A bill to permit surrogacy for gay couples in Israel is now being debated by all sides, and it is under public review

• BENJI ROSEN

erez Ben-Amot and his male partner, Arnon, knew they wanted children of their own. To fulfill their dream, the civilly married Israeli couple emptied many shekels into failed surrogacies and miscarriages in India. They would have persisted no matter what the cost until a child was born to them, but in 2012 India banned homosexual couples from utilizing commercial surrogacy. The Asian subcontinent otherwise remains an international destination for affordable surrogacy as long as couples or singles fall into sexual orientation categories recognized by Indian law.

The Ben-Amits next turned to Thailand, where laws for the procedure are vague. To the couple’s joy, they succeeded in having a daughter on their first try. Naomi was born to them just over two months ago.

However, according to Thai law, Naomi legally belonged to her Thai surrogate mother because she gave birth to her, even though Naomi is genetically unrelated to her (Naomi was conceived from sperm from one of the pair, and an egg donated by a South African Caucasian woman).

Israel, worried that it would be implicated in child trafficking, refused to issue Naomi a passport until Thailand assured it that the baby’s birth mother had validly signed her rights away, and that Thailand allowed Naomi to leave the country with her fathers for Israel.

While Israel sought to resolve this diplomatic conflict, the Ben-Amits were left waiting with their newborn in their hotel room.

Erez recalled how the wonderful experience of having his first child became a nightmare. “The most difficult thing was that we didn’t know what was going to happen,” he said. “Everything was very vague.”

At last, amid a public campaign, and protests and even a hunger strike in Tel Aviv that took place in January, the two countries settled the matter. They agreed that if the documentation they drafted in both English and Thai was signed by the birth mother, she would be giving up her rights to the child and consenting to it leaving the country.

Naomi and 64 other infants born or soon to be born to Israeli parents in Thailand were either granted Israeli passports following this settlement, or will be issued once they are born.

The Ben-Amits returned to Israel with Naomi in February.

In spite of this trial, they plan to have at least one more child. Erez just hopes that their next surrogacy can be in Israel.

This latter wish might come true if Israel’s surrogacy laws are revised because of amendments a committee submitted to the Health Ministry in 2012. The ministry revealed in early February that it is now endorsing the prospective bill after evaluating it for approximately a year.

The committee – chaired by Prof. Shlomo Mor-Yosef, a gynecologist, former director-general of the Hadassah Medical Organization and now director-general of the National Insurance Institute – is recommending that Israel expand to whom it approves surrogacy to include homosexuals and single parents. Although the committee’s document refers to this amendment as applying to “single men” and “single women” and avoids any open mention of homosexuality, it intentionally implies that surrogacy should no longer be limited to anyone in Israel because of their sexual orientation.

Israel’s existing surrogacy law permits only heterosexual couples of the same religion to use the procedure in Israel. The Embryo Bearing Carrying Act excludes single people and homosexuals from legally having children through surrogacy in the Jewish state. Although the law can be seen as discriminatory, it is agreed that there was no intended prejudice against homosexuals in the drafting of the law that was enacted in 1996. At the time, it was almost unimaginable in Israel that same-sex couples would be interested in having children.

However, after numerous legal battles over the years that questioned the original law, the debate came to a boil recently with a case involving a male couple, Pinkas vs the Approval Committee for Surrogacy Agreements. The case was not discussed by the court and instead led to the formation of the Mor-Yosef Committee in 2010, as pointed out in a chapter in International Surrogacy Arrangements: Legal Resolution at the International Level, written by Sharon Shakkarg, an attorney who wrote her dissertation on the effects of substantive law reforms on choice of law in marriage and divorce cases. After much discussion, the committee decided that the practice of surrogacy should continue in Israel if commercial surrogacy is restricted, and that those who can qualify for surrogacy should include homosexuals.

Many experts consider the amendments a step towards equality for the Israeli lesbian, gay, bisexual and transgender community. However, some are also up in arms over the implications of the prospective bill, especially its language, which completely avoids any terminology associated with homosexuality.

Mor-Yosef explained that his committee’s decision to exclude anything referring to homosexuality, and instead apply it to just “single men” and “single women,” was a deliberate decision by a group of “practical people.” According to Mor-Yosef, the committee realized that its recommendations would be reviewed and most likely revised by the Health Ministry, and that it is now open to public criticism. The bill will be further altered before it is presented to the Knesset for criticism. The committee’s language, in effect, is meant to soften the impact of their proposal to improve its chances.

Orthodox Jewish and conservative politicians opposed to homosexuality because it is contrary to halachic Judaism declined to comment on how they plan to challenge the bill, though it is expected that they will.

Eliam Abraham, a former adviser to Health Minister Yael German on the subject and co-founder of the Hebrew University’s LGBT association, considers the bill a “step forward and a step backwards at the same time.”

“You have the language and the comment that you want more equality,” he says but emphasizes that it’s “weird” that the committee avoided referring to LGBT couples at all. The justification that the Health Ministry is using this language to strengthen the bill’s chances of being passed, for Abraham, doesn’t excuse that the bill is intolerant of homosexual couples.

“They are completely ignored.”

Abraham points to the fact that the majority of Israel’s who use surrogacy abroad and most of the people who insisted the Mor-Yosef Committee be formed were not only from the LGBT community, but were also men. “The greater section of the population that needs the surrogacy process [is] probably same-sex or gay men.”

Abraham also criticizes the bill for failing to provide a plan for the absorption process for children born abroad to surrogate mothers who are expected to not be Jewish. According to Jewish law, a child’s birth mother determines whether it is Jewish. Currently, Naomi Ben-Amot’s religion isn’t listed on her Israeli identity card because she was delivered by a Thai woman. The amendment fails to propose how Israel will attend to this matter in the future. Abraham suggests that this discrepancy will provide the Orthodox group that opposes homosexuality with the leverage to contest the conversion of same-sex couples’ children who were born abroad through surrogacy. These amendments are just creating temporary solutions with looming problems, according to Abraham. He agrees it’s only a half-solution.

Dr. Ruth Zafra of the Interdisciplinary Center Herzliya, whose academic research focuses on family law, especially the status of children in the family and the legal ramifications of assisted reproductive technology, isn’t as critical, and applauds the committee’s strategy. She said it is only important that the legislation pass because same-sex couples are living unequally in Israel. If surrogacy in Israel were made available to same-sex couples, it is implied that both the surrogate mother and even the woman who donates her egg would be Jewish. The child would already be halachically and hereditarily Jewish, and wouldn’t require a conversion. Zafra asserts this would weaken any case for discrimination against gay couples, and promote greater equality in Israel.

While the prospective bill is already eliciting all sorts of opinions, it is not yet in its final form. As explained by Abraham, the bill will be open to the public for comments for 21 days. Afterward, it will go through three stages of revisions before it is presented to the Knesset, where it will be altered further.

One group that plans to petition the bill is Isha L’Isha (Woman to Woman). Although the feminist organization fully supports the rights of the LGBT community, it is opposed to commercial surrogacy, which the bill restricts but doesn’t ban. The group is drafting its criticisms for submission.

A calmer voice in this debate is Uzi Even, who was the first openly gay MK and the first gay man to be granted an official divorce from his male partner by Israel. He admits he would like the legislation to be different. However, “if this is an intermediate stage on the road to a permanent solution, it’s better than nothing.”

Meanwhile, Erez Ben-Amot insists that regardless of the outcome, he and Arnon “will do whatever it takes to become parents. We fought very hard to do it. We just hope next time it won’t be so difficult.”