

Surrogacy

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Context:

The Union government recently modified the Surrogacy (Regulation) Rules, 2022 to permit married couples to use donor eggs or donor sperm for surrogacy. The notification outlines that the child to be born through surrogacy must have at least one gamete from the intended parents.

Background:

Modified Surrogacy (Regulation) Rules, 2022, permit married couples to use donor eggs or donor sperm for surrogacy — a move that provided a big relief to those with medical complications. This revoked a previous amendment made in March 2023 that banned the use of such donor gametes.

About Surrogacy in India:

1. It is a contractual process by which a woman carries and delivers a child for a couple/individual after an embryo is implanted in her through in-vitro fertilisation (IVF).
2. Commercial surrogacy is banned in India. Only altruistic arrangements where women acting as surrogates do not receive any monetary remuneration or compensation are allowed.
3. Only married couples and ever-married single women (widowed or divorced) can seek a surrogacy.
4. Would-be parents can only pay for an altruistic surrogate's insurance coverage and medical expense in India.

Latest changes to the Surrogacy Regulation Act (2021)

1. On March 14, 2023, Form 2 (Consent of the Surrogate Mother and Agreement for Surrogacy) of the Surrogacy Rules read with Rule 7 was amended to stipulate that donor eggs could not be used for gestational surrogacy of an intending couple.
2. This has now been amended by a notification of the Ministry of Health and Family Welfare allowing married couples to use a donor gamete on the condition that a District Magistrate Board certifies that either the husband or the wife suffers from a medical condition.
3. However, the notification outlines that the child to be born through surrogacy must have at least one gamete from the intending parents. This implies that a married couple where both partners are unable to use their gametes due to an existing medical condition cannot opt for surrogacy.
4. The regulatory change is however not applicable to ever-married single women as it specifies that a widow or a divorcee undergoing surrogacy must use self-eggs and donor sperm.

Who all cannot access surrogacy in India?

Single persons (ever-married i.e. widowed or divorced women are permitted to access), live-in couples, LGBTQ couples, couples older than 45 years.

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