Amendment in Surrogacy Rules

Why in news?

The Centre has allowed married couples with medical complications to use donor gametes for surrogacy, revoking a previous ban.

What are the key provisions of Surrogacy Act 2021?

Key aspects	About
Definition of Surrogacy	It is a practice where a woman gives birth to a child for an intending couple with the intention to hand over the child after the birth to the intending couple.
Regulation of surrogacy	• The Act *prohibits commercial surrogacy*(carrier is paid), but allows altruistic surrogacy • **Altruistic surrogacy** involves *no monetary compensation* to the surrogate mother other than the medical expenses and insurance coverage during the pregnancy.
Purpose for which surrogacy is permitted	• For intending couple who suffer from proven infertility. • Altruistic and not for commercial purposes. • Not for producing children for sale, prostitution or other forms of exploitation • For any condition or disease specified through regulation.
Eligibility criteria for intending couple	They should have a certificate of essentiality and certificate of eligibility issued by appropriate authority.
Certificate of eligibility	• The intended couple shall be a legally married Indian man and woman for at least 5 years. • The man shall be between the ages of 26-55 years and the woman shall be between the ages of 25-50 years. • The intending couple shall not have any previous biological, adopted, or surrogate child.
Certificate of essentiality	• It is issued by District Medical Board when either the wife or the husband or both husband and wife have any medical conditions which indicates the *necessity of gestational surrogacy*. • An order will be passed by Magistrate's court that the custody of the child will be given to the intending parent. • Insurance will also be provided to the surrogate mother for the period of 16 months.
Eligibility criteria for surrogate mother	To obtain a certificate of eligibility from the appropriate authority, the surrogate mother has to be • A close relative of the intending couple • A married woman having a child of her own • 25 to 35 years old • A surrogate only once in her lifetime • Possess a certificate of medical and psychological fitness for surrogacy
Registration of surrogacy clinics	• Clinics must apply for registration within a period of 60 days from the date of appointment of the appropriate authority. • Registration shall be renewed after every 3 years.
Institutional mechanism	• **National level-** Central government will appoint *National Surrogacy Board*. • **State level**- The State governments will appoint *State Surrogacy Board*.

2023 amendment	• It stipulates that the donor eggs could not be used for gestational surrogacy (In-Vitro Fertilization). • It is a type of assisted reproductive technology (ART) where sperm and an egg are fertilized outside of the human body. • The fertilized egg is inserted in the uterus of the surrogate mother who keeps the child in her womb for that couple.
Surrogacy(Regulation) Amendment Rules, 2024	• The 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. • Eligibility condition- It 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. • There is a separate rules for single women.
Single women	• Single women opting for surrogacy should be a *divorcee or a widow*. • Single women undergoing surrogacy must use self-eggs and donor sperms to avail surrogacy procedure.

Why have the surrogacy rules been changed?

- **MRKH syndrome**- The Supreme Court allowed a women with Mayer Rokitansky Kuster Hauser (MRKH) Syndrome- a rare congenital disorder that affects production of eggs and can cause infertility to use donor eggs for surrogacy.
- The Court observed that the law permitting gestational surrogacy was "woman-centric" as it was a woman's choice to have a surrogate child owing to existing medical or congenital conditions.
- The Supreme Court has since allowed two dozen petitioners to use donor eggs.
- **Delhi High Court**- It observed that 2023 amendment banning donor gametes in surrogacy violates the "basic rights" of a married infertile couple to parenthood by denying them access to legally and medically regulated procedures and services.
- **Implications of 2024 rules**- It bars single unmarried women from having children through surrogacy which violates Article 14 (right to equality) and Article 21 (right to life) of the Constitution.

Surrogacy cannot be accessed by single persons, live-in couples, and LGBTQ couples.

- A petition was filed by unmarried by 44-year-old unmarried woman challenging provisions of the 2021 Act.
- The Court expressed reservation stating that the institution of marriage needed to be "protected" in the country, unlike the West where it was normal to have children without getting married

Quick facts

Mayer Rokitansky Kuster Hauser Syndrome
• It is a rare congenital disorder that can affect the development of the female reproductive system. • It causes the absence or underdevelopment of the uterus, cervix, and upper vagina. • It is also called as Müllerian agenesis and congenital absence of the uterus and vagina. • Type 1- It only affects the reproductive organs • Type 2- It involves problems with other organs such as kidneys, spine or ears.

References

1. Indian Express- Donor gametes are allowed
2. The Hindu- Why surrogacy rules modified?

