



Surrogacy

For Prelims: Assisted Reproductive Technology, Altruistic and Commercial Surrogacy

For Mains: Surrogacy, Legal Provisions and Shortcomings, Issues related to Women, Gender

Why in News?

Recently, a petition was filed before Delhi High Court, challenging the exclusion of a single man and a woman having a child from surrogacy and demanded the decriminalization of commercial surrogacy.

- The petitioners have **challenged their exclusion from availing surrogacy under the Assisted Reproductive Technology (Regulation) Act, 2021 and Surrogacy (Regulation) Act, 2021.**
- The Petitioner argued that the personal decision of a single person about the birth of a baby through surrogacy, i.e., the **right of reproductive autonomy is a facet of the right to privacy** guaranteed under [Article 21 of the Constitution](#).
 - Thus, the **right of privacy of every citizen or person to be free from unwarranted governmental intrusion** into matters fundamentally affecting a decision to bear or beget a child through surrogacy cannot be taken away.

What is the Surrogacy (Regulation) Act, 2021?

- **Provisions:**
 - Under the Surrogacy (Regulation) Act, 2021, a woman who is a widow or a divorcee between the age of 35 to 45 years or a couple, **defined as a legally married woman and man, can avail of surrogacy** if they have a medical condition necessitating this option.
 - It also **bans commercial surrogacy, which is punishable with a jail term of 10 years and a fine of up to Rs 10 lakhs.**
 - The **law allows only altruistic surrogacy** where no money exchanges hands and where a surrogate mother is genetically related to those seeking a child.
- **Challenges:**
 - **Exploitation of the Surrogate and the Child:**
 - One could argue that the state must stop the exploitation of poor women under surrogacy and protect the child's right to be born. However, the **current Act fails to balance these two interests.**
 - **Reinforces Patriarchal Norms:**
 - The Act reinforces traditional patriarchal norms of our society that attributes **no economic value to women's work** and, directly affecting the fundamental rights of the women to reproduce under Article 21 of the constitution.
 - **Denies Legitimate income to Surrogates:**
 - Banning commercial surrogacy also **denies a legitimate source of income of the surrogates**, further **limiting the number of women willingly to surrogate.**

- Overall, this step indirectly **denies children to the couples choosing to embrace parenthood.**
- **Emotional Complications:**
 - In altruistic surrogacy, a friend or relative as a surrogate mother may lead to **emotional complications not only for the intending parents but also for the surrogate child as there is great deal of risking the relationship in the course of surrogacy period** and post birth.
 - Altruistic surrogacy also **limits the option of the intending couple in choosing a surrogate mother** as very limited relatives will be ready to undergo the process.
- **No Third-Party Involvement:**
 - In an altruistic surrogacy, there is no third-party involvement.
 - A third-party involvement **ensures that the intended couple will bear and support the medical and other miscellaneous expenses** during the surrogacy process.
 - Overall, a third party **helps both the intended couple and the surrogate mother navigate through the complex process**, which may not be possible in the case of altruistic surrogacy.

What is Surrogacy?

- **About:**
 - Surrogacy is an arrangement in which a woman (the surrogate) agrees to carry and give birth to a child on behalf of another person or couple (the intended parent/s).
 - 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).
- **Altruistic surrogacy:**
 - It involves no monetary compensation to the surrogate mother other than the medical expenses and insurance coverage during the pregnancy.
- **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.

What is Assisted Reproductive Technology?

- **About:**
 - ART is used to treat infertility. It includes **fertility treatments that handle both a woman's egg and a man's sperm.** It works by removing eggs from a woman's body and mixing them with sperm to make embryos. The embryos are then put back in the woman's body.
 - **In Vitro fertilization (IVF)** is the most common and effective type of ART.
 - ART procedures **sometimes use donor eggs, donor sperm, or previously frozen embryos.** It may also involve a surrogate carrier.
- **Legal Provisions:**
 - The ART (Assisted Reproductive Technology Act) Regulation 2021 provides **a system for the implementation of the law on surrogacy by setting up of the National Assisted Reproductive Technology and Surrogacy Board.**
 - The Act aims **at the regulation and supervision of ART clinics and assisted reproductive technology banks**, prevention of misuse, and safe and ethical practice of ART services.
- **Shortcomings:**
 - **Exclusion of Unmarried and Hetrosexual Couples:**
 - The Act excludes unmarried men, divorced men, widowed men, unmarried yet cohabiting heterosexual couples, trans persons and homosexual couples (whether married or cohabiting) from availing ART services.
 - This exclusion is relevant as the Surrogacy Act also excludes above said persons from taking recourse to surrogacy as a method of reproduction.

- **Reduces the Reproductive Choices:**
 - The Act is also limited to those commissioning couples who are infertile - those who have been unable to conceive after one year of unprotected coitus. Thus, it is limited in its application and significantly reduces the reproductive choices of those excluded.
- **Unregulated Prices:**
 - The prices of the services are not regulated; this can certainly be remedied with simple directives.

Way Forward

As India is one of the major hubs of these practices, the Act is certainly a step in the right direction. There, however, needs to be a dynamic oversight to ensure that the law keeps up with rapidly evolving technology, demands of morality and societal changes.

UPSC Civil Services Examination, Previous Year Question

Q. In the context of recent advances in human reproductive technology, “Pronuclear Transfer” is used for (2020)

- (a) fertilization of egg in vitro by the donor sperm
- (b) genetic modification of sperm producing cells
- (c) development of stem cells into functional embryos
- (d) prevention of mitochondrial diseases in offspring

Ans: (d)

Exp:

- Pronuclear transfer involves the transfer of pronuclei from one zygote to another. This technique first requires fertilisation of healthy donated eggs (provided by the mitochondrial donor) with the intended male parent sperm. Simultaneously, the intending mother’s affected oocytes are fertilised with the intending father’s sperm.
- By using a technique, called ‘Maternal Spindle transfer’, the maternal DNA is put into the egg of a donor woman, which is then fertilized using the father’s sperm. The procedure was developed to help existing In-vitro-Fertilization (IVF) treatments in which mothers have mitochondrial diseases.
- Mutations in maternal DNA are a cause of mitochondrial disease, a heterogeneous group of diseases that can lead to premature death, sometimes in infancy or childhood. Most mitochondrial diseases lack specific treatments, and women who carry the causative mutations are at high risk of transmitting the diseases to their offspring. Therefore, option (d) is the correct answer.

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