What's in ART and Surrogacy Bills?

Why in news?

Lok Sabha has passed the Assisted Reproductive Technology Regulation Bill, 2020 after the Surrogacy (Regulation) Bill, 2019.

What is the Surrogacy (Regulation) Bill, 2019 about?

- The Bill defines surrogacy as a practice where a woman gives birth to a child for an intending couple with the intention to hand over the child after the birth to the intending couple.
- **Regulation of surrogacy** - The Bill prohibits commercial surrogacy, but allows altruistic surrogacy
- Altruistic surrogacy involves no monetary compensation to the surrogate mother other than the medical expenses and insurance coverage during the pregnancy.
- **Purposes for which surrogacy is permitted** - Surrogacy is permitted when it is:
    - For intending couples who suffer from proven infertility
    - Altruistic
    - Not for commercial purposes
    - Not for producing children for sale, prostitution or other forms of exploitation
    - For any condition or disease specified through regulations
- **Eligibility criteria for intending couple -** The intending couple should have a 'certificate of essentiality' and a 'certificate of eligibility' issued by the appropriate authority.
- **Eligibility criteria for surrogate mother**: To obtain a certificate of eligibility from the appropriate authority, the surrogate mother has to be
    - A close relative of the intending couple
    - A married woman having a child of her own
    - 25 to 35 years old
    - A surrogate only once in her lifetime
    - Possess a certificate of medical and psychological fitness for surrogacy
- **Appropriate authority**- The central and state governments shall appoint

one or more appropriate authorities within 90 days of the Bill becoming an Act.

- **Registration of surrogacy clinics** - Clinics must apply for registration within a period of 60 days from the date of appointment of the appropriate authority.
- **National and State Surrogacy Boards** - The central and the state governments shall constitute the National Surrogacy Board (NSB) and the State Surrogacy Boards (SSB), respectively.
- **Parentage and abortion of surrogate child** - A child born out of a surrogacy procedure will be deemed to be the biological child of the intending couple.
- An abortion of the surrogate child requires the written consent of the surrogate mother and the authorisation of the appropriate authority in compliant with the Medical Termination of Pregnancy Act, 1971.
- **Offences and penalties** - The penalty for offences is imprisonment up to 10 years and a fine up to 10 lakh rupees.

What is the Assisted Reproductive Technology (Regulation) Bill, 2020 about?

- The Bill defines ART to include all techniques that seek to obtain a pregnancy by handling the sperm or the oocyte (immature egg cell) outside the human body and transferring the gamete or the embryo into the reproductive system of a woman.
- **Regulation of ART clinics and banks** - The Bill provides that every ART clinic and bank must be registered under the National Registry of Banks and Clinics of India.
- The National Registry will be established under the Bill which will act as a central database with details of all ART clinics and banks in the country.
- The registration will be valid for 5 years and can be renewed for a further 5 years.
- **Conditions for gamete donation and supply -** Screening of gamete donors, collection and storage of semen, and provision of oocyte donor can only be done by a registered ART bank.
- A bank can obtain semen from males between 21 and 55 years of age, and oocytes from females between 23 and 35 years of age.
- **Conditions for offering ART services -** ART procedures can only be carried out with the written informed consent of both the party seeking ART services as well as the donor.
- **Pre-implantation genetic testing** - The Bill mandates that pre-implantation genetic testing shall be used to screen the embryo for

known, pre-existing, heritable, or genetic diseases.

- **Rights of a child born through ART -** A child born through ART will be deemed to be a biological child of the commissioning couple and will be entitled to the rights and privileges available to a natural child of the commissioning couple.
- **National and State Boards -** The Bill provides that the National and State Boards for Surrogacy constituted under the Surrogacy (Regulation) Bill, 2019 will act as the National and State Board respectively for the regulation of ART services.
- **Offences and penalties -** The offences will be punishable with a fine between 5 and 10 lakh rupees for the first contravention. For subsequent contraventions, these offences will be punishable with imprisonment for a term between 8 and 12 years, and a fine between 10 and 20 lakh rupees.

What is the difference between the two bills?

- **Involvement of third party** - The Surrogacy (Regulation) Bill relates to surrogacy, an infertility treatment, where a third person, a woman, is the surrogate mother.
- In ART, treatments can be availed by the commissioning couple themselves and it is not always necessary that a third person is involved.
- **Applicability** - Surrogacy is allowed for only Indian married couples whereas ART procedures are open to married couples, live-in partners, single women, and also foreigners.
- A 2015 notification prohibits commissioning of surrogacy in India by foreigners or OCI or PIO cardholders, but NRIs holding Indian citizenship can avail surrogacy.

What drawbacks have been noted in the bill?

- The bill has excluded two categories — LGBTQIA+ and single men out of the mandate of right to exercise reproductive rights.
- The omission is particularly baffling considering that the legislation has made provisions for single women too, apart from a commissioning heterosexual couple.
- The Parliamentary Standing Committee recommended it would not be appropriate to allow live-in couples and same sex couples to avail the facility of ART citing the best interest of the child born through ART.
- It also noted that given the Indian family structure and social norms, it will not be very easy to accept a child whose parents are together but not legally married.

- The law must also nudge retrograde social norms out of their freeze-frames towards broader acceptance of differences and preferences and introduce the spirit of justice in the letter of the law.

References

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