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Mains Practice Questions

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Q. Recently Lok Sabha passed the Surrogacy (Regulation) Bill 2016. Discuss the need, provisions and concerns with regard to the bill (250 words).

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Approach

- Define Surrogacy
- Bring out the need for the Surrogacy Bill
- Give provisions of the bill
- Discuss concerns related to the bill

Answer

Surrogacy is a form of assisted reproductive treatment (ART) in which a woman carries a child within her uterus on behalf of another person or couple. Recently Lok Sabha passed the Surrogacy (Regulation) Bill, 2016 which seeks to regulate commercial surrogacy which has become a flourishing industry in the country.

Need of the Bill

- To **curb unethical practices** such as exploitation of surrogate mothers, abandonment of children born out of surrogacy and cases of intermediaries importing human embryos and gametes.
- To **safeguard health of women** belonging to lower socio-economic strata, who often do it repeatedly for a paltry amount thus putting their own bodies at risk.
- According to the Confederation of Indian Industry (CII) , surrogacy is about \$2 billion industry fed by lack of regulation and poverty. The bill aims at **regulating rampant commercial surrogacy** and allows only 'altruistic surrogacy'.
- The **228th report of the Law Commission** had recommended prohibition of commercial surrogacy.

Key Provisions

- The bill allows '**altruistic surrogacy**' in which only the medical expenses and insurance coverage is provided by the couple to the surrogate mother during pregnancy. No other monetary consideration is allowed.
- The bill allows surrogacy for infertile married (at least five years) **Indian couples only**. The female must be between 23 and 50 years and the male 26 and 55 years; and they cannot have any surviving child (biological, adopted or surrogate).
- Only a **close relative of the couple**, who is able to provide a medical fitness certificate, can be a surrogate mother. She should have been married, having a child of her own, and must be between 25 and 35 years, but can be a surrogate mother only once.
- The stated objective of the new Bill is to constitute a **National Surrogacy Board, State Surrogacy Board** and appointment of authorities for regulation of practice and process of surrogacy.

Concerns

- **Exclusion:** The bill does not allow single women or men, or gay couples to go in for surrogacy.
- An **unhealthy child** borne out of surrogacy is often not accepted by the parents, due to the lack of legal safeguards for the child and the surrogate mother. The bill has not addressed this issue comprehensively.
- A blanket ban on commercial surrogacy proposed in the Bill could trigger a **black market** for surrogacy services in India which would lead to increased exploitation with no mechanism for protection of any of the parties involved in the surrogacy arrangement.
- It could result in **trafficking of surrogate mothers** to foreign nations or safe surrogacy havens around the globe for monetary returns.
- The provision of no monetary incentive in the proposed Bill except medical expenses can make surrogacy similar to “**forced labour**” which is prohibited under Article-23 of the Constitution.
- Endorsing altruistic surrogacy will enforce **emotional and social pressure** on close female relatives without any compensation for immense emotional and bodily labour of gestation involved in surrogacy as well as loss of livelihood.