

## Surrogacy (Regulation) Act, 2021

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### Surrogacy (Regulation) Act, 2021

Supreme Court allows surrogacy, strikes down rule banning use of donor gametes.

#### **About Surrogacy (Regulation) Act, 2021:**

- **Definition of Surrogacy:** According to the Act surrogacy is defined as the practice of a woman carrying and giving birth to a child to later give the child to the **intended couple**.
- The act was passed to protect **women's reproductive rights**.
- It intends to provide a **legal framework to regulate and promote surrogacy** in a manner that protects the rights and interests of all parties involved.
- It seeks to **prohibit commercial surrogacy** and **encourage altruistic surrogacy** without any payment except for the surrogate mother's medical expenses and her insurance coverage.

Who is an “intending couple”?

- According to the Act, an 'intending couple' refers to an infertile married Indian couple, with the woman's age falling between 23 to 50 years and the man's age between 26 to 55 years.
- To **qualify for a surrogacy eligibility certificate**, the couple should **not have any living children**, except in cases where their **surviving child** has a **mental or physical disability** or a **life-threatening condition**.
- The Act allows **Indian widows, divorcees, and married couples** of Indian origin residing abroad to **become parents through altruistic surrogacy**.
- An **Indian widow or divorcee** between the ages of 35 and 45 who plans to use surrogacy is referred to as an **intending woman**.

### Definition and requirements for becoming a surrogate mother:

- Any willing, **ever-married woman** between the ages of **25 and 35** who has her **own child** may become a surrogate.
- She can only participate in surrogacy **once in her lifetime**, but up to **three attempts** are allowed if the embryo transfer does not occur.
- She must be physically and mentally fit, as **attested by a medical practitioner** through certification.
- She is **Prohibited from providing her own gametes** for surrogacy by the Act.
  - Intending couples must use their **own gametes for surrogacy**.
- She will not receive any **compensation** for carrying the child in her womb other than the **necessary insurance and medical costs**.
  - Insurance must provide coverage for a duration of 36 months, encompassing complications related to childbirth, postpartum issues, and even potential fatalities.
- The surrogate mother has the **choice to revoke her participation** even right up until the **embryo is placed in her womb** and if necessary, even to **terminate the pregnancy**, as per the Medical Termination of Pregnancy Act, 2019

### Prerequisites for surrogacy as per the Act:

- According to the Act, **surrogacy procedures** for medical reasons are only permitted in cases meeting **specific criteria**.
- The **District Medical Board** is responsible for issuing a medical indication certificate to the commissioning party when the following situations are met.
  - The **intended parents** are of **Indian origin**.
  - The **intended mother** is a **divorcee or widow**.
  - The surrogacy is for **charitable purposes**.
  - It is **not being done for financial gain**

### Recent Supreme Court Judgement:

- The Supreme Court allows surrogacy through **use of donor gametes**.
- According to SC the decision to have a **surrogate child** was entirely based on the **woman's inability to become a mother** owing to her **medical or congenital condition**.
- This condition included the "**absence of a uterus or repeatedly failed pregnancies, multiple pregnancies** or an **illness** which makes it impossible for her to **carry a pregnancy to term** or would make the **pregnancy life-threatening**."

- The act cannot contradict Rule 14(a) which specifically recognises the **absence of a uterus** or any **allied condition** as a medical indication necessitating gestational surrogacy.
  - In this regard, it may be noted that the expression '**genetically**' related to the intending couple has to be read as being related to the **husband** when Rule 14(a) applies.