

ANNEXURE-I

FULFILING DREAMS OF PARENTHOOD SINCE 2011



DISPUR IVF & FERTILITY CLINIC

DISPUR POLYCLINIC & NURSING HOME, GANESHGURI, CHARIALI, GUWAHATI-6

(A Unit of Dispur Polyclinic and Hospitals Pvt. Ltd.)

Phone - +91 8812025070, 88140 25070,

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From,

The Manager,
Dpt. Of HRD
Dispur IVF & Fertility Clinic
Ganeshguri, Dispur
Guwahati- 06

To,

Mrs. Dipsikha Konwar,
Juridical Studies.
MSSV, Guwahati Campus

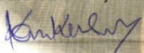
Sub: Certificate of Participation

Dated: 22-08-2018

Dear Madam,

This is to inform you that we have acknowledge the proposal for conducting a survey on ART and had a fruitful interview session on Assisted Reproductive Technology and its related alike treatment on 21-08-2018 in our premises.
We wish all the good luck to her.

Yours' Faithfully


(Kankan Sarmah)
Dpt. Of HRD
Dispur IVF & Fertility Clinic
Ganeshguri, Dispur
Guwahati- 06

DISPUR IVF & FERTILITY CLINIC
C/O DISPUR POLYCLINIC & NURSING HOME
GANESHGURI, GUWAHATI - 6, ASSAM

State of the art IVF Lab.

Fertility enhancing Endoscopic Surgeries (Laparoscopy + Hysteroscopy)
IUI IVF ICSI VITRIFICATION Andrology Clinic
website : www.ivfdispurpolyclinic.com

ANNEXURE-II



To,
Mrs. Dipsikha Konwar
Research Scholar
Department of Juridical Studies.
MSSV, Guwahati Campus

Sub: Certificate of Participation

Dated: 22/08/2018

This to inform that Mrs. Dipsikha Konwar has collected data and participated in Assisted Reproductive Technology.

We hereby acknowledge the proposal for conducting survey on Assisted Reproductive Technology.

She successfully cleared her queries and earned proper understanding and knowledge by means of interview and collection of data from IVF Deptt. Of Pratiksha Hospital.

We wish her best of luck.

Dr. Arup Deka
Deputy Medical Superintendent

Deputy Medical Superintendent
Pratiksha Hospital
Guwahati-781036
Tel. No. 0381-7101600

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PARLIAMENT OF INDIA

RAJYA SABHA

REPORT OF THE SELECT COMMITTEE

ON

THE SURROGACY (REGULATION) BILL, 2019

(Presented to the Rajya Sabha on 5th February, 2020)



Rajya Sabha Secretariat, New Delhi

February, 2020/Magha, 1941 (SAKA)

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CONTENTS

| | | |
|----|--|---|
| 1. | COMPOSITION OF THE COMMITTEE | (i) |
| 2. | PREFACE | (ii) - (viii) |
| 3. | *ACRONYMS | (--) |
| 4. | REPORT Chapter- I Introduction Chapter – II Deliberations of the Select Committee Chapter- III Summary of contentious issues Chapter - IV Clause-by-clause consideration to the Bill | 1 - 6 7 - 13 14 - 20 21 - 36 |
| 5. | BILL AS REPORTED BY THE SELECT COMMITTEE | 37 - 67 |
| 6. | *ANNEXURES (i) NOTE ON STUDY TOUR (ii) LIST OF WITNESSES WHO APPEARED BEFORE THE COMMITTEE | |
| 7. | *MINUTES OF THE MEETINGS OF THE COMMITTEE | |

COMPOSITION OF THE COMMITTEE

(Constituted on 21st November, 2019)

1. Shri Bhupender Yadav - Chairman

2. Dr. Vikas Mahatme
3. Ms. Saroj Pandey
4. Shri Ashwini Vaishnaw
5. Shri Jairam Ramesh
6. Dr. Amee Yajnik
7. Shri Abir Ranjan Biswas
8. Shri A. Navaneethakrishnan
9. Shri Ravi Prakash Verma
10. Shri Prasanna Acharya
11. Shri Ram Chandra Prasad Singh
12. Dr. Banda Prakash
13. Shri K. Somaprasad
14. Shri R.S. Bharathi
15. Shri Veer Singh
16. Shrimati Vandana Chavan
17. Shri Anil Desai
18. Shri Naresh Gujral
19. Shri Sushil Kumar Gupta
20. Shri V. Vijayasai Reddy
21. Shri Hishey Lachungpa
22. Shri Parimal Nathwani
23. Shri Sambhaji Chhatrapati

SECRETARIAT

- | | | |
|----|---------------------------|-----------------------------|
| 1. | Shri P.P.K. Ramacharyulu | Secretary |
| 2. | Shri J. Sundriyal | Joint Secretary |
| 3. | Shri V.S.P. Singh | Director |
| 4. | Shri Bhupendra Bhaskar | Additional Director |
| 5. | Shrimati Harshita Shankar | Under Secretary |
| 6. | Shri Rajesh Kumar Sharma | Assistant Committee Officer |
| 7. | Ms. Monika Garbyal | Assistant Committee Officer |
| 8. | Shri Parth Gupta | Assistant Research Officer |

PREFACE

I, the Chairman of the Select Committee on the Surrogacy (Regulation) Bill, 2019, having been authorized by the Committee to present the Report on its behalf, do hereby present this Report on the Bill.

2. The Surrogacy (Regulation) Bill, 2019 (**Annexure I**) as passed by the Lok Sabha on 5th August, 2019, was referred* to the Select Committee, comprising of 23 Members of Rajya Sabha on a Motion adopted by the House on the 21st November, 2019 for examination of the Bill and report thereon to the Rajya Sabha by the last day of the first week of the next Session.

3. The Committee issued a Press Release inviting memoranda/views from individuals and other stakeholders. In response thereto, 54 memoranda from different organizations/associations and individuals were received. These memoranda were forwarded to the Department of Health Research for their comments. The Committee also invited the views from the State Governments/ Governments of Union Territories and received response from two State Governments only.

4. The Committee undertook a study visit to Vadodra, Anand, Hyderabad and Mumbai from 21st to 24th January, 2020. A note on the study tour is at **Annexure II**. During the Study Visit, the Committee visited surrogacy clinics, had interaction with doctors, surrogate mothers, surrogate children and intending couples, etc. The Committee also heard the views of State Government of Gujrat, Telengana & Andhra Pradesh and Maharashtra.

5. The Select Committee held a total of 9 sittings for examination of the Bill, i.e., on 3rd, 9th, 12th, 20th 30th December, 2019, 10th, 21st, 31st January, 2020 and 3rd February, 2020. The list of witnesses heard by the Committee is at **Annexure-III**.

* Rajya Sabha Parliamentary Bulletin Part II, No.59420, dated 26th November, 2019.

6. In its first meeting held on 3rd December, 2019, the Committee deliberated upon the future course of action for examination of the Bill and decided to hear the views of Secretary of Department of Health Research.

7. At its second meeting held on 9th December, 2019, the Committee heard the views of stakeholders. In its meeting, the Committee decided to issue a Press Release seeking views of the opinions of stakeholders, experts, organizations, etc. It was also decided to elicit the views of State Governments. Thereafter the Committee heard the views of Secretary, Department of Health Research.

8. The Committee in its third meeting held on 12th December, 2019 had a PowerPoint presentation on the recommendations made by the Parliamentary Standing Committee on Health & Family Welfare in its 102nd Report on the Surrogacy (Regulation) Bill, 2016, which have not been accepted by the Department. Clarifications were sought from the Department of Health Research on aforesaid recommendations.

9. In its fourth meeting held on 20th December, 2019, the Committee sought clarifications from the Department of Health Research.

10. In its fifth meeting held on 30th December, 2019, the Committee heard the views of representatives of National Human Rights Commission, National Commission for Protection of Child Rights, SAMA – Resource Group for Women and Health and Secretary, Ministry of Women and Child Development.

11. In its sixth meeting held on 10th January, 2020, the Committee heard the views of representatives of United Nations Population Fund, PRS Legislative Research, Dr. Prof. Neeta Singh, Expert, Division of Reproductive Medicine,

AIIMS, New Delhi and Dr. Kamini A. Rao, Milann (A Brand of BACC Health Care Pvt. Ltd.) on the Bill.

12. The Committee took up clause-by-clause consideration of the Bill in its meeting held on 1st February, 2020. The Committee considered the draft Report and adopted the same on 3rd February, 2020.

13. For examination of the Bill and finalisation of the Report thereon, the Committee considered and relied on the following documents placed before it:-

- (i) The Surrogacy (Regulation) Bill, 2019;
- (ii) Background Note on the Bill received from the Department of Health Research;
- (iii) Presentation, clarifications and Oral evidence of Secretary, Department of Health Research and comments of the Legislative Department;
- (iv) Replies to questionnaires received from the Department of Health Research and comments of the Legislative Department;
- (v) Oral evidence and written submissions by various stakeholders/experts on the Bill;
- (vi) Memoranda received on the Bill from various institutes/ bodies/ associations/ organizations/ experts and replies of the Department on the memoranda selected by the Committee for examination;
- (vii) Feedback received during study visit.

14. Surrogacy per se and The Surrogacy (Regulation) Bill, 2019, in particular, is a unique amalgamation of social, ethical, moral, legal and scientific issues and it is necessary to harmonise the conflicting interests inherent in the process of surrogacy to ensure betterment of child while protecting rights of surrogate mother.

15. Legal issues relating to surrogacy get manifested in a number of court cases – the prominent being the Baby M case in USA, Jaycee B. Vs. Superior Court, Baby Manji Yamada Vs. Union of India, Israeli gay couple's case, etc. which were widely debated in the media. Baby Jaycee case is a classic example of legal complexities involved in the surrogacy procedure. The custody of the child was sought by five parents – genetic mother, the commissioning mother, the surrogate mother, the commissioning father and the genetic father.

16. These are the vexatious issues which are being discussed and debated all over the world. While some are of the opinion that both commercial and altruistic surrogacy be legalized and regulated to protect the rights and interests of all parties, others argue for blanket ban on surrogacy in all forms for the sake of human dignity keeping in view that surrogacy is inherently exploitative. While there are countries like Russian Federation, Columbia, Ukraine and some States of USA where commercial surrogacy is allowed, there are countries like France, Finland, Italy, Japan, Spain, Sweden, Switzerland, Hungary, Ireland, etc. where surrogacy in all forms is banned. But these two are extreme paths and therefore it was necessary to find a midway which facilitates surrogacy but in a regulated way. Hence, the other legal aspect attached with surrogacy lies in the challenge of finding a middle or more preferred path by striking a fine balance between the two squarely opposite ideas because law is to act both as an ardent defender of human liberty and an instrument of distributor of positive entitlements. Further, law must keep pace with the emerging/developing technologies so that their positive benefits could be availed by those in need.

17. The Surrogacy (Regulation) Bill, 2019 is a step in that direction which seeks to regulate surrogacy procedure in such a way as to stop exploitation of poor

vulnerable women; to ensure protection of rights of the child born out of surrogacy and to facilitate only needy infertile couple and widow and divorced women to have child to complete their family. To achieve the above objective, the Bill provides to prohibit commercial surrogacy and allow only altruistic surrogacy. Australia, Canada, Israel, Netherlands, New Zealand, South Africa, United Kingdom, Vietnam, etc. are some of the countries where similar surrogacy practices exist.

18. The Committee has in the process of examination of the Bill came across all sorts of views for and against the Bill and to synthesize and harmonize them to a standard acceptable to a majority, if not all, has undoubtedly been a daunting task which it could perform with the active cooperation, sustained support and untiring efforts of one and all involved in the process, especially the Members of the Select Committee, for which they truly deserve special commendation. I, on my behalf as well as on behalf of the Select Committee offer special thanks to the Secretary and other officers of the Department of Health Research, Legislative Department, various experts/ organizations/ institutions who contributed to the successful accomplishment of the detailed examination of and prepare a report on the Surrogacy (Regulation) Bill, 2019. I would also like to appreciate the untiring efforts of officers of Rajya Sabha Secretariat who accomplished the entrusted task within stipulated timeframe.

NEW DELHI
3rd February, 2020
Magha 14, 1941 (Saka)

Bhupender Yadav
Chairman,
Select Committee on Surrogacy
(Regulation) Bill, 2019,
Rajya Sabha

CHAPTER-I

Introduction

1.1 The Surrogacy (Regulation) Bill, 2019 was introduced in the Lok Sabha on 15th July, 2019 and passed by the same house on 5th August, 2019. The Rajya Sabha in its meeting held on Thursday, the 21st November, 2019 adopted a motion for reference of the Surrogacy (Regulation) Bill, 2019, as passed by Lok Sabha, to a Select Committee of the Rajya Sabha with the instructions to report to the Rajya Sabha by the last day of first week of the next session.

1.2 The Surrogacy (Regulation) Bill, 2019 seeks to constitute National Surrogacy Board, State Surrogacy Boards and appointment of appropriate authorities for regulation of the practice and process of Surrogacy and for matters connected therewith or incidental thereto.

1.3 According to the Statement of Objects and Reasons of the Bill as introduced in Lok Sabha, India has emerged as a Surrogacy hub for couples from different countries for past few years. There have been reported incidents of unethical practices, exploitation of surrogate mothers, abandonment of children born out of Surrogacy and import of human embryos and gametes. Widespread condemnation of commercial Surrogacy in India has been regularly reflected in different print and electronic media for last few years. The Law Commission of India, in its 228th Report, has also recommended for prohibition of commercial Surrogacy by enacting a suitable legislation. Due to lack of legislation to regulate Surrogacy, the practice of Surrogacy has been misused by the Surrogacy clinics, which leads to rampant commercial Surrogacy and unethical practices in the said area of Surrogacy. It had, therefore, become necessary to enact a legislation to regulate Surrogacy services in the country, to prohibit the potential exploitation of surrogate mothers and to protect the rights of children born through Surrogacy.

1.4 The Department of Health Research informed the Committee that Surrogacy has been practiced in India since last few decades. In the absence of regulation, India has emerged as a Surrogacy hub for couples from different countries. They submitted that there has been a plethora of reports concerning unethical practices, abandonment of children, exploitation of surrogate mothers, death of the surrogate mother, rackets of intermediaries in importing, exporting and selling of human embryos and gametes and unregularised clinics practicing Surrogacy.

1.5 The background note on Surrogacy (Regulation) Bill, 2019 as furnished by the Department of Health Research stipulates that Surrogacy is an arrangement where a woman (the surrogate) offers to carry a baby through pregnancy on behalf of a couple and then return the baby to the intended parent(s) once it is born. In Surrogacy, an embryo is created using an egg and sperm produced by the intended couple and is transferred into the surrogate's uterus. The surrogate has no genetic link to the child. Her eggs cannot be used to conceive the child.

Meaning of Surrogacy

1.6 The word 'Surrogate' has its origin in the Latin term Surrogatus' which means a woman acts as a substitute for another woman. To understand surrogacy in its proper perspective and plain language, it is a form of third party reproductive practice or an arrangement which the intending parents (unable to procreate on their own) and the surrogate mother mutually agree that the latter shall become pregnant, gestate and give birth to a child and shall legally and physically transfer the child to the intending parents without retaining any parentage or parental obligations.

Surrogacy comes as an important option to fulfill the desire to have a child of such couple for whom it is physically or medically impossible or undesirable to carry a baby to term on their own.

1.7 There are two types of surrogacy practices – (i) Traditional and (ii) Gestational. Gestational surrogacy which has been envisaged in the Bill occurs in the context of assisted reproductive technologies such as in-vitro fertilization and embryo transfer where the surrogate mother is not genetically related to the child. Further, there are two types of surrogacy arrangements:- (a) Altruistic: where the surrogate mother is the one, who cares for the intended person or couple and due to her concern in the interest of the person or couple, decides to help them to become parents. Altruistic surrogacy is based upon care, concern and the same has no space or scope for monetary compensation. In this arrangement the surrogate mother receives no financial rewards for her pregnancy or the relinquishment of the child to the genetic parents except for essential medical expenses; and (b) Commercial: where the surrogate mother is paid over and above the necessary medical expenses.

Background of the Bill

1.8 The Department of Health Research submitted that the 228th Report (2009) of Law Commission of India strongly recommended for prohibiting commercial Surrogacy and allowing ethical altruistic Surrogacy services by enacting a suitable legislation.

1.9 In the wake of a Public Interest Litigation by Smt. Jayashree Wad, filed in the Hon'ble Supreme Court, the Cabinet Secretariat took a meeting on 21.10.2015 and asked this Department to bring early the legislation to regulate Surrogacy. Subsequently, an Affidavit was filed in the Hon'ble Supreme Court undertaking to bring the legislation early.

1.10 While answering the Lok Sabha starred Question number 100 in the Parliament on 4th December, 2015, the Government took the stand not to support commercial Surrogacy.

1.11 The Department of Health Research informed that the draft Bill was circulated for inter-Ministerial consultation on 8th September, 2014. The Bill was also put on the website of the Department for a period of 45 days on 30th September, 2015 inviting comments. After receiving comments from stakeholders, including Central Ministries/Departments and State Governments, the comments were suitably incorporated in the draft Bill. The proposal for introduction of the Bill to the Parliament was submitted to the Cabinet on 21st April, 2016 for consideration. The Cabinet in its meeting held on 27th April, 2016 postponed any decision on the matter vide Secretariat communication No.19/CM/2016, dated 2nd May, 2016.

1.12 A decision was taken to constitute a Group of Ministers (GoM) comprising of Minister of External Affairs, Minister of Health and Family Welfare, Minister of Science and Technology and Earth Sciences, Minister of State for Commerce and Industry (Independent Charge), Minister of Communication and Information Technology, Minister of Food Processing Industries and Minister of State (Finance) for going through the provisions laid down in the draft Surrogacy (Regulation) Bill, 2016. The GoM held various meetings to examine the provisions of the draft Bill, on 5th May, 2016, 1st July, 2016, 8th July, 2016 and 14th July, 2016. Based on the suggestions on the GoM, the draft Surrogacy (Regulation) Bill 2016 was finalized after due consultation with the Ministry of Law and Justice. The Surrogacy (Regulation) Bill, 2016 was approved by the Cabinet on the 24th of August 2016.

