Issues in Altruistic Surrogacy Arrangement

What is the issue?

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- Lok Sabha has approved the Surrogacy (Regulation) Bill. Click here to know more.
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- The contracts a ‘close relative’ as a surrogate by a heterosexual married couple who have been childless.
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What is Surrogacy (Regulation) bill?

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- Surrogacy is the practice where a woman agrees to give birth to a baby (usually by artificial insemination or surgical implantation) on behalf of another couple.
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- Surrogacy (Regulation) Bill seeks to put an end to commercial surrogacy - payment to a surrogate mother is punishable by up to 5 years imprisonment.
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- The Bill allows only altruistic surrogacy (by relatives) for married couples.
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- It allows surrogacy to intending infertile Indian married couples between the ages of 23-50 (female) and 26-55 (male).
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- It limits the option to only legally married childless couples who have been trying for a child for at least 5 years.
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- The commissioning couple cannot have a surviving child, either biological or adopted.
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- But this is except when they have a child who is mentally or physically challenged or suffers from a life-threatening disorder with no permanent cure.
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- The Bill also has safeguards built in against sex selection of the baby and also requires all surrogacy clinics to be registered.
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- Clinics can charge for these services but the surrogate mother cannot be paid.
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- The national and state surrogacy boards will be the regulating authorities.
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What is the significance of altruistic surrogacy across globe?

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- In the U.K., laws on surrogacy allow only altruistic arrangements where the surrogate can be paid only ‘reasonable expenses’.
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- The fluidity in defining reasonable expenses means that this should ideally include payment for medical treatment, and in-vitro fertilization (IVF) but may include other ‘expenses’.
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- In most of Australia, altruistic surrogacy entails restricted — in different parts of the world, varying levels of legal restrictions, or complete bans are practiced — pre-approved payments to the surrogate, including for diet during the pregnancy, and/or for the medical treatment.
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- However, altruism also entails the provision that the surrogate is the legal mother of the child, which can be transferred to the parents through a legal process, including adoption.
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- In many countries in Europe, the act of gestation defines motherhood, even though the egg used for the pregnancy through IVF may belong to the couple entering the arrangement.
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What is the emphasis of altruistic surrogacy in India?

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- As per the new Surrogacy Bill, the surrogate in India continues to fulfil her role as a gestate.
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- In keeping with the insistence on gestational surrogacy, which makes the use of IVF and other assisted reproductive technologies mandatory.
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- The current Bill is faithful to the Indian Council of Medical Research's Draft Assisted Reproductive Technology (Regulation) Bill, 2010.
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- The latter has governed the practice of surrogacy till the Surrogacy Bill of 2016 banning commercial surrogacy comes into effect.
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- Motherhood did not belong to the surrogate; she was trained to think of herself as a gestate, and the relinquishment of the child was an absolutely essential clause within the draft bills on commercial surrogacy, and in practice in the surrogacy contract.
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- The commercial surrogacy arrangement in India was an exchange of money for services: and yet, clinics and surrogacy agents went to great lengths to transform the commercial element of the surrogacy arrangement, primarily identified as the surrogate's fees, into gift-giving, and sacrifice. That motherhood could be for sale is a matter of distress and shock.
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What are the issues with the bill?

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- In India altruistic surrogacy is not very different from its opposite commercial variant.
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- Unlike the U.K., altruism in India is being defined through the tie of kinship, not through the exchange of payment for 'services rendered'.
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- Here, kinship and family hide the commercial element entailed in seeking a surrogate from among close relatives.
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- Thus, much of the criticism against the Surrogacy Bill in Parliament points toward the lack of definition that the category of the 'close relative' carries.
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- But unlike the Surrogacy Bill, the Transplant of Human Organs Act identifies 'near relatives' as 'spouse, son, daughter, father, mother, brother or sister'.
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- It's a closed group of relatives within the structure of the nuclear family unit members who may not be eligible to be surrogates, unfortunately.
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- By banning commercial surrogacy in favor of its altruistic avatar, the identification of ‘close relatives’ will take on a cloudy turn.
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What are the challenges in taking up altruistic surrogacy?

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- In India just like in the case of organ donation, wherein ‘strangers’ were dressed up as ‘near relatives’, in altruistic surrogacy too, similar negotiations may be entered into.
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- In an overtly patriarchal society, women are always at the receiving end of ostracism and exploitation.
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- In facilitating altruistic surrogacy among close kin, government has to be wary of the kind of exploitation which is fostering.
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- Despite exempting gay couples, single men and women, and live-in couples from seeking surrogacy, the bill fails to define the regulative mechanisms within altruistic surrogacy.
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- With very regressive approval for couples with differently-abled children to opt for surrogacy, the Bill does seek certain important changes.
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- The popularity of IVF and other assisted reproductive technologies stems from a problematic conceptualization of infertility itself, pushing couples to opt for invasive intervention within a year of unprotected coitus.
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Source: The Hindu

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