

Standing Committee Report Summary

The Surrogacy (Regulation) Bill, 2016

- The Standing Committee on Health and Family Welfare (Chairperson: Prof. Ram Gopal Yadav) submitted its report on the Surrogacy (Regulation) Bill, 2016 on August 10, 2017. Key observations and recommendations of the Committee are summarised below:
- **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 several things including the wages lost during the pregnancy, psychological counselling, and post-delivery care. The Committee noted that there is potential for exploiting poor women who become surrogates due to the lack of regulatory oversight and legal protection. However, it also noted that the economic opportunities available to surrogates through surrogacy services should not be dismissed entirely. It further stated that under altruistic surrogacy, permitting women to provide reproductive labour for free without them being paid is unfair and arbitrary.
- **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 altruistic surrogacy by close relatives will always be out of compulsion and coercion, and not because of altruism. Such an arrangement within the family may have: (i) detrimental psychological and emotional impact on the surrogate child, (ii) parentage and custody issues, and (iii) inheritance and property disputes. The Committee recommended that the criteria of being a ‘close relative’ should be removed to allow both related and unrelated women to become surrogates. Further, the Committee recommended that the Bill must unambiguously state that the surrogate mother will not donate her own eggs for the surrogacy.
- **Persons who can avail surrogacy services:** The Bill limits the option of surrogacy to legally married Indian couples. 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 and include live-in couples, divorced women, and widows. Further, this facility must be extended to Non-Resident Indians, Persons of Indian Origin, and Overseas Citizen of India card holders but not to foreign nationals.
- **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 recommended that the definition of ‘infertility’ in the Bill should be as per WHO’s definition where it is the inability to conceive after at least one year of unprotected coitus. The Committee observed that the requirement of a five year waiting period violates the right to reproductive autonomy.
- **Gamete (sperm and egg) donor:** Under the Bill, intending couples can commission a surrogacy only by proving infertility. Thus, gametes from the couple may not be a possibility due to infertility. In such cases, the gametes will be required to be donated by others. The Committee noted that there is no mention of an egg or sperm donor in the Bill. It recommended that the provision for gamete donation must be incorporated in the Bill.
- **Abortion:** Under the Bill, the approval of the appropriate authority (appointed by the central or state government) is required to undertake an abortion during the surrogacy. The Committee recommended a review of this requirement considering the existence of the Medical Termination of Pregnancy Act, 1971 which regulates abortions. Further, it noted that time is crucial in medical emergencies during pregnancy. In such cases, there may not be enough time to seek permission from an authority for performing an abortion to save the life of the surrogate mother.

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