102nd Report of Parliamentary Standing Committee

1.13 The Surrogacy (Regulation) Bill, 2016 was introduced in the Parliament on 21st of November, 2016. The Bill was referred to the Parliamentary Standing Committee on Health and Family Welfare on the 12th January, 2017. The 102nd report of the Departmental Related Parliamentary Standing Committee on Health and Family Welfare on Surrogacy (Regulation) Bill, 2016 was presented in the Rajya Sabha and simultaneously laid on the table of the Lok Sabha on 10th of August, 2017.

Major recommendations made by the Parliamentary Standing Committee

- a) The Committee was of the view that the altruistic Surrogacy be replaced with Compensated Surrogacy and Surrogacy procedures should also be available to PIO, NRI, OCI, live in couples, divorced women and widows.
- b) The Committee recommended that the definition of infertility should be made commensurate with the definition given by WHO. The words “five years” in Clause 2(p) and 4(iii)(c) II, be therefore, replaced with “one year” and consequential changes be made in other relevant Clauses of the Bill.
- c) The Committee was of the view that limiting the practice of Surrogacy to close relatives is not only non pragmatic and unworkable but also has no connect with the object to stop exploitation of surrogates envisaged in the proposed legislation. The Committee, therefore, recommended that this Clause of “close relative” should be removed to widen the scope of getting surrogate mothers from outside the close confines of the family of intending couple.
- d) Insurance coverage for a longer period of 6 years for the Surrogate mother.
- e) The Committee recommended prohibiting sex selective Surrogacy.
- f) The Committee also endorsed the suggestion of the Ministry of Women and Child Development that a surrogate mother should have an option to withdraw from the Surrogacy arrangement if she chooses to do so before the start of the procedure.
- g) The Committee recommended prescribing time-limit for issuing an essentiality certificate by the District Medical Board and any appeal or review procedure, in case the application for Surrogacy is rejected.

1.14 The Department submitted that of total 42 recommendations made by the DRSC on Health and Family Welfare in its Report, 13 recommendations were accepted by the Department and 13 recommendations will be part of the rules and regulation. Four recommendations were already part of the Surrogacy Bill and 11 recommendations were not accepted by the Department. Details of the recommendations of the Standing Committee and Departments response on them are placed at **Annexure-IV**. The Surrogacy Regulation Bill was again approved by the Cabinet on the 21st day of March, 2018 for moving the official amendments recommended by the Parliamentary Standing Committee.

Bill Passed by Lok Sabha

1.15 The Bill approved by Cabinet was introduced in the 17th Lok Sabha on 15th July, 2019 and was also passed by it on the 5th August, 2019. The Bill was further placed in Rajya Sabha on the 6th November, 2019 for consideration and on 21st November, 2019 referred to the Select Committee.

1.16 A statement indicating distinction between the Surrogacy (Regulation) Bill, 2016 and the Surrogacy (Regulation) Bill, 2019 is placed at **Annexure-V**.

Salient Features of the Bill

1.17 The Objects and Reasons of the Surrogacy (Regulation) Bill, 2019 entails the objectives/ Salient Features of the Bill that inter alia includes:-

- (i) The Bill proposes to allow altruistic ethical Surrogacy to the needy infertile married Indian couples including Non Resident Indians (NRIs).
- (ii) Purposes and conditions of ethical Surrogacy as defined in the Bill provisions:-
 - When either or both members of the couple are suffering from proven infertility.
 - When it is only for altruistic Surrogacy purposes.
 - When it is not for commercial purposes or for commercialization of Surrogacy or Surrogacy procedures.
 - When it is not for producing children for sale, prostitution or any other form of exploitation.
- (iii) The Bill prohibits commercial Surrogacy or commercialization of Surrogacy services including sale, purchase of human gametes, oocytes and human embryo.
- (iv) Commercial Surrogacy” means
 - commercialization of Surrogacy services or procedures
 - selling or buying of human embryo for the purpose of Surrogacy
 - trading in the sale or purchase of human embryo by way of giving payment, reward, benefit, fees, remuneration or monetary incentive in cash or kind, to the surrogate mother or her dependents
- (v) A leaner structure of a National Surrogacy Board, State Surrogacy Boards and Appropriate Authorities at State/UT level is proposed.

A. National Surrogacy Board

1.18 National Surrogacy Board to exercise the powers and perform the functions conferred on the Board under this Bill.

- The Board shall consist of the Minister in-charge of the Ministry of Health and Family Welfare, the Chairperson
- the Secretary to the Government of India in- charge of the Department dealing with the Surrogacy matter, Vice-Chairperson
- three women Members of Parliament, of whom two shall be elected by the House of the People and one by the Council of States, Members

B. State Surrogacy Board

1.19 A similar State Surrogacy Board is to be constituted in the States and Union Territories

C. Appropriate Authority

1.20 The Appropriate Authority in States/UTs would be the Executive Committee with 4 members and the Joint Director of Health as the Chairperson. The appropriate authority shall discharge following functions:

- to grant, suspend or cancel registration of a Surrogacy clinic;
- to enforce the standards to be fulfilled by the Surrogacy clinics;
- to investigate complaints of breach of the provisions of this Act, rules and regulations and take legal action as per provision of this Act;
- to take appropriate legal action against the use of Surrogacy by any person at any place other than prescribed, *suo-moto* or brought to its notice, and also to initiate independent investigations in such matter;

(vi) **The Needy Infertile Intending Couple**

- The age of the intending couple is between 23 to 50 years in case of female member and between 26 to 55 years in case of male member on the day of certification;
- The intending couple are married for at least five years and are Indian citizens;
- The intending couple have not had any surviving child biologically or through adoption or through Surrogacy earlier except when they have a child and who is mentally or physically challenged or suffer from life threatening disorder or fatal illness.

(vii) **To prevent exploitation of surrogate mother, minimum criteria pertaining to age and medical conditions to be fulfilled by the surrogate mother has been specified in the Act.**

- The surrogate mother should be married with one child
- The age of the surrogate mother to be between 25-35 years.
- The surrogate mother to be a close relative (this will be defined by the National Board).

(viii) The Bill also contains provisions to ensure that the intending couples do not abandon the child.

- A parentage order concerning the parentage and custody of the child to be born through Surrogacy to be issued by a court of magistrate of first class is made as a pre-requisite condition. This will also be an agreement.

(ix) **An insurance coverage for 16 months** is proposed for the Surrogate Mother to take care of all her medical needs emergency conditions/complications.

(x) **Registration of Surrogacy clinics:** Surrogacy clinics cannot undertake Surrogacy related procedures unless they are registered by the appropriate authority. Clinics must apply for registration within a period of 60 days from the date of appointment of the appropriate authority.

- (xi) **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 authorization of the appropriate authority. This authorization must be compliant with the Medical Termination of Pregnancy Act, 1971. Further, the surrogate mother will have an option to withdraw from Surrogacy before the embryo is implanted in her womb.
- (xii) **Offences and penalties:** The offences under the Bill include: (i) undertaking or advertising commercial Surrogacy; (ii) exploiting the surrogate mother; (iii) abandoning, exploiting or disowning a surrogate child; and (iv) selling or importing human embryo or gametes for Surrogacy. The penalty for such offences is imprisonment up to 10 years and a fine up to 10 lakh rupees. The Bill specifies a range of offences and penalties for other contraventions of the provisions of the Bill.

CHAPTER -II

Deliberations of the Select Committee

2.1 The Select Committee started deliberations on the said Bill on 3rd December, 2019 followed by the meetings held on 9th, 12th, 20th & 30th December, 2019, 10th, 21st, 31st January, 1st and 3rd February, 2020.

FIRST MEETING ON 03.12.2019

2.2 Select Committee in its first meeting held on 3rd December had internal discussion on the Bill to decide the future course of action. The Chairman informed the members of the Committee that the Surrogacy (Regulation) Bill, 2016 has been extensively examined by the Department-related Parliamentary Standing Committee on Health and Family Welfare. He also informed the Members that out of 42 recommendations made in 102nd Report, 13 recommendations have been incorporated in the current Bill, 13 would be considered while framing rules and regulations and 11 recommendations were not accepted by the Government. The Committee decided to start the examination of the Bill by hearing the views of Secretary, Department of Health Research and other stakeholders in subsequent meeting.

SECOND MEETING ON 09.12.2019

2.3 In the meeting held on 9th December, 2019, the Committee decided to issue a Press Release on the said Bill to illicit views from stakeholders/experts, to undertake a study visit to places like Anand etc., to seek the views of the State Governments/UTs and to hear the views of the stakeholders viz. doctors, surrogates, intending couples, experts etc. The Committee also heard the views of Secretary, Department of Health Research. Giving a background of the Bill, the Secretary, Department of Health Research in his deposition before the Committee submitted that the Department had been working on this Bill for the last ten years and had taken all the best practices from different countries and the changing patterns in different countries. They had also taken into account the culture and tradition of the country to develop this Bill. The Department also showed a documentary film related to Surrogacy and plight of surrogate mothers. The representatives of Department of Legal Affairs and Department of Legislative Department attended the meetings to clarify the legal and legislative queries of the members.

2.4 The Joint Secretary, Department of Health Research then made a powerpoint presentation on the genesis of the Bill and its salient features wherein she highlighted the issues related to citizenship of commissioning couple and the surrogate child, issue of custody of the child born out of Surrogacy, issues related to Surrogacy by foreign nationals as reported by Ministry of External Affairs, rights of child and how these get abrogated in cases of Surrogacy, legitimacy of children born through Surrogacy, exploitation and compensation issue. She also informed the Committee about the reported cases of exploitation, reported complaints of Surrogacy clinics, court cases related to Surrogacy in India, need for regulation of Surrogacy in India, recommendations of the 228th Law Commission, international developments in Surrogacy, and major recommendations not accepted as made in 102nd Report of the Standing Committee on Health and Family Welfare.

2.5 The Joint Secretary, further, informed the Committee about the scenario of Surrogacy at the world level. The Committee was informed that in countries like Finland, France, Hong Kong, Hungary, Iceland, Ireland, Italy, Japan, Nepal, Pakistan, Saudi Arabia, Serbia, Spain,

Sweden and Switzerland, all types of Surrogacy (both commercial and altruistic) was illegal. She, further, apprised the Committee of the countries where commercial Surrogacy was banned and only altruistic Surrogacy was allowed in countries like Australia, Canada, Georgia, Greece, Israel, Netherlands, Belgium, New Zealand, Portugal, South Africa, Thailand, United Kingdom and Vietnam. There were only few countries in the world where commercial Surrogacy was allowed like Russian Federation, Colombia, Ukraine and some states of USA like California, Illinois, Arkansas, Maryland, and New Hampshire. The reasons cited by various countries for the regulation of Surrogacy were also highlighted. Great Britain's ban on commercial Surrogacy arrangements was in part a reaction to Americans' use of English women as surrogate mothers. Thailand banned commercial Surrogacy after Baby Gammy case where Down's syndrome child was left behind with an unmarried surrogate mother. UK did not allow for anonymous donors as it was believed that a child had a right to know his/her origin and this was in consistence with the Convention on the Rights of the Child (Article 8). The New Jersey Supreme Court declared all Surrogacy contracts void and unenforceable as they were violative of several State laws and public policies. In *R.R. vs. M. H.*, the Massachusetts Supreme Court looked into Massachusetts's adoption laws, which prohibit the payment of money in connection with an adoption beyond adoption-related expenses. Finding the policy underlying these statutes persuasive in a Surrogacy context, the Court held that "eliminating any financial rewards... is the only way to assure that... economic pressure will not influence a women to be a surrogate mother". European Parliament in its resolution of 17th December, 2015 condemned the practice of Surrogacy which undermined the human dignity of the women since her body and its reproductive functions were used as a commodity. 13th Law commission of UK proposed revision of the UK Surrogacy Act and emphasized that the most important aspect would be to safeguard the children born as a result of Surrogacy arrangements. Many countries have banned Surrogacy altogether.

THIRD MEETING ON 12.12.2019

2.6 In the meeting of the Committee held on 12th December, 2019 the Secretary made a power point presentation before the Committee wherein he highlighted reasons for not accepting the recommendations made by the DRSC on Health and Family Welfare w.r.t. altruistic Surrogacy or compensated Surrogacy, Surrogacy procedures to be made available to PIO, NRI, OCI, live in couples, divorced women and widows, 5 years waiting period for availing Surrogacy to be reduced to 1 year, surrogate mother to be a close relative to be removed, economic opportunities available to surrogates through Surrogacy, definition of Surrogacy be revised, raising the upper age limit of the surrogate mother, surrogate child be defined separately in the Bill, inclusion of Registrar in the board.

FOURTH MEETING ON 20.12.2019

2.7 The Committee, in its meeting held on 20th December, 2019, sought detailed clarification from the Department of Health Research on the issues raised by Members during the meetings of the Committee held on 9th and 12th December, 2019. The Department also stated various reasons for not accepting recommendations of the Standing Committee. It was pointed out that altruistic Surrogacy cannot be replaced by commercial or compensatory surrogacy because the 228th Report of Law Commission and Supreme Court directed to ban commercial surrogacy in the country. All the expenses for the surrogate mother are covered under one Clause where i.e. insurance period. The PIO/OCI and foreigners should not be allowed to avail surrogacy in India because the Home Ministry, Ministry of External Affairs issued a notification wherein PIO/OCI and foreigners were banned to avail surrogacy in India as it may lead to citizenship issues for the

child borne out of Surrogacy. The Department also stated the reasons for allowing only close relative to be a surrogate and surrogacy should not be looked at as one economic opportunity for a below poverty line women. The age limit of surrogate mother has been kept between 25-35 years because it is most suitable period for reproduction.

FIFTH MEETING ON 30.12.2019

2.8 In the meeting held on 30th December, 2019, the Committee held discussion with the representatives of Ministry of Women and Child Development, National Commission for Protection of Child Rights, National Human Rights Commission and representatives of SAMA (Resource Group for Women and Health) on various provisions of the Bill. Representatives of NHRC opposed total ban on Commercial Surrogacy and supported regulated commercial Surrogacy. They felt that regulatory mechanism may include legally binding agreements and reasonable compensation should be given as a part of the regulatory mechanism. The issue of certificates (Section 4) in respect of the surrogate mother and the intending couple should be kept outside the purview of the RTI Act keeping in view the Right of Privacy and the stigma attached to infertility in the Indian Society.

2.9 NCPCR submitted that the definition of “Surrogacy” provided in the Bill seems to be appropriate. The Commission was not in the support of defining Surrogate child as the surrogate children and biological children will get differentiated and this will come in conflict with existing laws. The commercial Surrogacy should not be permissible in the country to prevent exploitation and violation of women and also to prevent abuse and trafficking in Children. The Commission was of the view that there should be provision of putting bond in the name of child by the commissioning parents to take care of his needs, in case if they fail to take up the responsibility of the child in future. Further, if any kind of dispute arises, the child should be immediately produced before CWC and declared as child in need of care and protection and shall be entitled to all benefits provided under the Juvenile Justice (care and protection of Children) Act, 2015.

2.10 Representative of SAMA- Resource Group for Women and Health was of the view that regulation of commercial Surrogacy should begin with regulation of ART industry. The Bill should allow single, married, in a live-in relationship or queer to avail benefit of Surrogacy. The number of oocytes or embryos to be implanted in the surrogate mother for the purpose of Surrogacy shall be such as may be prescribed. Five year time period to prove infertility is a long time to wait before accessing Surrogacy services and suggested to review it.

SIXTH MEETING ON 10.01.2020

2.11 In the meeting of the Committee held on 10th January, 2020, the Committee held discussion with the representatives of United Nations Population Fund (UNFPA), PRS Legislative Research (PRS), Dr. (Prof.) Neeta Singh, Division of Reproductive Medicine, AIIMS Delhi and Dr. Kamini A. Rao, Milann (A Brand of BACC Healthcare Pvt. Ltd.), Bangalore.

2.12 Representative of UNFPA stated that the Surrogacy Regulation Bill needs to be positioned and understood in close conjunction with the ART Bill because the ART Bill deals with the mode, the procedures and the technology of reproductive medicine in surrogacy while the Surrogacy Bill deals with the implications and the ethical issues arising from such arrangements. Therefore, regulation of ART is a necessary pre-condition for effective implementation of the Bill. It was also pointed out that complete banning of the practice was going to drive it underground. Thus to avoid this risk, the law should instead introduce strict

regulation and protection mechanisms to regulate compensated surrogacy. Further, given the family setup, it may lead to conditions of exploitation and coercion for the surrogate mother. They, therefore, supported compensated form of surrogacy that must include consideration for a range of expenses including the expenses of the opportunity cost of wage laws for the surrogate mothers, and other post-delivery care cost. It is also stated that definition of infertility should be reconciled with the definition given in the ART Bill and with WHO definition which is to have a one year period as the time clause. They supported extending of surrogacy services to unmarried couples, single women including widows or divorced women, and single men. However, regarding the provisions related to the foreign nationals, PIOs and OCI cardholders who intend to commission surrogacy shall be retained as mention in the Bill.

2.13 Representatives of PRS legislative research stated that the Bill effectively prohibits the option of surrogacy to many couples as the altruistic arrangement in the Bill seems to be quite unrealistic. According to the Bill, the intending couple must prove failure to conceive in order to be eligible to undertake a surrogacy procedure. There may be other medical conditions that affect the ability to give birth to a child such as multiple miscarriages and other congenital issues. Such persons will not be eligible to undertake surrogacy. The intending couple and the surrogate mother needed to obtain certificates of eligibility and essentiality from the appropriate authority. There was no provision for the review or appeal process in case the application for such certificates is rejected. They also stated the surrogate mother needed to be a ‘close relative’ of the intending couple, however, the term ‘close relative’ has not been defined in the Bill. For an abortion, in addition to complying with the Medical Termination of Pregnancy Act, 1971, the approval of the appropriate authority and the consent of the surrogate mother was required. The Bill does not specify a time limit for granting such an approval. Further, the intending couple had no say in the consent to abort. Storage of embryos and gametes for the purpose of surrogacy was not permitted but assisted reproductive technologies used for enabling surrogacy arrangements require multiple attempts. These multiple attempts may need such storage of embryos and gametes. If a surrogate mother renders surrogacy services other than those permitted under the Bill, it is presumed that she was compelled to do so by: (i) her husband; (ii) the intending couple; or (iii) any other relative. The burden of proof is on these parties to establish that they did not compel the surrogate mother.

