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Plan for surrogate births

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A project team of the Liberal Democratic Party has recently compiled a bill on assisted reproductive technologies. It would not only allow donations of sperm and ova from third parties for the purpose of having babies but also conditionally allow surrogate births.

The team hopes to submit the bill to the Diet in the current session, but its prospect is unclear because the LDP is considering other legislation that bans surrogate births in light of the lingering opposition within the party to such births.

Assisted reproductive technologies involve sensitive ethical and legal issues. The LDP team's draft legislation, put together by lawmakers behind closed doors, failed to address some of those issues, leaving them up for future discussion. Informed public discussions on the issue are indispensable.

Japan currently has no law that regulates surrogate births. The relevant panel of the Health, Labor and Welfare Ministry as well as the Japan Society of Obstetrics and Gynecology have opposed surrogate births on the grounds that "people should not be used as a means of reproduction." However, a maternity doctor in Nagano Prefecture is known to have handled more than a dozen surrogate births, while a much larger number of Japanese couples are believed to have had children through surrogate birth arrangements overseas.

The LDP team's bill would allow an arrangement in which a third-party surrogate carries a fetus to term for the intended parents if the woman cannot become pregnant because of surgical operations or the congenital absence of the uterus.

Surrogate birth imposes a great burden on the surrogate mother. The bill does not specify who would be qualified to become surrogate mothers and what protections to afford them. Surrogacy could involve other problems. A surrogate mother might develop a strong affection for the baby and refuse to give it up to the intended parents. Or intended parents might refuse to accept a child born to a surrogate mother if it has a serious disease or birth defect.

From the viewpoint of people who wish to resort to surrogacy to have children, the bill leaves key questions unanswered. It states that the woman who gives birth in a surrogacy arrangement should be recognized as the mother. The LDP team says it will consider — in the future — a scheme to establish a legal parent-child relationship between a child born to a surrogate mother and the intended parents. The absence of such a scheme would discourage many couples who want but cannot have babies from seeking surrogacy.

The bill would also allow donation of sperm or ova either for artificial insemination or in vitro fertilization. Sperm or ova must be donated by unidentified third parties. But the LDP team has postponed discussion on whether children born this way have the right to know their biological father or mother. There have been cases in which such children have developed a

strong desire to find their biological parents and suffer emotionally. Donors of sperm or ova can also suffer psychologically if they are contacted by their biological children.

Japan needs a legal framework on assisted reproductive technologies. But hasty legislation with holes will cause confusion as various problems are inherent to the technologies. The government and lawmakers need to study potential problems and listen to opinions from wide sectors of society.

Couples who want but cannot have children also should remember that adoption could also be an option.