, the Committee recommended that surrogacy could be classified on the basis of the specific intention with which a woman agrees to be a surrogate mother. The intention could be to either: (i) render a paid service and make money, or (ii) do it for altruistic reasons.
 - **Implications of the surrogate being a ‘close relative’:** Under the Bill, the surrogate can only be a ‘close relative’ of the intending couple. The Committee noted that the criteria of being a ‘close relative’ potentially restricts the availability of surrogate mothers and may affect persons in genuine need. It recommended deleting the definition of ‘close relative’ and allowing any willing woman to act as a surrogate mother.
 - **Five year waiting period:** Under the Bill, the intending couple can undertake a surrogacy arrangement following the inability to conceive after five years of unprotected coitus or other medical conditions preventing conception. The Committee observed that the requirement of a five year waiting period is too long particularly in conditions like absent uterus, removal of uterus due to cancer, fibroids, and medical conditions where normal pregnancy is ruled out.
- In this context, the Committee recommended removing the definition of infertility from the Bill and the five year waiting period. It recommended that any couple who have a medical condition (could be either or both members of the couple) which necessitates gestational surrogacy, should be allowed to undertake surrogacy. Gestational surrogacy is a practice where a surrogate mother carries a child for the intending couple through implantation of embryo in her womb and the child is not genetically related to the surrogate mother.
- **Persons who can avail surrogacy services:** The Bill limits the option of surrogacy to legally married Indian couples, with certain age restrictions. The Committee noted that this overlooks other sections of the society who may want a surrogate child. It recommended that the eligibility criteria be widened to include women who are widows or divorcees, and between the age of 35 to 45 years. It recommended that intending couples of Indian origin should also be allowed to undertake surrogacy.
- **Insurance cover:** The Bill provides for 16 months of insurance coverage to a surrogate mother. The Committee recommended extending this to 36 months.
- **Appeals:** In order to initiate a surrogacy procedure, the surrogate mother and the intending couple are required to obtain certificates of eligibility and essentiality upon fulfilling various conditions from the relevant appropriate authorities. However, the, the Bill does not specify a review or appeal procedure in case the surrogacy applications are rejected. The Committee recommended that the intending couple or the surrogate mother can file an appeal with the state government within 30 days from the rejection of the surrogacy application.
- **Assisted Reproductive Technology (ART) Bill:** The Committee noted that surrogacy clinics include centres and labs conducting ART services such as in-vitro fertilisation. In this context, it recommended that the ART Bill should be introduced before the Surrogacy (Regulation) Bill, 2019. This will allow addressing all the highly technical and medical aspects in the Surrogacy (Regulation) Bill, 2019.

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