2.14 Dr. (Prof.) Neeta Singh, Division of Reproductive Medicine, AIIMS Delhi made a power point presentation before the Committee where she supported a blanket ban on the commercial surrogacy. She also pointed that altruistic surrogacy should not be replaced with compensated surrogacy as it will lead to commercialization, and the whole idea of banning commercial surrogacy will be abolished. The period of five years to avail surrogacy can be relaxed in special situations like if the cause of infertility is not treatable and in couples with late marriage and in cases of absent uterus or non functional uterus and in patients with chronic medical condition where pregnancy is contraindicated. Surrogacy can be allowed to widows and divorced women if an apparent cause is there like absent or malformed uterus but not to single unmarried women or men. The upper age limit of women should not be more than 35 years since the chances of obstetrical complications are higher with advanced maternal age thereby putting the surrogate mother at an unwanted high risk during pregnancy.

2.15 Dr. Kamini A. Rao, Milann (A Brand of BACC Healthcare Pvt. Ltd.), Bangalore stated that there is general conception that surrogate mother gets exploited at the hand of the intending parent. However, on many occasions intending parent were exploited by the surrogate herself. She requested the Committee to consider incorporating of ART Bill with the Surrogacy Bill. The separate Surrogacy boards and ART boards would lead to duplication of boards and would

only result in corruption. She was of the view that exploitation cannot be stopped by banning commercial surrogacy. It was only going to result in more black-marketing and going underground. She concluded that the ART Bill and the Surrogacy Bill should be passed together under a single board, so that, there can be a control on all the cases in the form of national registry by the ICMR.

SEVENTH MEETING ON 21.01.2020

2.16 In the meeting held on 21st January, 2020, the Committee heard the views of Smt. Kirron Kher, MP, Lok Sabha, Secretary, Ministry of Women and Child Development, Adv. Ranjit Malhotra, Malhotra and Malhotra Associates, Chandigarh, Dr. Sheela Sarvanan, Independent Researcher, Dr. Devika Singh, Co-Founder & CEO, Cohere Consultants, New Delhi. Smt. Kirron Kher deposed before the Committee that it is very difficult to prove infertility with certainty. She also submitted that five years waiting period to avail surrogacy is not appropriate where in certain medical conditions, it is clear that the couple will not be able to conceive. She emphatically pointed out that any Government or any law should not interfere with someone's personal life as what happens in a woman's body and a man's mind cannot be judged by a panel. Since science has taken giant leaps in giving hope to childless couples, it should be left to the couple to avail it. The provision of close relative also was inappropriate as in the age of nuclear families, it would be difficult to find close relative. The prerequisite of having medical and psychological fitness certificate is also cumbersome. She also put forth the concerns of live in couples, LGBT community wanting to go for surrogacy and they should be taken into account. She supported the recommendations made in 102nd Report of the DRSC on Health and Family Welfare wrt a comprehensive legally binding agreement between the intending parents and the surrogate mother providing for monetary compensation with a minimum and maximum cap. Reasonable expenses should be paid to the surrogate mother.

2.17 Adv. Ranjit Malhotra, Malhotra & Malhotra Associates submitted that the stigmatic requirement of a certificate of proven infertility is like a bull in a China shop. It is interference with the right to reproductive autonomy. The provision of close relative needs to be re-looked in the age of nuclear families. He was of the view that it would be much easier to regulate surrogacy for NRIs, PIOs, OCIs with adequate safeguards like comprehensive medical insurance with dollar benchmarks commensurate with income. It should be on the lines of adoption process as by CARA entailing home study report etc. He also submitted that to avoid foreigners from exploiting surrogacy, instead of clamp down or shut down, surrogacy needs to be regulated. He further submitted that the National Surrogacy Board should have members of the Ministry of Law, Ministry of Legal and Treaties Division, Ministry of Women and Child Development, and representatives of the National Commission for Child Protection Rights. In case there is a default by an NRI, PIO, OCI, this nodal agency should be vested with the rights to liaise with the embassies and missions. A high-powered committee should also be a part of the National Surrogacy Board which looks at the changing conditions on a day to day basis. He also suggested that there has to be a surrogacy ombudsman and the bank account of the surrogate mother should be mentioned in the surrogacy agreements. He was also of the view that there should be a dedicated website of all registered surrogacy clinics and medical practitioners so that intending commissioning parents can have their own due diligence and, in case, there are some defaulters, their names are also put up on those websites. There should also be provision for mandatory testamentary conveyance of stored embryos.

2.18 Shri Rabindra Panwar, Secretary, Ministry of Women and Child Development submitted that there is a need to consider the possibility of any unforeseen situation or rift or divorce

between commissioning couple which may render a child abandoned. The Bill needs to be in consonance with the existing laws such as the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act) with regard to issues such as definition of child, definition of abandoned child, declaration of child as abandoned child and age requirement of intending couple etc. Clear provisions regarding roles and responsibilities of commissioning couples and surrogate mothers in cases of abandonment of surrogate children by commissioning parents, need to be provided in the Bill from the point of view of the best interest of such children as well as from the point of view of safeguarding of rights of the women. He further submitted that the need for surrogate mothers to be close relatives of couples commissioning surrogacy may lead to problems with family, social structures and norms. Provision for insurance cover or other welfare measures for child in such condition also needs to be considered. He also stated that the provision for breast feeding of the child needs to be taken care of from the point of view of proper nourishment, immunity and best interest of the child born to surrogate mother. There should also be a limit for women to undergo surrogacy procedure only once. Availability of surrogacy technique to only legally married infertile couple also needs to be reconsidered, in light of Section 57(3) of the JJ Act. The Secretary also submitted that wrt Section 112 of Indian Evidence Act; it needs to be ensured that a surrogate mother is not automatically construed as the mother of a child born by her through surrogacy, against her will, in case that child has been abandoned by the commissioning couple.

2.19 Dr. Sheela Sarvanan submitted that she had done two studies on surrogacy; one is 2009 and other in 2019. She also submitted that an upper age limit is important for surrogate mother because as the woman gets older, her fertility rate goes down and the possibility of risk to her life and health also rises. She was of the view that adoption should be encouraged over surrogacy which should be the last option because women's health is in question here. Surrogacy should not be looked as an economic opportunity. There are extraterritoriality laws all over the world, especially, in countries which have banned surrogacy. She further stated that some surrogate mothers opt for this just to buy an extra piece of land or to buy some buffalos. Most of the poor women accept to become a surrogate mother to come out of poverty.

2.20 Dr. Devika Singh, Co-Founder & CEO - Cohere Consultants, submitted that she had done about nine years of research in surrogacy as a legal subject from the Constitution's perspective. She was of the view that there is insufficient research to take a judgment call on surrogacy. She further submitted that an entire surrogacy industry has been established and if commercial surrogacy is banned, the entire industry will go underground and it will take the surrogate with it. The only countries in the world that support a binding contract on surrogacy are the countries that allow commercial surrogacy. There is not a single country that allows altruistic surrogacy and an enforceable contract. She further submitted that every country that allows altruistic surrogacy has got great safeguards for surrogates. She was also of the view that the birth mother be the legal mother on the birth certificate. Her name should be later removed from the certificate, and the intending parents' names should go on the certificate. In altruistic surrogacy, there should not be any nature of contract. It can be called an inter-parental arrangement or family arrangement. If there is a dispute on the child, then, the dispute on the child should be resolved under the Custody Law, not under the Contract Law. Dr. Devika Singh further submitted that the Surrogacy Regulation Bill-2019 talks about altruistic surrogacy, but market practice has been doing commercial surrogacy, therefore, there has to be a common minimum denominator, which is compensatory surrogacy. She further submitted that there needs to be a budgetary allocation for the functioning of the Surrogacy Board.

EIGHTH MEETING ON 31.01.2020

2.21 The Chairman of the Committee made a PowerPoint presentation on the Bill. Thereafter, the Committee had internal discussion on various aspects of the Bill.

NINTH MEETING ON 1.02.2020

2.22 The Committee took up clause-by-clause consideration and finalized its views on various provisions of the Bill.

TENTH MEETING ON 3.02.2020

2.23 The Committee considered and adopted the Report on the Bill with few modifications.

CHAPTER-III

Issues Raised

3.1 While deliberating on the Bill, the Committee came across various contentious issues that were raised by the members during the proceedings/meetings of the Committee. The Committee held detailed discussion on these issues and the same were raised before the Department of Health Research for detailed clarification. The Department in their replies clarified the queries/issues raised by the Members of the Committee on various provisions of the Bill. These issues have been dealt separately as given below:-

Altruistic Surrogacy vs Compensated Surrogacy

3.2 The Committee observes that a lot of debate has been going on *w.r.t.* model of Surrogacy to be practiced in the country with the objective to put a stop to commercial Surrogacy which results in exploitation of surrogate mother. However, concerns have been raised with respect to the model of surrogacy to be practiced in the country to achieve the desired objectives. Various viewpoints have been expressed in support of altruistic as well as compensated surrogacy (as recommended by 102nd report of DRSC n Health and Family Welfare) with the main concern to safeguard and protect the rights of the surrogate mothers. The present Bill proposes altruistic surrogacy which entails that a surrogate mother will be genetically related to either of the intending couple. Department of Health Research is of the view that compensated Surrogacy may lead to commercialization of Surrogacy which in turn may lead to exploitation of surrogate mother. The 228th report of the Law Commission of India had also recommended for prohibiting commercial Surrogacy and allowing only ethical altruistic Surrogacy by enacting a suitable legislation. Subsequently, Department of Health Research issued a notification dated 04.11.2015 for prohibiting commercial Surrogacy.

3.3 In a specific query with regard to the option of having a compensated Surrogacy within a legal regulatory oversight, the Department submitted that the compensation to the surrogate mother has been provisioned in the Bill by way of insurance coverage for expenses incurred by the surrogate mother, medical expenses, post-partum complications and situations of death. Beyond this, it will amount to commercialization of Surrogacy because demarcation between compensatory and commercial Surrogacy is diffused. The Government aimed to prevent altruistic Surrogacy from becoming “forced labour” by proposing that the Surrogate mother to be a close relative, allowing a woman to be a surrogate only once in her life time, stringent penal provisions and insurance coverage of medical and other necessitated expenses.

3.4 The Committee also wanted to be apprised as to how the Government would ensure that the blanket ban on commercial Surrogacy would not give rise to a black market in Surrogacy services and whether the provisions of stringent punishment would suffice for banning the commercial Surrogacy. The Department submitted that the stringent punishment in the provisions of the Bill and allowing any woman to be a surrogate only once would go a long way in stopping the black marketing in Surrogacy services. In addition, monitoring provisions have been kept in the Bill and additional measures /policy interventions made by the National Surrogacy Board would be need based.

Compensation to the surrogate mother

3.5 During the deliberation of the Committee, time and again, members have raised concerns related to the adequate compensation to the surrogate mother in lieu of the grand/noble gesture she would be making towards the intending couple. Demands have been raised to frame a robust system through which surrogate mother is supported monetarily and she is given enough protection both financially and health wise. The proposed legislation promises to give medical expenses incurred on surrogate mother and the insurance coverage to the surrogate mother. Demand has also been raised to reimburse surrogate the loss of wages during pregnancy if she would have been working during the time of carrying the pregnancy. However, there is no such provision in the Bill. It has also been argued that proper compensation to the surrogate should be given and be regulated by Government so that there is no scope for bargaining.

3.6 In response to a query regarding the quantum of compensation to the surrogate mother in the Bill, the Department submitted that the insurance coverage will be provisioned as a part of the rules and regulations which will be laid in the Parliament that will cover expenses incurred by the surrogate mother, medical expenses, post-partum complications, situations of death and unnatural abortions. It was, further, added that surrogate mother will be provided insurance right from the beginning of the procedure, throughout the gestational period and including any complications and seven months post delivery. The success rate of Surrogacy is only 30-40 %, so insurance coverage will have to be decided case wise by the IRDA authorities. The estimated average cost /medical expenses for Surrogacy will be worked out in consultation with IRDA authorities and open to revision by the National Surrogacy Board. The Department informed that the Bill provides for only altruistic Surrogacy which will prevent exploitation of Surrogate mother by any middle men.

Period of Insurance coverage

3.7 The Committee notes that varied suggestions have been received with regard to the insurance coverage for a period of sixteen months covering post partum delivery complications from an Insurance company recognized by IRDA as proposed in the Bill. Suggestions have also been received to incorporate provisions for the compensation of the surrogate mother after delivery.

3.8 As per the written submission of the Department, the insurance coverage of 16 months includes duration for screening and necessary treatment of the surrogate before establishment of the pregnancy, gestation period of nine months and seven months postpartum period. Generally, any pregnancy related complications are expressed within three to four months after delivery. The minimum amount of the insurance coverage for the surrogate mother will be fixed by an insurance company or an agent recognized by the Insurance Regulatory and Development Authority (IRDA) established under the Insurance Regulatory and Development Authority Act, 1999 for a period of 16 months covering post-partum delivery complications. The insurance coverage can be provided in 3 phases to protect the intending couple from any catastrophic expenditure:

- i. 1st phase during initiation of Surrogacy procedures till the pregnancy is confirmed
- ii. 2nd phase till delivery of the child by the Surrogate mother covering the gestational period
- iii. 3rd Phase covering post-partum complications including death

Waiting period to establish infertility

3.9 Waiting period to establish infertility has been another debatable provision of the Bill. Concerns have been raised with regard to 5 years time period to establish infertility as provisioned in the Bill. The Committee notes that various suggestions have been received wherein the recommendation made under the 102nd report of the DRSC Health and Family Welfare to reduce the waiting period to one year has been supported widely. Due to a trend of late marriages, various sectors have suggested to reduce the time period to 2-3 years. Support has also been received to remove waiting period of five years for the women diagnosed with clinical issues due to which they cannot bear a child. It has also been pointed out that the definition of infertility in the Surrogacy Bill is inconsistent with the definition provided by WHO as well as the ART Bill, which describes infertility as the inability to conceive/achieve pregnancy after at least one year of unprotected sexual intercourse.

3.10 With respect to rationale behind five years waiting period to establish infertility, the Department submitted that the upper age limit of intending couple has been kept as 50 years for the female and 55 years for the male envisaging the trend of delayed marriages in India. The five years period is kept for the intending couple to avail all possible Assisted Reproductive Technology treatments (ART) and if no ART procedure results in live birth, then the couple finally may avail altruistic Surrogacy as the last resort. The age of the surrogate mother has been kept at 25-35 years and this does not get affected by the age of the intending couple. The Department stated that since the infertility cannot be proven in early years of marriage as sometimes conception happens even after 15 years, a reasonable time of 5 years has been kept.

Close relative to be a surrogate mother

3.11 The Committee observes that one of the most contentious issues raised by many members of the Committee and stakeholders has been the provision of having a close relative as a surrogate. However, the provision of "close relative" of couple to be a surrogate mother has not been defined in the Bill. This has received wide criticism and suggestions have been received to define close relative in such a way that it includes not only blood relatives but also people from amongst extended families too. Various viewpoints have been received opposing the condition of close relative to be a surrogate mother as it may lead to many problems including property feuds as recommended by DRSC on Health and Family Welfare. It has been, further, criticized on the grounds that it drastically reduces the number of women who can potentially carry the pregnancy for the intending couple. Since the close relative has to be between 25 and 35 years of age and be married with a child, such a close relative is likely to be a sister or the wife of either of the brothers, or their niece through a sibling or a cousin.

3.12 The Department has justified the provision of having a close relative as the surrogate as the proposed Bill seeks to avoid commercialization of Surrogacy and exploitation of below poverty line (BPL) women who are pushed into it even by their own families. Similar provisions finds mention in the Transplantation of Human Organs and Tissues Act 1994 as "Near relative including son, daughter, father, mother, brother or sister". This is a robust Act and stood the test of time for twenty five years. In this Act, the provision for allowing organ donation by persons having emotional connect with the recipient is also incorporated. In the current Bill, close relative has been provisioned to cover a wider ambit of relatives even a distant relative could be close to any of the intending couple. In this context, the Department has kept the provision for

the National Surrogacy Board to work on similar lines to define close relative keeping in view the nature of issues involved in Surrogacy. The National Board along with State Boards would have Women Parliamentarians, eminent experts in the field, senior administrators and other stake holders to take care of all these aspects. Further, the Companies Act 2013, defines a relative as (i) members of a Hindu undivided family (ii) husband and also wife or (iii) other relations prescribed under the Act.

Need for a Contract/Tripartite Agreement

3.13 The need for a legally binding tripartite agreement has been expressed by various stakeholders including Members of Parliament. It has been stated that there should be provision for a contract or an arrangement. Clause 6(i) specifies the requirement of a written informed consent from the surrogate mother but it is limited to medical procedures and side effects. However, a more expansive contract or agreement is needed to govern the arrangements clearly spelling out the rights and duties of each party. It has also been argued that in order to minimize the role of the state, and clarify all possible grey areas, a tripartite agreement is necessary between the surrogate mother, the intending person or persons and the surrogacy clinic, which will be governed by the Indian Contract Act. The agreement will include elements of reasonable compensation contemplated in the altered definition of altruistic surrogacy - the timeline, details for bank transfer, a nominee who will care for the child in case of any eventuality, cases in which abortion and foetal reduction can take place.

3.14 The Department of Health Research submitted in this regard that the tripartite agreement mentioned is equivalent to the parental order to be issued by the Magistrate Court as mentioned in section 4.

3.15 The Department related Parliamentary Standing Committee in its 102nd Report on the Surrogacy (Regulation) Bill, 2016 made the following recommendation wrt to a surrogacy agreement:

“The Committee is of the view that mere parentage order issued by the first class magistrate will not suffice. If the intent of the Bill is to protect the surrogate mothers and children, it must provide a legal framework for a comprehensive surrogacy agreement containing all safeguards. The agreement should mandatorily provide insurance, monetary compensation to surrogates, the manner of its disbursement and pre/post delivery care of the surrogates. It should also contain a provision for nourishment of the surrogates not just during the pregnancy but also in the post partum period; comprehensive healthcare for a period of five years starting from the date any medication for surrogacy procedure is begun; legal, medical and psychological counselling etc. Since the surrogates are predominantly uneducated, the contract should be made available in the language they fully understand and should be explained properly to them. The surrogacy agreement should be registered also. The jurisdiction for registration should lie before the Registrar where surrogate mother resides or where the intending parents reside or where the agreement is executed. Since a surrogacy agreement is a legal document, it will act as bedrock of the surrogacy arrangement and shall have a legal binding on all the parties involved in the surrogacy and help in solidifying the rights and duties of both the participants to the arrangement. Therefore, the Committee recommends that an agreement of surrogacy among all the stakeholders of the facility i.e the intending parents, surrogate mother and the surrogacy clinic should be made a mandatory document for the surrogacy arrangement for them”

3.16 There has been another viewpoint against having a contract citing legal aspects. In altruistic surrogacy, there should not be any nature of contract. It can be called an inter-parental arrangement or family arrangement. If there is a dispute on the child, then, the dispute on the child should be resolved under the Custody Law, not under the Contract Law. The only countries in the world that support a binding contract on surrogacy are the countries that allow commercial surrogacy. There is not a single country that allows altruistic surrogacy and an enforceable contract.

