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Surrogacy in India

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Why is in news? Donor gametes are allowed: what the new rule on surrogacy says

The Centre **amended the surrogacy Rules** to allow couples to use donor eggs or donor sperm for surrogacy. This overturned a previous amendment made in March 2023 that banned the use of donor gametes.

News Summary:

The Central government has **modified** the surrogacy rules to **permit married couples opting for surrogacy to use donor gametes** — a move that would come as a big relief to those with medical complications.

The Surrogacy (Regulation) Act, 2021, **restricted married couples from getting donor gametes**.

A gamete is a reproductive cell. Female gametes are called ova or egg cells, and male gametes are called sperm.

A fresh notification issued by the Union Ministry of Health and Family Welfare said the couple undergoing surrogacy must use their own gametes for having a surrogate child.

However, in case a **District Magistrate Board** certifies that either husband or wife suffers from a medical condition, then the couple can use a donor gamete.

But the notification allows only one of the two partners – either wife or husband – to use a donor gamete.

A child to be born through surrogacy must have at least one gamete from the intending parents.

This means a married couple where both partners have medical issues or are unable to have their own gametes cannot opt for surrogacy.

The **modifications in the Surrogacy Rules** by the Central government came after the Supreme Court doubted the correctness of the existing rules.

Applications were filed by married women in the Supreme Court who were unable to conceive due to medical complications.

Surrogacy:

A surrogate, sometimes also called a gestational carrier, is a woman who conceives, carries and gives birth to a child for another person or couple (intended parent/s).

The surrogate agrees to give the child to that person or couple after the birth.

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Understanding Surrogacy and its Regulation

SURROGACY

- Having another woman bear a child for a couple (or single women or men) to raise.
- The surrogate offers to carry a baby through pregnancy and then return the baby to the intended parent(s) once it is born.
- Surrogacy is an option to fulfill the desire to have a child of a couple for whom it is physically or medically impossible or undesirable to carry a baby to term on their own.
- There are two types of surrogacy – traditional surrogacy and gestational surrogacy.
- In Traditional Surrogacy, a surrogate mother is artificially inseminated, either by the intended father or an anonymous donor. The surrogate mother provides the egg and is thus genetically related to the child.
- In Gestational 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.
- The Surrogacy (Regulation) Bill seeks to allow and regulate Gestational Surrogacy.
- Surrogacy can be altruistic or commercial. In altruistic surrogacy, the surrogate is not paid for her services, except for medical expenses and insurance. In commercial surrogacy, the surrogate is paid over and above these expenses.
- The Surrogacy (Regulation) Bill seeks to ban commercial surrogacy but protect the altruistic surrogate through enhanced, prescribed payments (for medical expenses, food and care, longer-duration insurance).

INDICATIONS FOR SURROGACY

- Opting for surrogacy is often a choice made when women are unable to carry children on their own.
- This can be for a number of reasons, including an abnormal uterus or a complete absence of a uterus either congenitally or post-hysterectomy.
- Women may have a hysterectomy due to complications in childbirth, medical diseases such as cervical cancer or endometrial cancer, or heart and renal conditions, etc

WHAT DO OTHER COUNTRIES DO?

- Russia, Georgia, Ukraine, Columbia, Iran, and some states of the US allow commercial surrogacy
- France, Finland, Italy, Japan, Spain, Sweden, Switzerland, Hungary, Ireland, etc. have banned all forms of surrogacy.
- India seeks a middle path between these extremes, by banning commercial surrogacy (including for foreigners) while allowing and regulating altruistic surrogacy for all persons of Indian origin.
- Australia, Canada, Israel, Netherlands, New Zealand, South Africa, UK, Vietnam, Thailand, Cambodia, Nepal, Mexico have similar surrogacy practices as India seeks to establish.

Types of Surrogacies:

Commercial Surrogacy:

It includes surrogacy or its related procedures undertaken for a **monetary benefit or reward** (in cash or kind) **exceeding the basic medical expenses and insurance coverage**.

Altruistic Surrogacy:

It involves **no monetary compensation** to the surrogate mother **other than the medical expenses and insurance coverage** during the pregnancy.

Surrogacy in India:

Since 1978, surrogacy has been practiced in India, which is also known for having a **high rate of “reproductive tourism”** and being a burgeoning hub of the fertility industry.

Although commercial surrogacy was made legal, no bill or explicit rule was created and put into effect. This led to a **sharp rise in uncontrolled surrogacy in India** by low-cost fertility clinics.

