

GREAT EXPECTATIONS: ON SURROGACY BILL

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It is a truth, universally acknowledged, that surrogacy needs to be regulated by law. There is no argument about whether an issue such as surrogacy fraught with bioethical issues aplenty requires regulation: it does. The Surrogacy (Regulation) Bill, 2019, should have come a long time ago. Regulations in the past in the area of child adoption and transplantation of human organs have, historically, borne fruit, effectively putting an end to rampant commercial transactions, and providing a structure by which any excursions outside of the law may be shut down. Flagrant violations of human rights have been witnessed repeatedly in the 'baby-making factory' in India, the underprivileged woman often in the cross hairs, and at the bottom of the pile. The plethora of unregulated assisted reproductive techniques (ART) clinics that mushroomed, coinciding with India becoming a global health-care destination, ensured that there was a good volume of traffic toward the country, besides growing domestic demand for surrogacy services. In this context, there is expectation that the Surrogacy Bill will regulate commercial surrogacy, while allowing an altruistic form of it to continue, by putting in place strict supervisory and regulatory frameworks. The question here is whether the Bill, recently passed by the Lok Sabha, will serve the wholesome purpose of regulating the vastly complex area of surrogacy, while sensitively balancing the needs of 'intending parents' and surrogates.

The Bill mandates payment to the surrogate mother, who can only be a 'close relative', to the extent of covering medical expenses and providing insurance during the term of the pregnancy. It has specified that 'exploiting the surrogate mother' would attract punishment of imprisonment of up to 10 years and a fine of up to 10 lakh; advertising for surrogacy and selling/importing human embryos or gametes for surrogacy also attract the same punishment. It has mandated registration of surrogacy clinics, and put in place regulatory boards to ensure compliance with the law. But its critics have panned it for the lack of specifics in definitions (the generalised 'close relative' criterion for surrogates); the exclusion of various groups of people from access to surrogacy (only married couples of a certain age group are eligible); and primarily, of trying to put the 'cart before the horse' by seeking to regulate surrogacy before setting the ART house in order. The capacity of the state to end commercial surrogacy may itself be compromised if it does not first set up a regulatory framework for ART clinics, which provide the basic technology for surrogacy. Else, the government is merely setting itself up to implement a law that may spectacularly fail. That would be a tragedy, because this is one law that is pregnant with the possibility of truly revolutionising the surrogacy sector, cleaning it up, and fulfilling the dreams of people who are themselves unable to bear children.

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