Economic Opportunity

3.17 The Committee observes that surrogacy has been considered as an economic opportunity by the women from economically weak background. Various stakeholders have advocated that women should have autonomy over her body and they should be allowed to undergo surrogacy to earn a good amount which might solve some of their immediate crucial problems. However, at the same time, various viewpoints have been received wherein it has been argued that the reproductive capacity of women cannot be viewed as an economic opportunity.

The Department of Health Research is of the view that surrogacy cannot be looked into as means to earn money. The Department also submitted that Government provides various alternative opportunities to such poor women who act as surrogate mothers to ensure their economic and social empowerment. The Ministry of Women and Child Development has initiated many new schemes for women empowerment in the last five years like Pradhan Mantri Matru Vandana Yojana (PMMVY), Mahila Shakti Kendra (MSK) Scheme, Training and Employment Programme (STEP) for Women, Beti Bachao & Beti Padoos and other Ministries also have specific schemes for women empowerment.

Permission to PIO, OCI and foreigners to commission Surrogacy

3.18 The Committee notes that PIO, OCI and foreigners have not been allowed to commission surrogacy under the Bill. This provision had been debated widely both in and outside the Parliament of India. Various suggestions have been received arguing to consider PIO and OCI in a different way, since they are the people of Indian origin only. Under Adoption Act, even PIOs and OCIs are permitted. They should, therefore, be treated at par with NRIs because to say that there could be a possibility of abandonment of child borne out of surrogacy, it could be the same for an NRI. PIO and OCI may be allowed only if they have received NOC from their home country and that is how it is happening in the case of adoptions also. It has also been argued that situation like one partner being Indian and another being a foreigner should not be excluded from availing Surrogacy.

3.19 The Department of Health Research is of the view that allowing Surrogacy services to PIO, OCI and foreigners would amount to women of our country getting exploited by foreigners.

3.20 On a specific query regarding as to how the Government will ensure that surrogate child of a NRI couple will not be subjected to any child abuse/abandonment/right violation, the Department clarified that any NRI is an Indian citizen and the surrogate will be his/her relative and hence, the chances of any child abuse/abandonment/rights violation will not be there. Further, contraventions of the provisions of the Act have stringent penal provisions which will be applicable/ implementable on NRIs as they are Indian Passport holders. A notification no. 25022/74/2011-F-1 (Vol-111) dated 3rd November 2015 was issued by Ministry of Home affairs prohibiting foreign nationals, PIO and OCI card holders from commissioning Surrogacy in India.

Issue of single women, widows and divorcees

3.21 Prohibition of single women from availing the benefits of Surrogacy has been another issue inviting lot of attention. There are many who have supported to extend surrogacy services to the single women, since they are allowed to adopt. The Department, while explaining the rationale behind prohibiting Surrogacy for single women asserted that this provision was kept with an intention of protecting the rights of the child/children born out of Surrogacy. The marriage is an institution where both partners have the mutual legal responsibility on child and vice versa. In case of married couple, the responsibility of upbringing a child is equally shared by both the parents. Although the aforesaid view cannot be accepted as there are conditions under which a single person genuinely needs to avail surrogacy option to have child. One such situation is young age widow, who is otherwise capable but cannot carry child because of fear of social stigma attached to pregnancy of a widow in our society. One cannot explain everyone that the child in her own womb is of surrogacy and therefore such single person should be given option of surrogacy within permitted regulation under the Bill. Similar situation is of a divorced lady who doesn't want to remarry but wants child.

Age limit for Surrogate Mother

3.22 The age limit of the surrogate mother as proposed in the Bill is yet another issue which has been widely discussed. Various parliamentarians and stakeholders have supported to increase the maximum age limit to 39 years as recommended by the DRSC on Health and Family Welfare in 102nd Report. However, at the same time some stakeholders have supported the age limit as given in the Bill.

3.23 The Department while justifying the upper age limit submitted that it has been provided keeping in view the health of mother & child because of the following reasons:-

- Implantation rate decreases sharply
- Increase in incidence in miscarriage
- Incidence of pregnancy related adverse effects increases for surrogate mother
- Incidence of abnormalities in the child born will also increase

Arrangements for breastfeeding

3.24 Concerns have been raised with regard to the breastfeeding of the surrogate child and provision for milk banks. The Department submitted that since the surrogate mother would be a close relative, this proviso would facilitate breast feeding. The Infant Milk Substitutes, Feeding Bottles and Infants Foods (Regulation of Production, Supply and Distribution) Act, 1992 which provides for the regulation of production, supply and distribution of infant milk substitutes, feeding bottles and infant foods with a view to the protection and promotion of breastfeeding and ensuring the proper use of infant foods will also be followed. The Department also stated that the recommendations of the Select Committee for breast feeding/ Milk banks will be kept in view while formulating the rules & regulations in this regard.

Rights of Child Borne out of Surrogacy

3.25 The rights of the child borne out of Surrogacy is another significant issue that has received attention from different MPs and stakeholders. It has been contended that rights of child has not been clearly elaborated in the Bill. Doubts have been raised regarding the provisions that

may prevent surrogate child from getting abandoned, ill-treated, abused, sold, trafficked or exploited in any way. Suggestions have also been received to insert provision related to the insurance of surrogate child, screening of intending couples, medical assessment of fitness, social-economic background, criminal record, age, family information and other checks before permitting commissioning of surrogacy.

3.26 The Department in this regard submitted that there are various provisions to safe guard the future of the surrogate child. Section 4 states “*when it is not for producing children for sale, prostitution or any other form of exploitation*”. Section 7 clearly explains that the child born through surrogacy will be deemed to be the biological child of the intending couple and all other laws applicable for protection of the rights of the biological children would apply on these surrogate children as well. It also prohibits abandonment of the child by the intending couple. Further, a parental order will be issued as per section 4 from a Magistrate Court to prevent abandonment by intending couple or detainment by the Surrogate mother. Also, the custody of the child as per the above provision will be subject to proof of insurance coverage for the child by the intending couple.

ART Bill should come before Surrogacy Bill

3.27 It has been argued that surrogacy is a part and parcel of Assisted Reproductive Technology (ART) and hence the Surrogacy Bill should come into force only after the enactment of ART Bill. Bringing Surrogacy Bill before the ART will be irrelevant and also create duplication of Boards. Suggestions have been received to incorporate Surrogacy Bill within the ART Bill as proposed earlier in the draft ART Bill. The Surrogacy Regulation Bill needs to be positioned and understood in close conjunction with the ART Bill because the ART Bill deals with the mode, the procedures and the technology of reproductive medicine in surrogacy while the Surrogacy Bill deals with the implications and the ethical issues arising from such arrangements. Therefore, regulation of ART is a necessary pre-condition for effective implementation of the Surrogacy Bill. On being enquired about reason of bringing a separate Bill for surrogacy when the ART Bill encompassed all assisted reproductive techniques including surrogacy, the Department submitted that the Assisted Reproductive Technology Regulation Bill, 2019 has been drafted and is awaiting Cabinet approval. ART Bill is intended to address the unethical practices by the ART clinics and banks. On the other hand, Surrogacy involves a third person other than the intending couple and exploitation of this third party (Surrogate mother) is becoming rampant. The Surrogacy Bill is based on social, legal, ethical and moral aspects whereas ART regulation Bill addresses highly technical and medical aspects. Most of the countries have separate Acts to regulate ART and Surrogacy. Some countries also have a 3rd Act on Embryos for e.g. Netherlands, Germany, and UK.

CHAPTER-IV

CLAUSE BY CLAUSE EXAMINATION OF THE BILL

4.1 The Surrogacy (Regulation) Bill, 2019 has been scrutinized in the context of India being called a Surrogacy hub for couples from different countries and reported incidents concerning unethical practices, exploitation of surrogate mothers, abandonment of children born out of Surrogacy and rackets of intermediaries importing human embryos and gametes. The Committee has examined the Bill in detail on provision of altruistic surrogacy and rights of child, regulation of the practice of surrogacy so as to prevent exploitation of women mainly from the economically weaker section of the society and to ban the commercial surrogacy.

4.2 During the course of the examination of the Bill, the Committee received a number of memoranda in response to its Press Release. The memoranda were forwarded to the Department of Health Research for its response. The Committee's observations and recommendations contained in the Report reflect an extensive scrutiny of submissions and all the viewpoints put forth before it by various organizations/experts/State Governments and Members of Parliament. The Committee is of the view that certain provisions of the Bill need to be recast to serve the intended purpose of the Bill better. The Committee in its meeting held on 1st February, 2020 took up clause-by-clause consideration of the Bill. Various amendments to the Bill have been suggested by the Committee on clauses of the Bill which are discussed in the succeeding paragraphs:

Clause 2- Definitions

4.3 Clause 2(b) provides the definition of altruistic surrogacy and it remained the most contentious and the most extensively debated topics during the deliberations of the Committee. While, some of the Members/stakeholders were of the view that the concept of altruistic surrogacy is not at all a workable proposition, some others apprehended that allowing only altruistic surrogacy would lead to black marketing and the surrogacy procedure being done clandestinely. The Committee was informed that by banning commercial surrogacy, the Bill assumes that altruistic surrogates are not exploited, ignoring the fact that unpaid surrogacy is also exploitative. The Bill also ignores the potential loss of earnings of the surrogate because she will have to effectively put her life on hold for a period of two years to successfully complete the process of surrogacy. It was also submitted before the Committee that through this Bill, it is expected that a woman must act as a surrogate and go through all the physical and emotional tolls of this arrangement free of cost and only out of "compassion". The irony is that through its "altruistic model", it promotes forced labour. In view of the above, there was a strong view that 'compensatory surrogacy' would be more appropriate word to make good for the losses suffered by the surrogate mother in terms of health, wages, sufferings, and death, etc. and hence the word 'altruistic surrogacy' may be replaced with the word 'compensatory surrogacy'.

4.5 The Department of Health Research responded to these issues by stating that Compensatory Surrogacy was not incorporated in the Bill because:-

- It may lead to commercialization of surrogacy and commercialization leads to exploitation of surrogate mothers and this practice has become rampant and India has become a surrogacy Hub.

- The 228th report of the Law Commission of India also recommended for prohibiting commercial surrogacy and allowing ethical altruistic surrogacy by enacting a suitable legislation;
- This got substantiated by the Supreme Court ruling with respect to a PIL by Smt. Jayashree Wad;
- In fact, many countries have banned surrogacy altogether. We are adopting a middle path.

4.6 The Department also submitted that provisions for compensation to the surrogate mother has been made in the Bill by way of insurance coverage for medical expenses, postpartum complications and the illness or death of a surrogate mother and any compensation beyond this would amount to commercialization of surrogacy because demarcation between compensation and commercial surrogacy gets defused.

4.7 While responding to the query of compensating the surrogate mother of the number of work days lost and entitlement to enhance maternity leave, the Department stated that under the Maternity Benefit Act, 2017, maternity benefits could be extended to the surrogate mother. There is also a provision of extended leave benefits to the surrogate mother to ensure the continuity of their service and to cover loss of wages.

4.8 The Committee is of the opinion that surrogacy could be classified on the basis of the specific intention with which a woman agrees to be a surrogate mother. The intention could be to make money and to render a paid service or for to do so for altruistic reasons. In case, the intention is to earn money, it is a commercial service and if it is to render a paid service it would be considered as compensatory surrogacy. Both the commercial and compensatory surrogacy is fraught with the risk of exploitation and commodifying the noble instinct of motherhood.

4.9 Compensatory surrogacy gives rise to some of the teasing questions:- whether there could be or should be any compensation for the noble act of motherhood; how much compensation could be treated as condign for a woman who agrees to rent her womb; whether any standard price or cost for this noble act of motherhood could be fixed, whether renting out of her womb by a woman for some material consideration could be considered as an ethical practice and the woman would get the same respect as other women and mothers get in the society. The appropriate and judicious response to all these questions appears to be in the negative and it is in this background that the most acceptable option for surrogacy is the altruistic one. Altruism signifies a behavior that is selfless and intended to help others. It is way of thinking or behaving that shows one's wish to help and care about other people. In a nutshell, it is an unselfish concern for the welfare of others. At the heart of the altruistic surrogacy lies the fact that it is bereft of any commercial consideration, it is a social and noble act of highest level. The surrogate mother shows a strong inclination to render selfless service and takes a forward step to abolish the stigma of infertility from the society. She willfully and voluntarily resolves to do something worthwhile for the society and she, instead of being considered as getting involved in an immoral and unethical practice, sets an example of being a model woman in the society indulging in altruistic and selfless service as other normal mothers do. In the eyes of the surrogate child such a mother would get the same respect and reverence as a normal mother would have got.

4.10 Women in general and mother and motherhood in particular, occupy a very exalted position in Indian socio-cultural context, so much so, that they have been deified, adored and revered as goddess and regarded as par excellence paradise – ‘*Janani Janmabhoomischa Swargadapi Gariyasi*’. The reason why a mother has been put on such a higher pedestal of divinity is not only because she is a biological creator but more so because of the selfless, sublime love and affection that a mother showers on her child which knows no boundaries. The kind of care and concern, the warmth, the unflinching feeling of oneness, unison and bond that the mother harbours for her child and the sense of security and safety that the child feels in the arms and lap of a mother can only be experienced and not expressed in words.

4.11 What needs to be pondered over here is that whether such a sublime and divine instinct of motherhood could be allowed to be turned into a mechanical paid service of procreation devoid of divine warmth and affection. To preserve the sanctity attached with the ‘*mother*’ and ‘*motherhood*’ it is imperative that surrogacy is altruistic. Hon’ble Justice Dr. A.R. Laxmanan, in the 228th Report of the Law Commission had opined – ‘*the need of the hour is to adopt pragmatic approach by legalizing altruistic service/ arrangements and prohibit commercial ones*’.

4.12 The Committee after deliberating the issue at length, decided that altruistic surrogacy be modified as in the succeeding para.

4.13 As far as, the requirement of reimbursement of all reasonable expenses is concerned, there could be no divided opinion on this. The Committee fully endorses the view that payment of all the required expenditure on surrogacy procedure including such other expenses like nutritional food required, maternity wear, etc. vital for the wellbeing and upkeep of the surrogate mother needs to be appropriately covered and compensated. The Committee, therefore, recommends that clause 2(b) may be amended as under:

“altruistic surrogacy” means the surrogacy in which no charges, expenses, fees, remuneration or monetary incentive of whatever nature, except the medical expenses **and such other prescribed expenses** incurred on surrogate mother and the insurance coverage for the surrogate mother, are given to the surrogate mother or her dependents or her representative.

Clause 2(f):

4.14 Consequent to the amendment in Clause 2(b), the Committee recommends that Clause 2(f) may be amended as under:

“commercial surrogacy” means commercialisation of surrogacy services or procedures or its component services or component procedures including selling or buying of human embryo or trading in the sale or purchase of human embryo or gametes or selling or buying or trading the services of surrogate motherhood by way of giving payment, reward, benefit, fees, remuneration or monetary incentive in cash or kind, to the surrogate mother or her dependents or her representative, except the medical expenses **and such other prescribed expenses** incurred on the surrogate mother and the insurance coverage for the surrogate mother.

4.15 This Clause 2(j) defines embryologist. The Committee finds that the word '*embryologist*' has been defined as a person who possesses any postgraduate medical qualification in the field of 'human embryology' recognized under the Medical Council Act, 1956 or who possesses a postgraduate degree in 'human embryology' from a recognized university.

4.16 When the Committee enquired from the Department as to whether any university in the country awards postgraduate degree in human embryology recognized under the Indian Medical Council Act, 1956, as prescribed in the Bill, the Department replied in the negative and stated that as per the recommendations of the Parliamentary Standing Committee wherever the term '*human embryologist*' occurred, it was replaced by '*embryologist*' and the Clause will also be rectified accordingly.

4.17 The Committee finds that it is an inadvertent error which has occurred due to some oversight. **The Committee, therefore, recommends that Clause 2(j) may be amended as under:**

“embryologist” means a person who possesses any post-graduate medical qualification or doctoral degree in the field of embryology or clinical embryology from a recognised University with not less than two years of clinical experience;

4.18 Clause 2(p) read with Clauses 2(r), 4(ii)(a) & 4(iii)(a)(I) provide the eligibility criteria for availing surrogacy procedure. A number of Members raised objections to the definition of the term '*infertility*' as the inability to conceive after 5 years of unprotected coitus on ground that it was too long a period for a couple to wait for child. They also argued that the World Health Organization defines infertility as a disease of the reproductive system defined by the failure to achieve a clinical pregnancy after 12 months or more by regular unprotected sexual intercourse. Some of the Members were of the view that there may be certain proven medical conditions like absence of uterus by birth, non-functional uterus, or patients with chronic medical condition where pregnancy is ruled out. They, therefore, were of the view that in these conditions, the 5 year period required for availing the procedure of surrogacy, needs to be relaxed. Some Members took umbrage to the Clause 4(iii)(a)(I) which provides for obtaining a certificate of infertility from a District Medical Board on the ground that why should such a certificate be required at all as it is quite offending and insulting. They were of the view that these Clauses need to be revisited.

4.19 The Department submitted that this particular definition of infertility has been specifically framed for infertility treatment through surrogacy. The intending couple needs to exhaust all other means of having a child of their own with the help of assisted reproductive technology, etc. because the joy of bearing one's own child can never be the same as can be had through surrogacy. So, this period of 5 years provides the intending couple the opportunity to exhaust all the possible means to have a child of their own rather than jump to the surrogacy procedure in haste. It was further submitted that infertility cannot be proven in early years of marriage as sometimes conception happens even after 15 years. That is why, a reasonable period of 5 years married life has been prescribed. The Department also submitted that provisions have been kept for individual cases with other conditions which may include birth anomalies and have only surrogacy as an option vide Clause 4(iii)(c)(IV).

