



Concerns Related to ART Bill, 2020

Why in News

Recently, the [Assisted Reproductive Technology \(Regulation\) Bill, 2020](#) has been introduced in the Lok Sabha.

Key Points

- **Assisted Reproductive Technology (ART):**
 - ART is **used to treat infertility**. It includes **fertility treatments that handle both a woman's egg and a man's sperm**. It works by removing eggs from a woman's body and mixing them with sperm to make embryos. The embryos are then put back in the woman's body.
 - **In Vitro fertilization (IVF)** is the most common and effective type of ART.
 - ART procedures **sometimes use donor eggs, donor sperm, or previously frozen embryos**. It **may also involve a surrogate carrier**.
- **Aim of the Bill:** To regulate ART banks and clinics, allow the safe and ethical practice of ARTs and protect women and children from exploitation.
- **Supplementary Status:**
 - It was introduced to supplement the [Surrogacy \(Regulation\) Bill, \(SRB\) 2019](#), which **aims to prohibit commercial surrogacy** in India.
 - The Bill designates **surrogacy boards under the SRB to function as advisory bodies** for ART.

Concerns

- **Discrimination in Accessibility:**
 - The Bill **allows** for a **married heterosexual couple** and a **woman above the age of marriage** to use ARTs and **excludes single men, cohabiting heterosexual couples and LGBTQ+ individuals and couples** from accessing ARTs.
 - LGBTQ+ stands for **lesbian, gay, bisexual, transgender, queer** (or sometimes questioning), and others. The "**plus**" represents **other sexual identities** including pansexual, intersex, and asexual.
 - The Bill seems to **violate Article 14** of the Constitution and the [Right to Privacy jurisprudence of Puttaswamy, 2017](#), where the [Supreme Court](#) held that "the sanctity of marriage, the liberty of procreation, the choice of a family life and the dignity of being" concerned all **individuals irrespective of their social status** and were **aspects of privacy**.
 - In [Navtej Singh Johar vs Union Of India \(2018\)](#), States were advised to take positive steps for equal protection for same-sex couples.
 - Unlike the SRB, there is **no prohibition on foreign citizens accessing the ARTs** but not all of the Indian citizens which is an illogical result which **fails to reflect the true spirit** of

the Constitution.

- The Bill **restricts egg donation to a married woman with a child** (at least three years old). Even here, egg donation as an altruistic act is **possible only once a woman has fulfilled her duties** to the patriarchal institution of marriage.

▪ **Less or No Protection for Donors:**

- The Bill does **little to protect the egg donor. Harvesting of eggs is an invasive process** which, if performed incorrectly, **can result in death**.
- The Bill requires an egg donor's written consent but **does not provide for her counselling or the ability to withdraw** her consent before or during the procedure.
- A woman receives **no compensation or reimbursement of expenses for loss of salary, time and effort. Failing to pay for bodily services** constitutes **unfree labour, which is prohibited by Article 23** of the Constitution.
- The **commissioning parties only need to obtain an insurance** policy in her name for medical complications or death with **no amount or duration specified**.

▪ **Ambiguity in Disorders:**

- The Bill requires **pre-implantation genetic testing** and where the **embryo suffers** from "pre-existing, heritable, life-threatening or genetic diseases", it **can be donated for research** with the commissioning parties' permission.
- These **disorders are not specified** and the Bill **risks promoting an impermissible programme of eugenics**.

- **Eugenics** is the practise or advocacy of improving the human species by selectively mating people with specific desirable hereditary traits.

▪ **Hides Information:**

- Children born from ART **do not have the right to know their parentage**, which is crucial to their best interests and was protected under previous drafts.

▪ **Imbalance Between ART and SRB:**

- Although the Bill and the SRB regulate ARTs and surrogacy, respectively, there is **considerable overlap** between both sectors and they **do not work in tandem**.
- **Core ART processes are left undefined** and few of them are defined in the SRB but not in the Bill.
- **Same offending behaviours** under both Bills are **punished differently** and sometimes with greater punishments under the SRB.

- **Offences under the Bill are bailable but not under the SRB.**

- Finally, **records** have to be maintained for **10 years under the Bill** but for **25 years under the SRB**.

▪ **Duplicacy:**

- **Both Bills set up multiple bodies for registration** which will result in **duplication or worse, lack of regulation**. For example, a surrogacy clinic is not required to report surrogacy to the **National Registry**.

- The National Registry will be established under the Bill and will act as a **central database with details of all ART clinics and banks** in the country.

▪ **Possible Gamete Shortage:**

- **Gamete shortage** is likely to happen as there is no clarity on if **gametes** could be gifted between known friends and relatives now, which was not allowed earlier.

- **Gametes** are an **organism's reproductive cells**. They are also referred to as **sex cells**. **Female gametes** are called **ova or egg cells**, and **male gametes** are called sperm.

▪ **Poorly Drafted:**

- Further, Bill's **prohibition on the sale, transfer, or use of gametes and embryos is poorly worded** and will **confuse** foreign and domestic parents relying on donated gametes.

- **Enhanced Punishments:**

- The SRB and the Bill impose **high sentences** (8-12 years) and **hefty fines**.
- The poor enforcement of the [Pre-Conception and Pre-Natal Diagnostic Techniques \(PCPNDT\) Act, 1994](#) demonstrates that enhanced punishments do not secure compliance.

Way Forward

- Clinics must have ethics committees and mandated counselling services should be independent of them.
- Prior versions of the Bill regulated research using embryos, which must be brought back and definitions of commissioning "couple", "infertility", "ART clinics" and "banks" need to be synchronised between the Bill and the SRB.
- All ART bodies should be bound by the directions of central and state governments in the national interest, friendly relations with foreign states, public order, decency and morality.
- All the constitutional, medico-legal, ethical and regulatory concerns raised by the Bill must be thoroughly reviewed before affecting millions.

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