The Surrogacy (Regulation) Bill

What is Surrogacy?

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When an another woman carries and gives birth to a child for a couple who want to have a baby but are unable to do so, because of infertility or some other problem, it is called surrogacy. This has been in the grey legal area in India.

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What is the need for the bill?

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- In 2002, India became the first country to legalise commercial surrogacy.
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- By 2012, India had become the ‘surrogacy capital’ of the world with surrogacy tourism valued at approximately $500 million annually.
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- Surrogate mothers practice it as a way of earning livelihood and are often abused.
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- Legal issues also emerge
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- e.g In 2008, a Japanese couple began the process with a surrogate mother in Gujarat, but before the child was born they split and there were no takers for the child.
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- In 2012, an Australian couple commissioned a surrogate mother, and arbitrarily chose one of the twins that was born.
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- So the 228th report of the Law Commission of India recommended prohibiting commercial surrogacy.
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What is the aim of the bill?

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- It aims to prevent exploitation of women, especially those in rural and tribal areas.
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- It prohibits couples who already have biological or adopted children from commissioning babies through surrogacy.
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- It ensures parentage of children born out of surrogacy is “legal and transparent.”
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What are the features of the Bill?

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- The bill was introduced in Lok Sabha in November 2016.
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- There is a ban on commercial surrogacy.
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- Commercial surrogacy will result in a jail term of at least 10 years and a fine of up to Rs 10 lakh.
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- The commissioning couples should be Indians, should have been married for at least five years and should have ‘proven infertility’ are candidates.
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- Only a married blood relative to the commission parents can be a surrogate mother. She must have herself borne a child, and should not be a NRI or a foreigner,
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- Under no circumstances money shall be paid to her, except for medical expenses.
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- She can be a surrogate only once in her lifetime.
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- Overseas Indians, foreigners, unmarried couples, single parents, live-in partners and gay couples are barred from commissioning the services of surrogate mothers.
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- In essence, the Bill limits the practice of surrogacy to heterosexual Indian couples who have been married for five years, have no children, and are able

to persuade a relative to become a surrogate altruistically for them.
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- The Bill will apply to the whole of India, except Jammu and Kashmir.
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What are the shortcomings?

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- Disqualifying on the basis of nationality, marital status, sexual orientation or age, is against the **right to equality**.
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- The **right to life** includes the right to reproductive and right to parenthood. So the state should not decide the modes of parenthood
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- Sudden interruption would just push the $400 million industry underground. Thus the very purpose of the bill- to protect surrogate mothers from exploitation would be defeated.
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- Fertility specialists and attached business would suffer.
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- Commissioning mothers, who are carrying a child, would be left in a limbo.
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- Restricting only a blood relative to be a surrogate mother is illogical and unreasonable.
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