4.20 The Committee was, however, not convinced with the arguments given by the Department and felt that five year waiting period is too long particularly in conditions like – absent or abnormal uterus, irreversible damage or destruction of uterus due to tuberculosis, removal of uterus due to cancer, fibroids, etc. or patients with chronic medical condition where normal pregnancy is ruled out and it is medically proven beyond any doubt that surrogacy is the only option. Besides, the Committee also felt that the requirement of obtaining certificate of proven infertility, is not at all justified.

4.21 In view of the above, the Committee recommends that while Clause 2(p) may be deleted and after this, the clauses may accordingly be renumbered/rearranged.

4.22 Clause 2(q) defines insurance to provide a guarantee of compensation to the surrogate mother. The Committee discussed this issue in the context of the clarification given by the Department that medical expenses incurred on surrogate mother would be provided by way of insurance coverage. The Committee, however, found that the word ‘insurance’ as defined in Clause 2(q) did not cover medical expenses, as it provided a guarantee of compensation for specified loss, damage, illness or death of surrogate mother during the process of surrogacy. The Committee, therefore, recommends that the Clause 2(q) may be amended as under:

“insurance” means an arrangement by which a company, individual or intending couple undertake to provide a guarantee of compensation for medical expenses, health issues, specified loss, damage, illness or death of surrogate mother and such other prescribed expenses incurred on such surrogate mother during the process of surrogacy.

4.23 Clause 2(r) defines ‘intending couple’ as the couple who have been medically certified an infertile couple. Consequent to the deletion of Clause 2(p) which defined infertility, the Committee recommends that this Clause may be amended as under:

“intending couple” means a couple who have a medical indication necessitating gestational surrogacy and who intend to become parents through surrogacy;

4.24 The Committee understands that there are conditions under which a single person genuinely needs to avail surrogacy option to have child. One such situation is young age widow, who is otherwise capable but cannot carry child because of fear of social stigma attached to pregnancy of a widow in our society. One cannot explain everyone that the child in her own womb is of surrogacy and therefore such single person should be given option of surrogacy within permitted regulation under the Bill. Similar situation is of a divorced lady who doesn’t want to remarry but wants child. In view of the above, single woman (divorcee or widow) has been made eligible for commissioning surrogacy by amending Clause 4 and the expression- single woman (divorcee or widow) figures in various clauses of the Bill, insertion of definition of intending woman is essential. Accordingly, the Committee recommends that the word ‘intending woman’ may be defined as under by inserting Clause 2(r)(a) as under:

Clause 2(r)(a)

“Intending woman” means an Indian woman who is a widow or divorcee between the age of 35 to 45 years and who intends to avail surrogacy.

4.25 The definition of ‘intending woman’ has been inserted in view of the insertion of the said expression in the Bill. Consequential amendments have been made by inserting the said expression, besides the couple of Indian origin, wherever they occur.

4.26 Clause 2(zf) defines ‘surrogate mother’ and consequent to insertion of the word ‘intending woman’ in the Bill. The Committee recommends that this Clause may be amended as under:

“surrogate mother” means a woman who agrees to bear a child (the Child who is genetically related to the intending couple or intending woman) through surrogacy from the implantation of embryo in her womb and fulfills the conditions as provided in sub-clause (b) of clause (iii) of section 4;

4.27 Clause 2 as amended is adopted.

Clause 3

4.28 Clause 3 has no amendment and is adopted.

4.29 Clause 4 – Regulation of surrogacy and surrogacy procedure

4.30 Clause 4 provides for regulation of surrogacy and surrogacy procedures, which *inter-alia* prescribes that the intending couple are Indian citizen.

4.31 Some Members/stakeholders also desired that debarring single man, single woman - divorcee or widow, live-in couples and gay couples from availing surrogacy is violative of their reproductive autonomy. They, therefore, demanded that the people of above categories may also be permitted to avail surrogacy.

4.32 Yet another objection to Clause 4 by the Members/stakeholders is that the intending couple for surrogacy have to be Indian Citizen thus effectively debarring or depriving foreigners and persons of Indian Origins of the opportunity to avail the surrogacy services in India. A strong demand has, therefore, been made that persons of Indian origin may be made eligible to avail the practice of surrogacy in India.

4.33 The main reasoning given behind making persons of Indian Origin eligible for surrogacy in India is that if they are permitted to adopt in India, why can't they be allowed to opt for surrogacy? The Department of Health Research gave the following reasons for not allowing them to avail surrogacy in India:- abandonment of children; citizenship laws in the home countries of persons of Indian origin not being supportive to migrating surrogate children; persons of Indian origin can avail surrogacy in their own countries as per prevalent laws; difficulty in their antecedent verification and lastly that it leads to Indian women getting exploited. They further submitted that Ministry of External Affairs have reported certain issues related to surrogacy by foreign nationals such as – suppression of facts during visa applications which results in trouble and inconvenience for the child, the surrogate mother, as well as, the Indian Mission; inconsistent DNA results from the surrogacy clinics/laboratories due to poor quality control, resulting in denial of Passport by some countries to the surrogate child, leading to the child getting stranded in India, etc. The Department has also referred to the Notification

No. – 25022/74/2011/F-1 Vol. III dated 3rd November, 2015 which was issued by Ministry of Home Affairs prohibiting foreign nationals, PIO and OCI cardholders from commissioning surrogacy in India. It was further added that after discussion with Ministry of Health & Family Welfare and Ministry of External Affairs, MHA has decided that no Visa should be issued to Indian Nationals intending to visit India for commissioning surrogacy and also that no permission should be granted by the foreigners regional registration offices to overseas Indian citizens cardholders to commission surrogacy in India and no exit permit to the child who is born by surrogacy would be issued. The notification of MHA is based on facts and hence cannot be undermined or overlooked. They also informed the Committee that the rules for availing surrogacy by persons of Indian origin were liberal up to the year 2015. But based on the developments, the MHA has to issue such a Notification.

4.34 When the Department was asked to clarify that if adoption is permissible for persons of Indian origin, why can't they be allowed to opt for surrogacy, the Department responded by saying that as informed by Ministry of External Affairs there is no international convention or multilateral agreement which defines and regulates surrogacy. They further submitted that Hague Convention on protection of Children and Co-operation in respect of Inter-country adoption which operates through a system of national central authorities, reinforces the UN convention on the Rights of the child (Article 21) and seeks to ensure that inter-country adoptions are made in the best interests of the child. Moreover, the process of adoption provides for a family to a homeless child whereas surrogacy involves a third party reproduction of a child with uncertain future.

4.35 The Committee extensively debated both the issues and came to a conclusion that keeping in view the interest of the child, only single woman (divorcee or widow) between the age of 35 to 45 years and persons of Indian origin may be permitted to avail surrogacy, provided they obtain a certificate of recommendations from the National Surrogacy Board on an application made by the above said persons in such manner and such format as may be prescribed. The format may contain No Objection Certificate for the Indian origin couple, country status regarding surrogacy, details of surrogate mother, parental order for the child to be born and clearance from Ministry of External Affairs and satisfying all provision of the Bill.

4.36 The Committee, however, after having detailed discussions on the matter feels that the facility to avail surrogacy procedure may be extended to persons of Indian origin because they have their ancestral root in India. Consequent to deletion of definition of infertility and keeping in view the above facts, the Committee recommends that Clause 4(ii)(a) may be amended as under:

(a) **when an intending couple has a medical indication necessitating gestational surrogacy:**

Provided that a couple of Indian origin or an Intending woman who intends to avail surrogacy shall obtain a certificate of recommendation from the Board on an application made by the said persons in such form and manner as may be prescribed.

Explanation.—For the purposes of this sub-clause, the expression “gestational surrogacy” means a practice whereby a surrogate mother carries a child for the

intending couple through implantation of embryo in her womb and the child is not genetically related to the surrogate mother.

4.37 Clause 4(iii)(a)(I) needs to be modified consequent to deletion of definition of infertility as under:

“a certificate of a medical indication in favour of either or both members of the intending couple or intending woman necessitating gestational surrogacy from a District Medical Board.”

4.38 Clause 4(iii)(a)(II) provides for parental order for the custody of the child born through surrogacy. The Committee discussed that in order to protect the interest of the surrogate mother and the surrogate child, a Tripartite Surrogacy Agreement among the intending parents, the surrogate mother and the authority should be made.

4.39 The Department informed the Committee that the Tripartite Agreement is equivalent to the parental order to be issued by the Magistrate Court as mentioned in Clause 4, which will safeguard the future of the child. Apart from this, there are various other provisions to secure the future of the child viz. – Clause 7 clearly explains that the child born through surrogacy will be deemed to be the biological child of the intending couple and also prohibits abandonment of the child by the intending couple. Provisions for Offences and penalties have also been kept to ensure that surrogacy is not taken lightly and the child is not abandoned. Further, to protect the interest of the child, the Department has suggested that the parental order may also be treated as the birth certificate of the surrogate child.

4.40 The Committee discussed this issue and recommends to amend this Clause as under:

“an order concerning the parentage and custody of the child to be born through surrogacy which shall be the birth affidavit after the surrogate child is born, has been passed by a court of the Magistrate of the first class or above, on an application made by the intending couple or the intending woman and the surrogate mother; and”

4.41 Clause 4(iii)(a)(III) provides for the period of insurance coverage to a surrogate mother. Concerns have been raised on the insurance coverage for the surrogate mother being limited for a period of 16 months only, keeping in view the fact that the procedure of surrogacy poses the risks of medical complications and health hazards, post-partum.

4.42 The Department has stated that generally pregnancy related complications are expressed within 3 to 4 months after delivery. The insurance coverage of 16 months includes duration for screening and necessary treatment of the surrogate before establishment of the pregnancy, gestation period of 9 months and 7 months postpartum period. They have further stated that the insurance coverage can be provided in three phases – the first phase during initiation of surrogacy procedures till the pregnancy is confirmed; second phase till delivery of the child covering the gestational period; and the third phase covering postpartum complications. They have also assured that other medical emergencies will be dealt on case to case basis as per rules and regulations.

4.43 The Committee feels that a woman by agreeing to be a surrogate going by the altruistic concept is doing a gratuitous or benevolent act, therefore, it becomes imperative that she is financially secured of her health and wellbeing. This is all the more necessary to provide her a psychological satisfaction. The need to have insurance for longer duration is also felt because the Department has no authentic data on the ill-effects/after effects of surrogacy procedure on the health of the surrogate mothers. In such a scenario, the Committee feels that the period of insurance coverage needs to be so enhanced as to assure surrogate mother that her health is secured.

4.44 The Committee, therefore, recommends that the Clause 4(iii)(a)(III) may be amended as under:

“an insurance coverage of such amount and in such manner as may be prescribed in favour of the surrogate mother for a period of thirty six months covering postpartum delivery complications from an insurance company or an agent recognised by the Insurance Regulatory and Development Authority established under the Insurance Regulatory and Development Authority Act, 1999”.

4.45 Clause 4(iii)(b)(I) provides for a woman to be of the age group of 25 to 35 years. Suggestions have been received by the Committee to the effect that the restriction of age limit i.e. between the age of 25 to 35 years of a surrogate mother on the day of implantation added by the pre-condition that she is having a child of her own would badly affect the availability of surrogate mothers. It has also been argued that there has been a sharp rise in the number of working women who tend to delay their own planning of family. There is also the rising phenomenon of late marriage. An argument has also been advanced that the Bill seeks to permit only gestational surrogacy in which the pregnancy is medically induced and obtained as a result of IVF where woman acting as surrogate does not contribute her eggs and hence a woman is reproductive as long as she has not attained menopause and can potentially act as surrogate provided she is deemed fit to do so by medical practitioner who would evaluate her obstetric health. The important criteria for deciding who can act as surrogate should, therefore, be through examination of physical and mental health to undergo the process and not merely her age. In view of the above, they have suggested that the age limit for a surrogate mother should be raised to 39 years.

4.46 The Department of Health Research held the view that the upper age limit of 35 years has been provided keeping in view the health of the mother and the child. The age between 25 to 35 years is proven to be the most suitable period for reproduction and the success of implantation reduces beyond 35 years of age. The chances of miscarriages and instances of pregnancy related adverse effects leading to more health hazard to the surrogate mother increase with age and at times even can be fatal, and more importantly the instance of abnormalities in the child born will also increase. Further, the success rate of surrogacy is not more than 30 to 40 per cent and that also in best clinics.

4.47 The Committee is of the opinion that to venture into this highly medical and specialized field by randomly suggesting increase in the age of a surrogate mother without any factual or material base would not be appropriate because by doing so both the life of the surrogate mother and the child to be born would be put to a risk.

4.48 The Committee, therefore, does not propose any amendment to this Clause.

4.49 Clause 4(iii)(b)(II) provides eligibility condition for a woman to be a surrogate mother. This issue was discussed at length during the deliberations of the Committee and the requirement of only a close relative being a surrogate mother was contested on the following grounds:

- That these stipulations significantly reduce the availability of women to act as a surrogate mother;
- Surrogate pregnancy is a private affair and a majority of the patients seeking parenthood through surrogacy want to keep their treatment private and confidential and hence the pre-condition of close relative to be surrogate mother would be violative of basic right to privacy and reproductive autonomy of infertile couple;
- The close relative Clause ignores the ground reality of most Indian family where women have little decision making authority. This will create a situation where women in families, especially close relatives would be coerced into providing reproductive labour;
- Limiting the practice of surrogacy to a close relative is not only impractical, but also has no connect with the object to stop exploitation of surrogates envisaged in the proposed legislation;
- That the term '*close relative*' needs to be defined for the purpose of clarity; and
- That there is a change in the way Indians have their personal relationships. Younger married couples do not necessarily have close relatives anymore or they may be cut off from them, or the close relatives may not be geographically accessible.

4.50 To have an exact and authentic information on the enormity of cases of infertility, the Committee asked the Department of Health Research as to whether any survey on the infertile married couples and the cases of surrogacy in the country has been carried out and if so what is the outcome during the last 3 years. The Department responded by saying that there are published reports by researchers, but government survey has not been carried out. The National Family Health Survey 5 initiated this year – has included survey questions related to surrogacy and assisted reproductive technology.

4.51 However, the Committee finds that the Department-related Parliamentary Standing Committee on Health & Family Welfare in its 102nd Report on the Surrogacy (Regulation) Bill, 2016 has cited a study by Ernst and Young Study (Call for Action: expanding IVF treatment in India, July 2015), in India. According to this study, around 27.5 million couples in the reproductive age group are infertile and about one percent i.e. about 2,70,000 infertile couples seek infertility evaluation. Of the people seeking remedy for infertility, 20-25% undergo IVF treatment and of that small group, one percent may require surrogacy. Ten to Twelve per cent of surrogacy is commissioned because of irreversible destruction of uterus due to TB, 8 per cent because of absence of uterus, 12 per cent because of multiple failed IVF cycles, 12 per cent because of multiple miscarriages, 10 per cent because of removal of uterus due to cancers, fibroids, etc.

4.52 Further, the Department of Health Research has stated that the word 'close relative' has been provisioned to cover a wider ambit of relatives and is not as restrictive, as in Thailand where a surrogate mother has to be related either to the husband or the wife by blood. Here, close relative has been provisioned to cover a wider ambit of relatives so as to include even a

distant relative of any of the intending couple. The emotional connect of the surrogate mother with the intending couple has also been kept in view which strengthens the concept of altruistic surrogacy while minimizing the possibilities of exploitation.

4.53 The Committee finds that the term “close relative” potentially restricts the availability of surrogate mother and may affect the genuinely needy persons. The Committee is, therefore, of the view that it may be removed. The Committee, therefore, recommends that the Clause 4(iii)(b)(II) may be amended as under:

“a willing woman, shall act as a surrogate mother and be permitted to undergo surrogacy procedures as per the provisions of this Act;

Provided that intending couple or the intending woman shall approach the appropriate authority with a willing woman who agrees to act as a surrogate mother.”

4.54 Clause 4(iii)(c)(I) and 4(iii)(c)(II) provides for eligibility certificate for intending couple. Consequent to the deletion of Clause 2(p) on the ground that five year period is too long for a couple to have a child and that couples of Indian origin may also be permitted to avail surrogacy the **Committee recommends that Clause 4(iii)(c)(I) and 4(iii)(c)(II) may be amalgamated and amended as under:**

“the intending couple are married and are between the age of 23 to 50 years in case of female and between 26 to 55 years in case of male on the day of certification”.

4.55 Clause 4 as amended is adopted.

Clauses 5 & 6

4.56 Clauses 5 & 6 have no amendment and are adopted.

Clause 7

4.57 Consequent to the insertion of proviso to Clause 4(ii)(a) making women who are divorced and widow or a couple of Indian origin eligible for surrogacy, the Committee recommends insertion of a new Clause as Clause 7(a) replacing proviso to Clause 7 as under:

“A child born out of surrogacy procedure, shall be deemed to be a biological child of the intending couple or the intending woman and the said child shall be entitled to all the rights and privileges available to a natural child under any law for time being in force”.

Clauses 8, 9, 10, 11 & 12

4.58 Clauses 8, 9, 10, 11 & 12 have no amendment and are adopted.

Clause 13

4.59 Clause 13 provides appeal against rejection of application etc. of surrogacy clinics. The Committee finds that the Bill does not contain any provision of appeal for the intending couple or the intending woman in case their application is rejected. The Committee, therefore, recommends that in order to provide the intending couple or the intending woman an opportunity to appeal, the Clause may be amended as under:

The surrogacy clinic or the intending couple or the intending woman may, within a period of thirty days from the date of receipt of the communication relating to order of rejection of application, suspension or cancellation of registration passed by the appropriate authority under Section 12 and communication relating to rejection of the certificates under section 4, prefer an appeal against such order to-

(a) the State Government, where the appeal is against the order of the appropriate authority of a State;

(b) the Central Government, where the appeal is against the order of the appropriate authority of a Union territory,”.

In such manner as may be prescribed.

4.60 **Clause 13 as amended is adopted.**

Clause 14

4.61 Clause 14(2)(f)(ii) inter-alia provides for experts of *stri-roga* or *prasuti-tantra* to be appointed on the National Surrogacy Board. After some discussions on this issue, the Committee decided to delete the expression- *stri-roga* or *prasuti-tantra*. **Accordingly, this clause as amended is adopted.**

Clause 15

4.62 Clause 15(I)(b) specifies the term of ten experts Members to be appointed by the Central Government on the National Surrogacy Board for a period of one year. As provided in Clause 16(1) that the Board shall meet at least once in six months, the Committee feels that there would be no meaningful contribution of these experts to the effective functioning of the Board. When the opinion of the Department on this issue was sought, they agreed that the term of the experts can be similar to the other members. The Committee, therefore, recommends that the term of the expert members may be increased from one year to three years and Clause 15(I)(b) may be amended as under:-

“in case of appointment under clause (f) of sub section (2) of section 14, three years”.

