

## RESPECTING REPRODUCTIVE CHOICE

Relevant for: Developmental Issues | Topic: Rights & Welfare of Women - Schemes & their Performance, Mechanisms, Laws Institutions and Bodies

It is unfortunate that the Surrogacy (Regulation) Bill, 2019, approved by the Cabinet, bans and criminalises commercial surrogacy and only allows altruistic surrogacy. The Bill stipulates that a surrogate mother has to be a 'close relative' of the intending couple.

The legislation shows that the government is eager to impose a certain morality on others as the Bill excludes gay couples, single men and women, and unmarried couples who want a child. In doing so, the government overlooks the needs of many same sex couples and single parents.

In its earlier form, the Surrogacy Bill was cleared by the Lok Sabha on December 19, 2018. It was passed after a short debate of just two hours among only nine members of Parliament. It could not be introduced in the Rajya Sabha, however. At that time, the Health Minister, J.P. Nadda, said various political parties supported the Bill which was drafted "keeping the Indian ethos in mind". He said the "intention is to save the family" and if the family is not able to bear children, to help them bear children through facilities offered by modern science. A family, according to the Minister, consists of "a registered husband and wife." The 228th Law Commission India Report on Commercial Surrogacy too strongly recommended prohibiting commercial surrogacy. However, it said that "prohibition on vague moral grounds without a proper assessment of social ends and purposes which surrogacy can serve would be irrational."

How did the the Health Ministry conclude that that all forms of commercial surrogacy are suspicious? If it relied on or conducted studies on commercial surrogacy, it would be helpful if it shared these with the public, especially since this Bill, if it becomes law, could affect the chances of many couples in India who are desperate for children and whose only ray of hope is often commercial surrogacy. Is there an inventory of clinics offering commercial surrogacy services? If yes, did the health inspectors carry out inspections? Should there be a charter of regulations that these clinics must follow? Many questions remain unanswered.

The legislation allows surrogacy only through a close relative. However, the Bill doesn't define 'close relative'. Moreover, the surrogate, the Bill says, should be married, aged 25 to 35, and should have at least one child. This further brings down the number of eligible surrogate mothers.

Votaries of the ban have argued that commercial surrogacy is used for trafficking, and foreigners abandon children born through surrogates. Such violations should be addressed with an iron fist. However, has there been a comparison between the number of cases of misuse and those cases where families have benefited from surrogacy? Other practices are misused too, but they are all not banned.

The focus should be on the well-being of the surrogate. The intending couple should ensure financial enumeration, a sound insurance cover and regular health check-ups for the surrogate. The relevant parts of the process should be legally documented. To impose a ban where better regulation may have sufficed will only take the entire process underground. Tightening regulations would respect the interests of infertile couples who might have a chance to have a child through surrogacy. That would also respect the woman's choice about how she wants to bear a child.

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