



## SURROGACY - GS III MAINS

**Q.** “Surrogacy is legal in India. But, making it commercial is illegal”. Elaborate it in the line of increasing issues of surrogacy in India. (15 marks, 250 words)

**News:** *Karnataka High Court says surrogacy using donor gametes can't be prohibited as a condition in consent form*

### What's in the news?

- Recently, the High Court of Karnataka has permitted 12 couples to opt for surrogacy through donor female gametes.

### What is Surrogacy?

- Surrogacy is defined as a practice wherein one woman bears and gives birth to a child with the intention to thereafter hand it over to the intending couple.
- While commercial surrogacy is not allowed in India such procedures are allowed only for altruistic purposes with many restrictions on the person seeking to apply under the law.
- No other monetary consideration will be permitted.

### Acts related to Surrogacy:

- **The Surrogacy (Regulation) Act:**
  - It governs the practice and process of surrogacy in India.
  - It provided a gestation period of ten months from the date of coming into force to existing surrogate mothers to protect their wellbeing.
- **The Assisted Reproductive Technology (Regulation) Act:**
  - It was enacted for regulation and supervision of the assisted reproductive technology clinics and banks.
  - Under the Act, the services can be made available to a woman above the age of 21 years and below the age of 50 years and to a man above the age of 21 years and below the age of 55 years.
  - ART procedures include gamete donation, intrauterine insemination and in-vitro fertilization or IVF.

### Issues in Surrogacy:

- **Gender discrimination:** The two Acts have been described as discriminatory against the single man who may desire to become a father via surrogacy or the married woman who already has a child and is desirous of expanding her family through the procedure.



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- **Disqualification:** Disqualifying other persons on the basis of nationality, marital status, sexual orientation or age does not pass the test of equality.
- **Reproductive autonomy:** inclusive of the right to procreation and parenthood, is not within the domain of the State.
- **Infertility cannot be compulsory to undertake surrogacy:** the certificate to prove infertility is a violation of privacy as part of the right to life under Article 21 of the Constitution.
- **India as Surrogacy hub:** 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.

## WAY FORWARD:

- Surrogacy is legal in India. But, making it commercial is illegal. It is a humanitarian act and is recognized by law.
- Surrogacy comes under the reproductive choices of women and it is included as a fundamental right under the purview of Article 21 of the Indian Constitution.
- The law on surrogacy came into effect from January 25 and provides a gestation period of ten months to existing surrogate mothers to protect their wellbeing.
- Prior to the coming into effect of the laws, the Indian Council of Medical Research had issued a 'Code of Practice, Ethical Consideration and Legal Issues' for clinics involved in such procedures.
- The guidelines said surrogacy by assisted conception should normally be considered only for patients for whom it would be physically or "medically impossible" to carry a baby to term and that a surrogate mother should not be over 45 years of age.

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