4.63 **Clause 15 as amended is adopted.**

Clauses 16 to Clause 23

4.64 Clauses 16 to Clause 23 have no amendment and are adopted.

Clause 24

4.65 Clause 24(f)(ii) inter-alia provides for experts of *stri-roga* or *prasuti-tantra* to be appointed on the State Surrogacy Board. After some discussions on this issue, the Committee decided to delete the expression- *stri-roga* or *prasuti-tantra*.

4.66 **Accordingly, clause 24 as amended is adopted.**

Clause 25

4.67 Clause 25(I)(b) specifies the term of ten experts Members to be appointed by the State Government on the State Surrogacy Board for a period of one year. The Committee recommends that the term of the expert members may be increased from one year to three years on the lines of National Surrogacy Board and Clause 25(I)(b) may be amended as under:-

“in case of appointment under clause (f) of section 24, three years”.

4.68 **Clause 25 as amended is adopted.**

Clause 26 to 31

4.69 Clause 26 to 31 have no amendment and are adopted.

Clause 32

4.70 Clause 32(3)(a)(i) provides for an officer of or above the rank of Joint Director to be the Chairperson of the appropriate authority. The Committee has been informed that the chairperson of the proposed appropriate authority should be a senior ranking officer as it has been assigned very significant functions. The Committee also feels that the appropriate authority forms the backbone of the implementation and regulation of surrogacy clinics on the ground level and hence it needs to have fairly senior ranking officer to act as chairperson. The Committee, therefore, recommends that Clause 32(3)(a)(i) may be amended as under:

(i) an officer of or above the rank of the Joint Secretary of Health and Family Welfare Department-Chairperson;

(i) an officer of or above the rank of the Joint Director of Health and Family Welfare Department- Vice Chairperson;

4.71 **Clause 32 as amended is adopted.**

Clause 33

4.72 Clause 33 has no amendment and is adopted.

Clause 34

4.73 Clause 34(2) provides that the appropriate authority shall maintain details of registration of surrogacy clinics, cancellation of registration, renewal of registrations, etc. The Committee has been apprised that in order to have transparency and the real time data base at the national level, it should be provided in the Bill that all the requisite data maintained by the appropriate authority as provided in Clause 34(2) must come to the National Surrogacy Board. The Committee finds merit in the argument and recommends that Clause 34(2) may be amended as under:-

The appropriate authority shall maintain the details of registration of surrogacy clinics, cancellation of registration, renewal of registration, grant of certificates to the intending couple and surrogate mothers or any other matter pertaining to grant of license etc. of the surrogacy clinics in such format as may be prescribed **and submit the same to the National Surrogacy Board.**

4.74 Clause 34 as amended is adopted.

Clause 35 and 36

4.75 Clauses 35 and 36 have no amendment and are adopted.

Clause 37

4.76 Clause 37 as worded in the Bill, gives an impression that punishment is not being provided for not following altruistic surrogacy, but for initiation of commercial surrogacy which is not the spirit of the Bill. The Committee, therefore, recommends that this Clause alongwith short title may be amended as under:

Any intending couple or intending woman or any person who seeks the aid of any surrogacy clinic, laboratory or of a registered medical practitioner, gynecologist, pediatrician, embryologist or any other person for not following altruistic surrogacy or for conducting surrogacy procedures for commercial purposes shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to five lakh rupees for the first offence and for any subsequent offence with imprisonment which may extend to ten years and with fine which may extend to ten lakh rupees.

Short title

4.77 Punishment for not following altruistic surrogacy.

4.78 Clause 37 as amended is adopted.

Clauses 38 to 46

4.79 Clauses 38 to 46 have no amendment and are adopted.

Clause 47

4.80 Clause 47 deals with power to make rules. Due to various amendments recommended to be made in the Bill, consequential changes made in Clause 47(2) are adopted.

Clause 1: Short title, extent and commencement

4.81 The Committee discussed the short title and extent of the Bill and recommends that consequent upon change in the year; abrogation of Article 370 and Jammu & Kashmir becoming a Union Territory, while Clause 1(2) may be deleted, Clause 1(1) may be amended as under:

1. (1) This Act may be called the Surrogacy (Regulation) Act, 2020.

4.82 Consequentially, the word '*extent*' after the word 'Short title' may also be deleted and only the 'Short-Title and Commencement' may be retained in the right margin of the Bill.

Clause 1 as amendment is adopted.

GENERAL RECOMMENDATION

Assisted Reproductive Technology (Regulation) Bill (ART Bill) vis-à-vis Surrogacy (Regulation) Bill, 2019.

4.83 Most of the experts/ stakeholders vociferously demanded that the Assisted Reproductive Technology (Regulation) Bill (ART Bill) could have been brought before the Surrogacy (Regulation) Bill, 2019. They contended that there is no separate surrogacy clinic to undertake surrogacy procedures. ART clinics are rather undertaking surrogacy procedures and hence they need to be regulated first.

4.84 The Department of Health Research informed the Committee that the Surrogacy Bill is based on social, legal, ethical and moral aspects, whereas Assisted Reproductive Technology Bill addresses highly technical, medical and scientific aspects. Further, surrogacy involves a third person other than the intending couple and exploitation of this third party (surrogate mother) is becoming rampant, while ART involved unethical practices by the ART clinics and banks. They also informed that most of the countries have separate acts to regulate ART and surrogacy. The Committee was also informed that the Assisted Reproductive Technology Bill 2019 has been drafted and is in advance stage and awaiting Cabinet approval.

4.85 The Committee have sought the opinion of the Department of Legal Affairs, Ministry of Law & Justice on the following points:

- (i) Whether the Assisted Reproductive Technology Bill, 2019 (ART Bill, 2019) should be passed first before passing of Surrogacy (Regulation) Bill, 2019 and whether pendency of the above Bill was in the knowledge of this Ministry;
- (ii) Whether this Ministry raised any such issue at the time of examination of the Surrogacy (Regulation) Bill, 2019;
- (iii) Whether inter-ministerial was taken into account before tendering our opinion on the Surrogacy (Regulation) Bill, 2019.

They have responded with respect to point No. (i), as follows:

“it is for the administrative Ministry to explain with reasons as to whether Assisted Reproductive Technology Bill, 2019 (ART Bill, 2019) should be passed before the passing of Surrogacy (Regulation) Bill, 2019 or otherwise in terms of objectives of both legislations. Further, administrative Ministry may also explain as to whether pendency of the ART Bill, 2019 was in knowledge of that Ministry”.

4.86 Responding to Point Nos. (ii) & (iii), they have stated that it is for the administrative Ministry to explain as to whether they have raised the issue of pendency of ART Bill, 2019 during the examination of Surrogacy (Regulation) Bill, 2019. During the examination of Cabinet Note on Surrogacy (Regulation) Bill, 2019 it is submitted that inter-ministerial consultations took place and this Ministry (Department of Legal Affairs as well as Legislative Department) also offered comments with approval of the Hon’ble Minister of Law & Justice.

4.87 The Committee agrees with the opinion of the Department of Health Research that the nature and the intent of two Bills are different and, hence these two Bills need to be dealt with separately. However, the Committee finds that the Surrogacy (Regulation) Bill, 2019 also involves highly technical, scientific and medical aspects, which would appropriately be addressed through ART Bill. There is hardly any clinic in the country which provides only surrogacy services. The Committee also finds that the surrogacy clinics as defined in Clause 2(zd) of the Bill includes centers or labs conducting ART services, in-vitro fertilization services, etc. The Surrogacy (Regulation) Bill also deals with such highly medical terminologies as storage of embryo, gamete, oocyte, etc. which could better be dealt with in the ART Bill for the purpose of their regulation.

4.88 In view of the above, the Committee recommends that ART Bill should be brought before the Surrogacy (Regulation) Bill, 2019, so that all the highly technical and medical aspects could be properly addressed in the Surrogacy (Regulation) Bill, 2019. The Committee also recommends that the National and State Boards constituted for regulation of surrogacy as proposed in the Bill shall act as the Boards for regulation of ART (Assisted Reproductive Technology).

**THE SELECT COMMITTEE ON THE SURROGACY (REGULATION)
BILL, 2019**

(AS REPORTED BY THE SELECT COMMITTEE)

THE SURROGACY (REGULATION) BILL, 2020

**[WORDS AND FIGURES UNDERLINED INDICATE THE
AMENDMENTS AND (**) MARK INDICATES THE OMISSION
SUGGESTED BY THE SELECT COMMITTEE]**

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| | THE SURROGACY (REGULATION) BILL, <u>2020</u> | |
| | A | |
| | BILL | |
| | <i>to constitute National Surrogacy Board, State Surrogacy Boards and appointment of appropriate authorities for regulation of the practice and process of surrogacy and for matters connected therewith or incidental thereto.</i> | |
| | BE it enacted by Parliament in the <u>Seventy-first</u> Year of the Republic of India as follows:— | |
| | CHAPTER I PRELIMINARY | |
| | 1. (1) This Act may be called the Surrogacy (Regulation) Act, <u>2020</u> . | Short title, (**) and commencement. |
| | (2) (**) | |
| | (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. | |

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| Definitions. | 2. In this Act, unless the context otherwise requires,— | |
| | (a) “abandoned child” means a child born out of surrogacy procedure who has been deserted by his intending parents or guardians and declared as abandoned by the appropriate authority after due enquiry; | |
| | (b) “altruistic surrogacy” means the surrogacy in which no charges, expenses, fees, remuneration or monetary incentive of whatever nature, except the medical expenses <u>and such other prescribed expenses</u> incurred on surrogate mother and the insurance coverage for the surrogate mother, are given to the surrogate mother or her dependents or her representative; | |
| | (c) “appropriate authority” means the appropriate authority appointed under section <u>33</u> ; | |
| | (d) “Board” means the National Surrogacy Board constituted under section <u>15</u> ; | |
| 23 of 2010. | (e) “clinical establishment” shall have the same meaning as assigned to it in the Clinical Establishments (Registration and Regulation) Act, 2010; | |
| | (f) “commercial surrogacy” means commercialisation of surrogacy services or procedures or its component services or component procedures including selling or buying of human embryo or trading in the sale or purchase of human embryo or gametes or selling or buying or trading the services of surrogate motherhood by way of giving payment, reward, benefit, fees, remuneration or monetary incentive in cash or kind, to the surrogate mother or her dependents or her representative, except the medical expenses <u>and such other prescribed expenses</u> incurred on the surrogate mother and the insurance coverage for the surrogate mother; | |
| | (g) “couple” means the legally married Indian man and woman above the age of 21 years and 18 years respectively; | |
| | (h) “egg” includes the female gamete; | |
| | (i) “embryo” means a developing or developed organism after fertilisation till the end of fifty-six days; | |

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| | (j) “embryologist” means a person who possesses any post-graduate medical qualification <u>or doctoral degree</u> in the field of (**) embryology or <u>clinical embryology</u> (**) from a recognised University with not less than two years of clinical experience; | |
| | (k) “fertilisation” means the penetration of the ovum by the spermatozoan and fusion of genetic materials resulting in the development of a zygote; | |
| | (l) “foetus” means a human organism during the period of its development beginning on the fifty-seventh day following fertilisation or creation (excluding any time in which its development has been suspended) and ending at the birth; | |
| | (m) “gamete” means sperm and oocyte; | |
| 57 of 1994. | (n) “gynecologist” shall have the same meaning as assigned to it in the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994; | |
| | (o) “implantation” means the attachment and subsequent penetration by the zona-free blastocyst, which starts five to seven days following fertilisation; | |
| | (p) (**) | |
| | (q) “insurance” means an arrangement by which a company, individual or intending couple undertake to provide a guarantee of compensation for <u>medical expenses, health issues,</u> specified loss, damage, illness or death of surrogate mother <u>and such other prescribed expenses incurred on such surrogate mother</u> during the process of surrogacy; | |
| | (r) “intending couple” means a couple who have (**) <u>a medical indication necessitating gestational surrogacy</u> and who intend to become parents through surrogacy; | |
| | (s) <u>“intending woman” means an Indian woman who is a widow or divorcee between the age of 35 to 45 years and who intends to avail the surrogacy ;</u> | |
| | (t) “Member” means a Member of the National Surrogacy Board or a State Surrogacy Board, as the case may be; | |

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| | (u) “notification” means a notification published in the Official Gazette; | |
| | (v) “oocyte” means naturally ovulating oocyte in the female genetic tract; | |
| | (w) “Pediatrician” means a person who possesses a post-graduate qualification in pediatrics as recognised under the Indian Medical Council Act, 1956; | 102 of 1956. |
| | (x) “prescribed” means prescribed by rules made under this Act; | |
| | (y) “registered medical practitioner” means a medical practitioner who possesses any recognised medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956 and whose name has been entered in a State Medical Register; | 102 of 1956. |
| | (z) “regulation” means regulations made by the Board under this Act; | |
| | (za) “sex selection” shall have the same meaning as assigned to it in clause (o) of section 2 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994; | 57 of 1994. |
| | (zb) “State Board” means the State Surrogacy Board constituted under section 24 ; | |
| | (zc) “State Government” in relation to Union territory with Legislature, means the Administrator of the Union territory appointed by the President under article 239 of the Constitution; | |
| | (zd) “surrogacy” means a practice whereby one woman bears and gives birth to a child for an intending couple with the intention of handing over such child to the intending couple after the birth; | |
| | (ze) “surrogacy clinic” means surrogacy clinic, centre or laboratory, conducting assisted reproductive technology services, invitro fertilisation services, genetic counseling centre, genetic laboratory, Assisted Reproductive Technology Banks conducting surrogacy procedure or any clinical establishment, by whatsoever name called, conducting surrogacy procedures in any form; | |
| | (zf) “surrogacy procedures” means all gynecological, obstetrical or medical procedures, techniques, tests, | |

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| | practices or services involving handling of human gametes and human embryo in surrogacy; | |
| | (zg) “surrogate mother” means a woman who agrees to bear a child (who is genetically related to the intending couple or intending woman) through surrogacy from the implantation of embryo in her womb and fulfills the conditions as provided in sub-clause (b) of clause (iii) of section 4; | |
| | (zh) “zygote” means the fertilised oocyte prior to the first cell division. | |
| | CHAPTER II REGILATION OF SURROGACY CLINICS | |
| | 3. On and from the date of commencement of this Act,— | Prohibition and regulation of surrogacy clinics. |
| | (i) no surrogacy clinic, unless registered under this Act, shall conduct or associate with, or help in any manner, in conducting activities relating to surrogacy and surrogacy procedures; | |
| | (ii) no surrogacy clinic, paediatrician, gynaecologist, embryologist, registered medical practitioner or any person shall conduct, offer, undertake, promote or associate with or avail of commercial surrogacy in any form; | |
| | (iii) no surrogacy clinic shall employ or cause to be employed or take services of any person, whether on honorary basis or on payment who does not possess such qualifications as may be prescribed; | |
| | (iv) no registered medical practitioner, gynecologist, pediatrician, embryologist or any other person shall conduct or cause to be conducted or aid in conducting by himself or through any other person surrogacy or surrogacy procedures at a place other than a place registered under this Act; | |
| | (v) no surrogacy clinic, registered medical practitioner, gynecologist, pediatrician, embryologist or any other person shall promote, publish, canvass, propagate or advertise or cause to be promoted, published, canvassed, propagated or advertised which— | |

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| | (a) is aimed at inducing or is likely to induce a woman to act as a surrogate mother; | |
| | (b) is aimed at promoting a surrogacy clinic for commercial surrogacy or promoting commercial surrogacy in general; | |
| | (c) seeks or aimed at seeking a woman to act as a surrogate mother; | |
| | (d) states or implies that a woman is willing to become a surrogate mother; or | |
| | (e) advertises commercial surrogacy in print or electronic media or in any other form; | |
| | (vi) no surrogacy clinic, registered medical practitioner, gynecologist, pediatrician, embryologist, intending couple or any other person shall conduct or cause abortion during the period of surrogacy without the written consent of the surrogate mother and on authorisation of the same by the appropriate authority concerned: | |
| | Provided that the authorisation of the appropriate authority shall be subject to, and in compliance with, the provisions of the Medical Termination of Pregnancy Act, 1971; | 34 of 1971. |
| | (vii) no surrogacy clinic, registered medical practitioner, gynecologist, pediatrician, embryologist, intending couple or any other person shall store a human embryo or gamete for the purpose of surrogacy: | |
| | Provided that nothing contained in this clause shall affect such storage for other legal purposes like sperm banks, IVF and medical research for such period and in such manner as may be prescribed; | |
| | “(viii) no surrogacy clinic, registered medical practitioner, gynaecologist, paediatrician, embryologist, intending couple or any other person shall in any form conduct or cause to be conducted sex selection for surrogacy.”. | |
| | CHAPTER III REGULATION OF SURROGACY AND SURROGACY PROCEDURES | |
| | 4. On and from the date of commencement of this Act,— | Regulation of surrogacy and |

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| | | surrogacy procedures. |
| | (i) no place including a surrogacy clinic shall be used or caused to be used by any person for conducting surrogacy or surrogacy procedures, except for the purposes specified in clause (ii) and after satisfying all the conditions specified in clauses (iii); | |
| | (ii) no surrogacy or surrogacy procedures shall be conducted, undertaken, performed or availed of, except for the following purposes, namely:— | |
| | (a) <u>when an intending couple has a medical indication necessitating gestational surrogacy:</u> | |
| | <u>Provided that a couple of Indian origin or an intending woman who intends to avail surrogacy, shall obtain a certificate of recommendation from the Board on an application made by the said persons in such form and manner as may be prescribed.</u> | |
| | <u>Explanation.—For the purposes of this sub-clause and item (I) of sub-clause (a) of clause (iii), the expression “gestational surrogacy” means a practice whereby a surrogate mother carries a child for the intending couple through implantation of embryo in her womb and the child is not genetically related to the surrogate mother;</u> | |
| | (b) when it is only for altruistic surrogacy purposes; | |
| | (c) when it is not for commercial purposes or for commercialisation of surrogacy or surrogacy procedures; | |
| | (d) when it is not for producing children for sale, prostitution or any other form of exploitation; and | |
| | (e) any other condition or disease as may be specified by regulations made by the Board; | |
| | (iii) no surrogacy or surrogacy procedures shall be conducted, undertaken, performed or initiated, unless the Director or in-charge of the surrogacy clinic and the person qualified to do so are satisfied, for reasons to be recorded in writing, that the following conditions have been fulfilled, namely:— | |