Subsequently, in 2021, President of India gave assent to the **Surrogacy Regulation Bill, 2021** which was passed by the parliament.

Key Provisions of the Surrogacy (Regulation) Act, 2021:

Regulation of Surrogacy:

The Act prohibits commercial surrogacy, and allows altruistic surrogacy.

The Act permits surrogacy when it is: (i) for intending couples who suffer from proven infertility; (ii) **altruistic**; (iii) not for commercial purposes; (iv) not for producing children for sale, prostitution or other forms of exploitation; and (v) for any other condition or disease specified through regulations.

Eligibility Criteria for Surrogate Mother:

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To obtain a certificate from the appropriate authority, the surrogate mother has to: (i) be a close relative of the intending couple; (ii) be an ever-married woman having a child of her own; (iii) be 25 to 35 years old; (iv) not have been a surrogate mother earlier; and (v) have a certificate of medical and psychological fitness.

Further, the surrogate mother cannot provide her own gametes for surrogacy.

Offences & Penalties:

The Act creates certain offences which include: (i) undertaking or advertising commercial surrogacy; (ii) exploiting the surrogate mother; (iii) selling or importing human embryo or gametes for surrogacy, and (iv) abandoning, exploiting or disowning a surrogate child.

These offences will attract a penalty of up to 10 years and a fine of up to 10 lakh rupees.

Abortion:

A surrogate mother can be allowed abortion during the process of surrogacy only in accordance with the Medical Termination of Pregnancy Act.

She also cannot disclose the identity of the couple seeking the surrogacy.

Regulating Body:

The Centre and State governments are expected to constitute a **National Surrogacy Board (NSB)** and **State Surrogacy Boards (SSB)** respectively.

This body is tasked with **enforcing standards for surrogacy clinics, investigating breaches and recommending modifications.**

Further, surrogacy clinics **need to apply for registration within 60 days** of the appointment of the appropriate authority.

Need for an regulations for Surrogacy:

India has **emerged as a hub for infertility treatment**, attracting people from the world over with its state-of-the-art technology and competitive prices to treat infertility.

Due to **prevailing socio-economic inequities**, underprivileged women found an option to 'rent their wombs' and thereby make money to take care of their expenses.

Once information of the availability of such wombs got out, the demand also picked up. **Unscrupulous middlemen** inveigled themselves into the scene and exploitation of these women began.

Several instances began to emerge where women, in often desperate straits, started lodging police complaints after they did not receive the promised sum.

Other issues: In 2008 a Japanese couple began the process with a surrogate mother in Gujarat, but **before the child was born they split with both of them refusing to take the child**. In 2012, an Australian couple commissioned a surrogate mother and arbitrarily chose one of the twins that were born.

Challenges to Surrogacy:

A surrogate mother is largely **unaware of existing legal or medical procedures** and the risks involved in the process.

Perhaps the most awful disadvantage is that surrogate mother is **not legally recognized as “workers” in India** since they do not sell mental or manual labour in the traditional sense of the term. Consequently, they do not have any legal rights.

There are **no internationally recognised laws** for surrogacy, so many parents and children can be left vulnerable - or even stateless.

In India, surrogacy is a \$2.3-billion industry which **allowed medical practitioners to earn huge profits**, without any rules and regulations governing their practice.

Surrogacy puts the lives of poor women, who rented out their wombs to a surrogate couple to earn a living, at **great risk due to repeated pregnancies**.

The practice **destroys the surrogate mother’s fundamental rights**. While the surrogate mother gets a very small amount, doctors and other professionals thrive on huge profits.

While the surrogate mother could not refuse to give up the child, the intended parents had the right to refuse the child.

Way Forward:

Ensuring Human Rights are upheld: Universal Declaration of Human Rights proclaims that all men and women of full age have the right to found a family [Article 16(1)] and to the decisions of Indian Supreme Court declaring that family, procreation and sexual orientation are integral to the dignity of an individual.

Solving Ethical Dilemmas: Some argue that surrogacy exploits and commodifies women’s bodies and children. Loss of natural reproduction can cause psychological problems for the surrogate mother.

Providing Practical Solutions: Unlike the proverbial ostrich burying its head in the sand, hoping that the surrogacy market will disappear by merely banning commercial surrogacy, the government may improve the regulation of surrogacy in India.

The implementation of the laws must be **periodically reviewed** including regular consultations with stakeholders to ensure that the rights of the surrogates, children born into surrogacy, and ART donors are protected.