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| | (a) the intending couple is in possession of a certificate of essentiality issued by the appropriate authority, after satisfying itself, for the reasons to be recorded in writing, about the fulfillment of the following conditions, namely:— | |
| | (I) a certificate of <u>a medical indication</u> in favour of either or both members of the intending couple <u>or intending woman necessitating gestational surrogacy</u> from a District Medical Board. | |
| | <i>Explanation.</i> —For the purposes of this <u>item</u> , the expression “District Medical Board” means a Medical Board under the Chairpersonship of Chief Medical Officer or Chief Civil Surgeon or Joint Director of Health Services of the District and comprising of at least two other specialists, namely, the chief gynecologist or obstetrician and chief pediatrician of the District; | |
| | (II) an order concerning the parentage and custody of the child to be born through surrogacy, <u>which shall be the birth affidavit after the surrogate child is born</u> , has been passed by a court of the Magistrate of the first class or above, on an application made by the intending couple <u>or the intending woman</u> and the surrogate mother; and | |
| 41 of 1999. | (III) an insurance coverage of such amount <u>and in such manner</u> as may be prescribed in favour of the surrogate mother for a period of <u>thirty-six</u> months covering postpartum delivery complications from an insurance company or an agent recognised by the Insurance Regulatory and Development Authority established under the Insurance Regulatory and Development Authority Act, 1999; | |
| | (b) the surrogate mother is in possession of an eligibility certificate issued by the appropriate authority on fulfillment of the following conditions, namely:— | |

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| | (I) no woman, other than an ever married woman having a child of her own and between the age of 25 to 35 years on the day of implantation, shall be a surrogate mother or help in surrogacy by donating her egg or oocyte or otherwise; | |
| | (II) <u>a willing woman</u> (**) shall act as a surrogate mother and be permitted to undergo surrogacy procedures as per the provisions of this Act: | |
| | <u>Provided that the intending couple or the intending woman shall approach the appropriate authority with a willing woman who agrees to act as a surrogate mother;</u> | |
| | (III) no woman shall act as a surrogate mother by providing her own gametes; | |
| | (IV) no woman shall act as a surrogate mother more than once in her lifetime; | |
| | Provided that the number of attempts for surrogacy procedures on the surrogate mother shall be such as may be prescribed; and | |
| | (V) a certificate of medical and psychological fitness for surrogacy and surrogacy procedures from a registered medical practitioner; | |
| | (c) an eligibility certificate for intending couple is issued separately by the appropriate authority on fulfillment of the following conditions, namely:— | |
| | (I) <u>the intending couple are married and between the</u> age of 23 to 50 years in case of female and between 26 to 55 years in case of male on the day of certification; | |
| | (II) (**) | |
| | (III) the intending couple have not had any child biologically or through adoption or through surrogacy earlier: | |
| | Provided that nothing contained in this item shall affect the intending couple who have a child and who is mentally or physically challenged or suffers from life threatening disorder or fatal illness with no permanent cure and approved by | |

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| | the appropriate authority with due medical certificate from a District Medical Board; and | |
| | (IV) such other conditions as may be specified by the regulations. | |
| Prohibition of conducting surrogacy. | 5. No person including a relative or husband of a surrogate mother or intending couple <u>or intending woman</u> shall seek or encourage to conduct any surrogacy or surrogacy procedures on her except for the purpose specified in clause (ii) of section 4. | |
| Written informed consent of surrogate mother. | 6. (1) No person shall seek or conduct surrogacy procedures unless he has — | |
| | (i) explained all known side effects and after effects of such procedures to the surrogate mother concerned; and | |
| | (ii) obtained in the prescribed form, the written informed consent of the surrogate mother to undergo such procedures in the language she understands. | |
| | (2) Notwithstanding anything contained in sub-section (1), the surrogate mother shall have an option to withdraw her consent for surrogacy before the implantation of embryo in her womb. | |
| | 7. The intending couple <u>or intending woman</u> shall not abandon the child, born out of a surrogacy procedure, whether within India or outside, for any reason whatsoever, including but not restricted to, any genetic defect, birth defect, any other medical condition, the defects developing subsequently, sex of the child or conception of more than one baby and the like. | Prohibition to abandon child born through surrogacy. |
| | (**) | |
| | <u>8. A child born out of surrogacy procedure, shall be deemed to be a biological child of the intending couple or intending woman and the said child shall be entitled to all the rights and privileges available to a natural child under any law for time being in force.</u> | <u>Rights of surrogate child.</u> |
| | 9. The number of oocytes or embryos to be implanted in the surrogate mother for the purpose of surrogacy, shall be such as may be prescribed. | Number of oocytes or embryos to be implanted. |
| | 10. No person, organisation, surrogacy clinic, laboratory or clinical establishment of any kind shall force the surrogate mother to abort at any stage of surrogacy except in such conditions as may be prescribed. | Prohibition of abortion. |

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| | CHAPTER IV REGISTRATION OF SURROGACY CLINICS | |
| | 11. (1) No person shall establish any surrogacy clinic for undertaking surrogacy or to render surrogacy procedures in any form unless such clinic is duly registered under this Act. | Registration of surrogacy clinics. |
| | (2) Every application for registration under sub-section (1) shall be made to the appropriate authority in such form, manner and shall be accompanied by such fees as may be prescribed. | |
| | (3) Every surrogacy clinic which is conducting surrogacy or surrogacy procedures, partly or exclusively, referred to in clause (ii) of section 4 shall, within a period of sixty days from the date of appointment of appropriate authority, apply for registration: | |
| | Provided that such clinic shall cease to conduct any such counseling or procedures on the expiry of six months from the date of commencement of this Act, unless such clinic has applied for registration and is so registered separately or till such application is disposed of, whichever is earlier. | |
| | (4) No surrogacy clinic shall be registered under this Act, unless the appropriate authority is satisfied that such clinic is in a position to provide such facilities and maintain such equipment and standards including specialised manpower, physical infrastructure and diagnostic facilities as may be prescribed. | |
| | (5) | |
| Certificate of registration. | 12. (1) The appropriate authority shall after holding an enquiry and after satisfying itself that the applicant has complied with all the requirements of this Act and the rules and regulations made there under, grant a certificate of registration to the surrogacy clinic, within a period of ninety days from the date of application received by it, in such form, on payment of such fees and in such manner, as may be prescribed. | |
| | (2) Where, after the inquiry and after giving an opportunity of being heard to the applicant, the appropriate authority is satisfied that the applicant has not complied with the requirements of this Act or the rules or regulations made there under, it shall, for reasons to be recorded in writing, reject the application for registration. | |

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| | (3) Every certificate of registration shall be valid for a period of three years and shall be renewed in such manner and on payment of such fees as may be prescribed. | |
| | (4) The certificate of registration shall be displayed by the surrogacy clinic at a conspicuous place. | |
| Cancellation or suspension of registration. | 13. (1) The appropriate authority may, <i>suo-moto</i> or on receipt of a complaint, issue a notice to the surrogacy clinic to show cause as to why its registration should not be suspended or cancelled for the reasons mentioned in the notice. | |
| | (2) If after giving a reasonable opportunity of being heard to the surrogacy clinic, the appropriate authority is satisfied that there has been a breach of the provision of the Act or the rules or regulations made there under, it may, without prejudice to any criminal action that it may take against such clinic, suspend its registration for such period as it may think fit or cancel its registration, as the case may be. | |
| | (3) Notwithstanding anything contained in sub-sections (1) and (2), if the appropriate authority is of the opinion that it is necessary or expedient to do so in the public interest, it may, for reasons to be recorded in writing, suspend the registration of any surrogacy clinic without issuing any notice under sub-section (1). | |
| | 14. (1) The surrogacy clinic <u>or the intending couple or the intending woman</u> may, within a period of thirty days from the date of receipt of the communication relating to order of rejection of application, suspension or cancellation of registration passed by the appropriate authority under section <u>13 and communication relating to rejection of the certificates under section 4,</u> prefer an appeal against such order to- | Appeal. |
| | (a) the State Government, where the appeal is against the order of the appropriate authority of a State; | |
| | (b) the Central Government, where the appeal is against the order of the appropriate authority of a Union territory, | |
| | in such manner as may be prescribed. | |
| | CHAPTER V NATIONAL AND STATE SURROGACY BOARDS | |
| | 15. (1) The Central Government shall, by notification, constitute a Board to be known as the National Surrogacy Board to exercise the powers and perform the functions conferred on the Board under this Act. | Constitution of National Surrogacy Board. |

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| | (2) The Board shall consist of— | |
| | (a) the Minister in-charge of the Ministry of Health and Family Welfare, the Chairperson, <i>ex officio</i> ; | |
| | (b) the Secretary to the Government of India in-charge of the Department dealing with the surrogacy matter, Vice-Chairperson, <i>ex officio</i> ; | |
| | (c) three women Members of Parliament, of whom two shall be elected by the House of the People and one by the Council of States, Members, <i>ex officio</i> ; | |
| | (d) three Members of the Ministries of Central Government in charge of Women and Child Development, Legislative Department in the Ministry of Law and Justice and the Ministry of Home Affairs, not below the rank of Joint Secretary, Members, <i>ex officio</i> ; | |
| | (e) the Director General of Health Services of the Central Government, Member, <i>ex officio</i> ; | |
| | (f) ten expert Members to be appointed by the Central Government in such manner as may be prescribed and two each from amongst— | |
| | (i) eminent medical geneticists or embryologists; | |
| | (ii) eminent gynecologists and obstetricians (**) | |
| | (iii) eminent social scientists; | |
| | (iv) representatives of women welfare organisations; and | |
| | (v) representatives from civil society working on women's health and child issues, | |
| | possessing such qualifications and experience as may be prescribed; | |
| | (g) four Chairpersons of the State Boards to be nominated by the Central Government by rotation to represent the States and the Union territories, two in the alphabetical order and two in the reverse alphabetical order, Member, <i>ex officio</i> ; and | |

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| | (h) an officer, not below the rank of a Joint Secretary to the Central Government, in charge of Surrogacy Division in the Ministry of Health and Family Welfare, who shall be the Member-Secretary, <i>ex officio</i> . | |
| | 16. (1) The term of office of a Member, other than an <i>ex officio</i> Member, shall be— | Term of office of Members. |
| | (a) in case of nomination under clause (c) of sub-section (2) of section 14, three years: | |
| | Provided that the term of such Member shall come to an end as soon as the Member becomes a Minister or Minister of State or Deputy Minister, or the Speaker or the Deputy Speaker of the House of the People, or the Deputy Chairman of the Council of States or ceases to be a Member of the House from which she was elected; and | |
| | (b) in case of appointment under clause (f) of sub-section (2) of section 15 , three years: | |
| | Provided that the person to be appointed as Member under this clause shall be of such age as may be prescribed. | |
| | (2) Any vacancy occurring in the office whether by reason of his death, resignation or inability to discharge his functions owing to illness or other incapacity, shall be filled by the Central Government by making a fresh appointment within a period of one month from the date on which such vacancy occurs and the Member so appointed shall hold office for the remainder of the term of office of the person in whose place he is so appointed. | |
| | (3) The Vice-Chairperson shall perform such functions as may be assigned to him by the Chairperson from time to time; | |
| | 17. (1) The Board shall meet at such places and times and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as may be determined by the regulations: | Meetings of Board. |
| | Provided that the Board shall meet at least once in six months. | |
| | (2) The Chairperson shall preside at the meeting of the Board and if for any reason the Chairperson is unable to attend the meeting of the Board, the Vice-Chairperson shall preside at the meetings of the Board. | |

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| | (3) All questions which come up before any meeting of the Board shall be decided by a majority of the votes of the members present and voting, and in the event of an equality of votes, the Chairperson, or in his absence, the Vice-Chairperson shall have and exercise a second or casting vote. | |
| | (4) The Members, other than <i>ex officio</i> Members, shall receive only compensatory travelling expenses for attending the meetings of the Board. | |
| Vacancies, etc., not to invalidate proceedings of Board. | 18. No act or proceeding of the Board shall be invalid merely by reason of— | |
| | (a) any vacancy in, or any defect in the constitution of, the Board; or | |
| | (b) any defect in the appointment of a person acting as a Member of the Board; or | |
| | (c) any irregularity in the procedure of the Board not affecting the merits of the case. | |
| Disqualifications for appointment as Member. | 19. (1) A person shall be disqualified for being appointed and continued as a Member if, he— | |
| | (a) has been adjudged as an insolvent; or | |
| | (b) has been convicted of an offence, which in the opinion of the Central Government, involves moral turpitude; or | |
| | (c) has become physically or mentally incapable of acting as a Member; or | |
| | (d) has acquired such financial or other interest, as is likely to affect prejudicially his functions as a Member; or | |
| | (e) has so abused his position, as to render his continuance in office prejudicial to the public interest; or | |
| | (f) is a practicing member or an office bearer of any association representing surrogacy clinics, having financial or other interest likely to affect prejudicially, his function as a Member; or | |

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| | (g) is an office bearer, heading or representing, any of the professional bodies having commercial interest in surrogacy or infertility. | |
| | (2) The Members referred to in clause (f) of section 15 shall not be removed from their office except by an order of the Central Government on the ground of their proved misbehaviour or incapacity after the Central Government, has, on an inquiry, held in accordance with the procedure prescribed in this behalf by the Central Government, come to the conclusion that the Member ought on any such ground to be removed. | |
| | (3) The Central Government may suspend any Member against whom an inquiry under sub-section (2) is being initiated or pending until the Central Government has passed an order on receipt of the report of the inquiry. | |
| | 20. (1) The Board may associate with itself, in such manner and for such purposes as may be determined by the regulations, any person whose assistance or advice it may desire in carrying out any of the provisions of this Act. | Temporary association of persons with Board for particular purposes. |
| | (2) A person associated with the Board under sub-section (1) shall have a right to take part in the discussions relevant to that purpose, but shall not have a right to vote at a meeting of the Board and shall not be a Member for any other purpose. | |
| | 21. All orders and decisions of the Board shall be authenticated by the signature of the Chairperson and all other instruments issued by the Board shall be authenticated by the signature of the Member-Secretary of the Board. | Authentication of orders and other instruments of Board. |
| | 22. Subject to other terms and conditions of service as may be prescribed, any person ceasing to be a Member shall be eligible for re-appointment as such Member: | Eligibility of Member for re-appointment. |
| | Provided that no Member other than an <i>ex officio</i> Member shall be appointed for more than two consecutive terms. | |
| | 23. The Board shall discharge the following functions, namely:— | Functions of Board. |
| | (a) to advise the Central Government on policy matters relating to surrogacy; | |

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| | (b) to review and monitor the implementation of the Act, rules and regulations made thereunder and recommend to the Central Government, changes therein; | |
| | (c) to lay down code of conduct to be observed by persons working at surrogacy clinics; | |
| | (d) to set the minimum standards of physical infrastructure, laboratory and diagnostic equipment and expert manpower to be employed by the surrogacy clinics; | |
| | (e) to oversee the performance of various bodies constituted under the Act and take appropriate steps to ensure their effective performance; | |
| | (f) to supervise the functioning of State Surrogacy Boards; and | |
| | (g) such other functions as may be prescribed. | |
| Constitution of State Surrogacy Board. | 24. (1) Each State and Union territory having Legislature shall constitute a Board to be known as the State Surrogacy Board or the Union territory Surrogacy Board, as the case may be, which shall discharge the following functions, namely:— | |
| | (i) to review the activities of the appropriate authorities functioning in the State or Union territory and recommend appropriate action against them; | |
| | (ii) to monitor the implementation of the provisions of the Act, rules and regulations made thereunder and make suitable recommendations relating thereto, to the Board; | |
| | (iii) to send such consolidated reports as may be prescribed, in respect of the various activities undertaken in the State under the Act, to the Board and the Central Government; and | |
| | (iv) such other functions as may be prescribed. | |
| Composition of State Board. | 25. The State Board shall consist of— | |
| | (a) the Minister in-charge of Health and Family Welfare in the State, Chairperson, <i>ex officio</i> ; | |
| | (b) the Secretary in-charge of the Department of Health and Family Welfare, Vice-Chairperson, <i>ex officio</i> ; | |

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| | (c) Secretaries or Commissioners in charge of the Departments of Women and Child Development, Social Welfare, Law and Justice and Home Affairs or their nominees, members, <i>ex officio</i> ; | |
| | (d) Director General of Health and Family Welfare of the State Government, member, <i>ex officio</i> ; | |
| | (e) three women members of the State Legislative Assembly or Union territory Legislative Council, members, <i>ex officio</i> ; | |
| | (f) ten expert members to be appointed by the State Government in such manner as may be prescribed, two each from amongst— | |
| | (i) eminent medical geneticists or embryologists; | |
| | (ii) eminent gynecologists and obstetricians (**) | |
| | (iii) eminent social scientists; | |
| | (iv) representatives of women welfare organisations; and | |
| | (v) representatives from civil society working on women's health and child issues, | |
| | possessing such qualifications and experiences as may be prescribed; | |
| | (g) an officer not below the rank of Joint Secretary to the State Government in charge of Family Welfare, who shall be the Member-Secretary, <i>ex officio</i> . | |
| | 26.(1) The term of office of a member, other than an <i>ex officio</i> member, shall be— | Term of office of members. |
| | (a) in case of nomination under clause (e) of section <u>25</u> , three years: | |
| | Provided that the term of such member shall come to an end as soon as the member becomes a Minister or Minister of State or Deputy Minister, or the Speaker or the Deputy Speaker of the Legislative Assembly, or the Deputy Chairman of the Legislative Council or ceases to | |

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| | be a member of the House from which she was elected; and | |
| | (b) in case of appointment under clause (f) of section 25 , three years: | |
| | Provided that the person to be appointed as member under this clause shall be of such age, as may be prescribed. | |
| | (2) Any vacancy occurring in the office whether by reason of his death, resignation or inability to discharge his functions owing to illness or other incapacity, shall be filled within a period of one months from the date on which such vacancy occurs by the State Government by making a fresh appointment and the member so appointed shall hold office for the remainder of the term of office of the person in whose place he is so appointed. | |
| | (3) The Vice-Chairperson shall perform such functions as may be assigned to him by the Chairperson from time to time; | |
| Meetings of State Board. | 27. (1) The State Board shall meet at such places and times and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as may be specified by the regulations: | |
| | Provided that the State Board shall meet at least once in four months. | |
| | (2) The Chairperson shall preside at the meeting of the Board and if for any reason the Chairman is unable to attend the meeting of the State Board, the Vice-Chairperson shall preside at the meetings of the State Board. | |
| | (3) All questions which come up before any meeting of the State Board shall be decided by a majority of the votes of the members present and voting, and in the event of an equality of votes, the Chairperson, or in his absence, the Vice Chairperson shall have a second or casting vote. | |
| | (4) The members, other than <i>ex officio</i> members, shall receive only compensatory travelling expenses for attending the meetings of the State Board. | |
| | 28. No act or proceeding of the State Board shall be invalid merely by reason of— | Vacancies, etc., not to invalidate proceedings of State Board. |

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| | (a) any vacancy in, or any defect in the constitution of, the State Board; or | |
| | (b) any defect in the appointment of a person acting as a member of the State Board; or | |
| | (c) any irregularity in the procedure of the State Board not affecting the merits of the case. | |
| | 29. (1) A person shall be disqualified for being appointed and continued as a member if, he— | Disqualifications for appointment as member. |
| | (a) has been adjudged as an insolvent; or | |
| | (b) has been convicted of an offence, which in the opinion of the State Government, involves moral turpitude; or | |
| | (c) has become physically or mentally incapable of acting as a member; or | |
| | (d) has acquired such financial or other interest, as is likely to affect prejudicially his functions as a member; or | |
| | (e) has so abused his position, as to render his continuance in office prejudicial to the public interest; or | |
| | (f) is a practicing member or an office bearer of any association representing surrogacy clinics, having financial or other interest likely to affect prejudicially, his function as a member; or | |
| | (g) is an office bearer, heading or representing, any of the professional bodies having commercial interest in surrogacy or infertility. | |
| | (2) The members referred to in clause (f) of section 25 shall not be removed from their office except by an order of the State Government on the ground of their proved misbehaviour or incapacity after the State Government, has, on an inquiry, held in accordance with the procedure prescribed in this behalf by the State Government, come to the conclusion that the member ought on any such ground to be removed. | |

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| | (3) The State Government may suspend any member against whom an inquiry under sub-section (2) is being initiated or pending until the State Government has passed an order on receipt of the report of the inquiry. | |
| Temporary association of persons with State Board for particular purposes. | 30. (1) The State Board may associate with itself, in such manner and for such purposes as may be determined by the regulations, any person whose assistance or advice it may desire in carrying out any of the provisions of this Act. | |
| | (2) A person associated with it by the State Board under sub-section (1) shall have a right to take part in the discussions relevant to that purpose, but shall not have a right to vote at a meeting of the State Board and shall not be a member for any other purpose. | |
| Authentication of orders and other instruments of State Board. | 31. All orders and decisions of the State Board shall be authenticated by the signature of the Chairperson and all other instruments issued by the State Board shall be authenticated by the signature of the Member-Secretary of the State Board. | |
| Eligibility of member for re-appointment. | 32. Subject to the other terms and conditions of service as may be prescribed, any person ceasing to be a member shall be eligible for re-appointment as such member: | |
| | Provided that no member other than an <i>ex-officio</i> member shall be appointed for more than two consecutive terms. | |
| | CHAPTER VI APPROPRIATE AUTHORITY | |
| Appointment of appropriate authority. | 33. (1)The Central Government shall, within a period of ninety days from the date of commencement of this Act, by notification, appoint one or more appropriate authorities for each of the Union territories for the purposes of this Act. | |
| | (2) The State Government shall, within a period of ninety days from the date of commencement of this Act, by notification, appoint one or more appropriate authorities for the whole or any part of the State for the purposes of this Act. | |
| | (3) The appropriate authority, under sub-section (1) or sub-section (2), shall,- | |
| | (a) when appointed for the whole of the State or the Union territory, consist of— | |

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| | <u>(i) an officer of or above the rank of the Joint Secretary of the Health and Family Welfare Department - Chairperson, ex officio;</u> | |
| | <u>(ii) an officer of or above the rank of the Joint Director of the Health and Family Welfare Department - Vice Chairperson, ex officio;</u> | |
| | <u>(iii)</u> an eminent woman representing women's organisation – member; | |
| | <u>(iv)</u> an officer of Law Department of the State or the Union territory concerned not below the rank of a Deputy Secretary – member; and | |
| | <u>(v)</u> an eminent registered medical practitioner – member: | |
| | Provided that any vacancy occurring therein shall be filled within one month of the occurrence of such vacancy; | |
| | (b) when appointed for any part of the State or the Union territory, be officers of such other rank as the State Government or the Central Government, as the case may be, may deem fit. | |
| | 34. The appropriate authority shall discharge the following functions, namely:— | Functions of appropriate authority. |
| | (a) to grant, suspend or cancel registration of a surrogacy clinic; | |
| | (b) to enforce the standards to be fulfilled by the surrogacy clinics; | |
| | (c) to investigate complaints of breach of the provisions of this Act, rules and regulations made thereunder and take legal action as per provision of this Act; | |
| | (d) to take appropriate legal action against the use of surrogacy by any person at any place other than prescribed, <i>suo-moto</i> or brought to its notice, and also to initiate independent investigations in such matter; | |
| | (e) to supervise the implementation of the provisions of this Act and rules and regulations made there under; | |

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| | (f) to recommend to the Board and State Boards about the modifications required in the rules and regulations in accordance with changes in technology or social conditions; and | |
| | (g) to take action after investigation of complaints received by it against the surrogacy clinics; and | |
| | (h) to consider and grant or reject any application under clause (vi) of section 3 and sub-clauses (a) to (c) of clause (iii) of section 4 within a period of ninety days. | |
| Powers of appropriate authorities. | 35. (1) The appropriate authority shall exercise the powers in respect of the following matters, namely:— | |
| | (a) summoning of any person who is in possession of any information relating to violation of the provisions of this Act and rules and regulations made there under; | |
| | (b) production of any document or material object relating to clause (a); | |
| | (c) search any place suspected to be violating the provisions of this Act and the rules and regulations made there under; and | |
| | (d) such other powers as may be prescribed; | |
| | (2) The appropriate authority shall maintain the details of registration of surrogacy clinics, cancellation of registration, renewal of registration, grant of certificates to the intending couple and surrogate mothers or any other matter pertaining to grant of license etc. of the surrogacy clinics in such format as may be prescribed <u>and submit the same to the National Surrogacy Board.</u> | |
| | CHAPTER VII OFFENCES AND PENALTIES | |
| | 36. (1) No person, organisation, surrogacy clinic, laboratory or clinical establishment of any kind shall— | Prohibition of commercial surrogacy, exploitation of surrogate mothers and children born through surrogacy. |

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| | (a) undertake commercial surrogacy, provide commercial surrogacy or its related component procedures or services in any form or run a racket or an organised group to empanel or select surrogate mothers or use individual brokers or intermediaries to arrange for surrogate mothers and for surrogacy procedures, at such clinics, laboratories or at any other place; | |
| | (b) issue, publish, distribute, communicate or cause to be issued, published, distributed or communicated, any advertisement in any manner regarding commercial surrogacy by any means whatsoever, scientific or otherwise; | |
| | (c) abandon or disown or exploit or cause to be abandoned, disowned or exploited in any form, the child or children born through surrogacy; | |
| | (d) exploit or cause to be exploited the surrogate mother or the child born through surrogacy in any manner whatsoever; | |
| | (e) sell human embryo or gametes for the purpose of surrogacy and run an agency, a racket or an organization for selling, purchasing or trading in human embryos or gametes for the purpose of surrogacy; | |
| | (f) import or shall help in getting imported in whatsoever manner, the human embryo or human gametes for surrogacy or for surrogacy procedures; and | |
| | (g) conduct sex selection in any form for surrogacy. | |
| 43 of 1860. | (2) Notwithstanding anything contained in the Indian Penal Code, contraventions of the provisions of clauses (a) to (g) of sub-section (1) by any person shall be an offence punishable with imprisonment for a term which may extend to ten years and with fine which may extend to ten lakh rupees. | |
| | (3) For the purposes of this section, the expression “advertisement” includes any notice, circular, label, wrapper or any other document including advertisement through internet or any other media, in electronic or print form and also includes any visible representation made by means of any hoarding, wall-painting, signal light, sound, smoke or gas. | |

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| Punishment for contravention of provisions of Act. | 37.(1) Any registered medical practitioner, gynecologists, pediatrician, embryologists or any person who owns a surrogacy clinic or employed with such a clinic or centre or laboratory and renders his professional or technical services to or at such clinic or centre or laboratory, whether on an honorary basis or otherwise, and who contravenes any of the provisions of this Act (other than the provisions referred to in section 36) and rules and regulations made there under shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to ten lakh rupees. | |
| | (2) In case of subsequent or continuation of the offence referred to in sub-section (1), the name of the registered medical practitioner shall be reported by the appropriate authority to the State Medical Council concerned for taking necessary action including suspension of registration for a period of five years. | |
| <u>Punishment for not following altruistic surrogacy.</u> | 38. Any intending couple <u>or intending woman</u> or any person who seeks the aid of any surrogacy clinic, laboratory or of a registered medical practitioner, gynecologist, pediatrician, embryologist or any other person <u>for not following the altruistic surrogacy</u> or for conducting surrogacy procedures for commercial purposes shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to five lakh rupees for the first offence and for any subsequent offence with imprisonment which may extend to ten years and with fine which may extend to ten lakh rupees. | |
| | 39. Whoever contravenes any of the provisions of this Act, rules or regulations made there under for which no penalty has been provided in this Act, shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to five lakh rupees and in the case of continuing contravention with an additional fine which may extend to ten thousand rupees for every day during which such contravention continues after conviction for the first such contravention. | Penalty for contravention of provisions of Act or rules for which no specific punishment is provided. |
| 1 of 1872. | 40. Notwithstanding anything contained in the Indian Evidence Act 1872, the court shall presume, unless the contrary is proved, that the woman or surrogate mother was compelled by her husband, the intending couple or any other relative, as the case may be, to render surrogacy services, procedures or to donate gametes for the purpose other than those specified in clause (ii) of section 4 and such person shall be liable for abetment of such offence under section 38 and shall be punishable for the offence specified under that section. | Presumption in the case of surrogacy. |

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| 2 of 1974. | 41. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence under this Act shall be cognizable, non-bailable and non-compoundable. | Offence to be cognizable, non-bailable and non-compoundable. |
| | 42. (1) No court shall take cognizance of any offence punishable under this Act except on a complaint in writing made by— | Cognizance of offences. |
| | (a) the appropriate authority concerned, or any officer or an agency authorised in this behalf by the Central Government or the State Government, as the case may be, or the appropriate authority; or | |
| | (b) a person including a social organisation who has given notice of not less than fifteen days in the manner prescribed, to the appropriate authority, of the alleged offence and of his intention to make a complaint to the court. | |
| | (2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act. | |
| Certain provisions of Code of Criminal Procedure, 1973 not to apply. | 43. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, Chapter XXI A of the said Code relating to plea of bargaining shall not apply to the offences under this Act. | 2 of 1974. |
| | CHAPTER VIII MISCELLANEOUS | |
| Maintenance of records. | 44. (1) The surrogacy clinic shall maintain all records, charts, forms, reports, consent letters, agreements and all the documents under this Act and they shall be preserved for a period of twenty five years or such period as may be prescribed: | |
| | Provided that, if any criminal or other proceedings are instituted against any surrogacy clinic, the records and all other documents of such clinic shall be preserved till the final disposal of such proceedings. | |
| | (2) All such records shall, at all reasonable times, be made available for inspection to the appropriate authority or to any other person authorised by the appropriate authority in this behalf. | |

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| Power to search and seize records, etc. | 45. (1) If the appropriate authority has reason to believe that an offence under this Act has been or is being committed at any surrogacy clinic or any other place, such authority or any officer authorised in this behalf may, subject to such rules as may be prescribed, enter and search at all reasonable times with such assistance, if any, as such authority or officers considers necessary, such surrogacy clinic or any other place and examine any record, register, document, book, pamphlet, advertisement or any other material object found therein and seize and seal the same if such authority or officer has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act. | |
| | (2) The provisions of the Code of Criminal Procedure, 1973 relating to search and seizure shall apply, as far as may be, to all action taken by the appropriate authority or any officer authorized by it under this Act. | 2 of 1974. |
| Protection of action taken in good faith. | 46. (1) No suit, prosecution or other legal proceeding shall lie against the Central Government or the State Government or the appropriate authority or any officer authorised by the Central Government or the State Government or by the appropriate authority for anything which is in good faith done or intended to be done in pursuance of the provision of this Act. | |
| | 47. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force. | Application of other laws not barred. |
| | 48. (1) The Central Government may, by notification and subject to the condition of pre-publication, make rules for carrying out the provisions of this Act. | Power to make rules. |
| | (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for— | |
| | <u>(a) the prescribed expenses under clauses (b), (f) and (q) of sub-section (1);</u> | |
| | (b) the minimum qualifications for persons employed at a registered surrogacy clinic under clause (iii) of section 3; | |
| | (c) the manner in which a person shall store human embryo or gamete under clause (vii) of section 3; | |

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| | <u>(d) the form and manner of application for obtaining certificate of recommendation from the Board under proviso to sub-clause (a) of clause (ii) of section 4;</u> | |
| | (e) the insurance coverage in favour of the surrogate mother from an insurance company <u>and the manner of such coverage</u> under <u>item (III) of</u> sub-clause (a) of clause (iii) of section 4; | |
| | (f) the number of attempts of surrogacy or providing of gametes under the proviso to <u>item (III) of</u> sub-clause (b) of clause (iii) of section 4; | |
| | (g) the form in which consent of a surrogate mother has to be obtained under clause (ii) of section 6; | |
| | (h) the number of oocytes or embryos to be implanted in the surrogate mother under section <u>9</u> ; | |
| | (i) the conditions under which the surrogate mother may be allowed for abortion during the process of surrogacy under section <u>10</u> ; | |
| | (j) the form and manner in which an application shall be made for registration and the fee payable thereof under sub-section (2) of section <u>11</u> ; | |
| | (k) the facilities to be provided, equipment and other standards to be maintained by the surrogacy clinics under sub-section (4) section <u>11</u> ; | |
| | (l) the period, manner and form in which a certificate of registration shall be issued under sub-section (1) section <u>12</u> ; | |
| | (m) the manner in which the certificate of registration shall be renewed and the fee payable for such renewal under sub-section (3) of section <u>12</u> ; | |
| | (n) the manner in which an appeal may be preferred under section <u>14</u> ; | |
| | (o) the qualifications and experiences of the Members as admissible under clause (f) of sub-section (2) of section <u>15</u> ; | |

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| | (p) the procedures for conducting an inquiry against the Members under sub-section (2) of section <u>19</u> ; | |
| | (q) the conditions under which a Member of the Board eligible for re-appointment under section <u>22</u> ; | |
| | (r) the other functions of the Board under clause (g) of section <u>23</u> ; | |
| | (s) the manner in which reports shall be furnished by the State and Union territory Boards to the Board and the Central Government under clause (iii) of section <u>24</u> ; | |
| | (t) the other functions of the State Board under clause (iv) of section <u>24</u> ; | |
| | (u) the qualifications and experiences of the members as admissible under clause (f) of section <u>25</u> ; | |
| | (v) the age of the person to be appointed as a member, referred to in clause (f) of section <u>25</u> , under the proviso to clause (b) of sub-section (1) of section <u>26</u> ; | |
| | (w) the procedures for conducting an inquiry against the members under sub-section (2) of section <u>29</u> ; | |
| | (x) the conditions under which the members of State Board eligible for re-appointment under section <u>32</u> ; | |
| | (y) empowering the appropriate authority in any other matter under clause (d) of section <u>34</u> ; | |
| | (z) the other powers of appropriate authority under clause (d) of sub-section (1) of section <u>35</u> ; | |
| | (za) the particulars of the details of registration of surrogacy clinics, cancellation of registration etc. in such format under sub-section (2) section <u>35</u> ; | |
| | (zb) the manner of giving notice by a person under clause (b) of sub-section (1) of section <u>42</u> ; | |
| | (zc) the period up to which records, charts, etc., shall be preserved under sub-section (1) of section <u>44</u> ; | |
| | (zd) the manner in which the seizure of documents, records, objects, etc., shall be made and the manner in which seizure list shall be prepared and delivered under | |

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| | sub-section (1) of section <u>45</u> ; and | |
| | (ze) any other matter which is to be, or may be, or in respect of which provision is to be made by rules. | |
| | 49. The Board may, with the prior approval of the Central Government, by notification, make regulations not inconsistent with the provisions of this Act and the rules made there under to provide for— | Power to make regulations. |
| | (a) the fulfillment of any other condition under which eligibility certificate to be issued by the appropriate authority under sub-clause (d) of clause (v) of section <u>4</u> ; | |
| | (b) the time and place of the meetings of the Board and the procedure to be followed for the transaction of business at such meetings and the number of Members which shall form the quorum under sub-section (1) of section <u>17</u> ; | |
| | (c) the manner in which a person may be temporarily associated with the Board under sub-section (1) of section <u>20</u> ; | |
| | (d) the time and place of the meetings of the State Board and the procedure to be followed for the transaction of business at such meetings and the number of members which shall form the quorum under sub-section (1) of section <u>27</u> ; | |
| | (e) the manner in which a person may be temporarily associated with the Board under sub-section (1) of section <u>30</u> ; <u>and</u> | |
| | (f) any other matter which is required to be, or may be, specified by regulations. | |
| Rules and regulations to be laid before Parliament. | 50. (1) Every rule made by the Central Government and every regulation made by the Board under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that | |

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| | any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification. | |
| Transitional provision. | 51. Subject to the provisions of this Act, there shall be provided a gestation period of ten months from the date of coming into force of this Act to existing surrogate mothers' to protect their well being. | |
| Power to remove difficulties. | 52. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette make such provisions not inconsistent with the provisions of the said Act as appear to it to be necessary or expedient for removing the difficulty: | |
| | Provided that no order shall be made under this section after the expiry of a period of two years from the date of commencement of this Act. | |
| | (2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament. | |
