

Frequently Asked Questions on Surrogacy (Regulation) Act, 2021

(A) Definitions and Scope

1. What is Surrogacy?

Reply: "Surrogacy" means a practice whereby one woman bears and gives birth to a child for an intending couple with the intention of handing over such child to the intending couple after the birth.

2. What is 'altruistic surrogacy'?

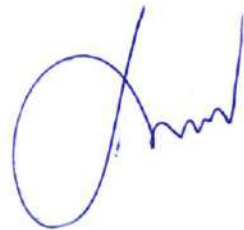
Reply: Altruistic surrogacy means the surrogacy in which no charges, expenses, fees, remuneration or monetary incentive of whatever nature, except the medical expenses and such other prescribed expenses incurred on surrogate mother and the insurance coverage for the surrogate mother, are given to the surrogate mother or her dependents or her representative.

3. What is 'commercial surrogacy' according to the Act?

Reply: Commercial surrogacy means commercialisation of surrogacy services or procedures or its component services or component procedures including selling or buying of human embryo or trading in the sale or purchase of human embryo or gametes or selling or buying or trading the services of surrogate motherhood by way of giving payment, reward, benefit, fees, remuneration or monetary incentive in cash or kind, to the surrogate mother or her dependents or her representative, except the medical expenses and such other prescribed expenses incurred on the surrogate mother and the insurance coverage for the surrogate mother.

4. Who is a surrogate mother?

Reply: Surrogate mother means a woman who agrees to bear a child (who is genetically related to the intending couple/intending woman) through surrogacy from the implantation of embryo in her womb and fulfils the conditions as provided in sub-clause (b) of clause (iii) of section 4.



5. Who is a Couple?

Reply: "Couple" means the legally married Indian man and woman above the age of 21 years and 18 years respectively.

6. Who is an Intending woman?

Reply: Intending woman means an Indian woman who is a widow or divorcee between the age of 35 to 45 years and who intends to avail the surrogacy.

7. Who is an Intending couple?

Reply: Intending couple means a couple who have a medical indication necessitating gestational surrogacy and who intend to become parents through surrogacy.

8. Who are couple of Indian Origin?

Reply: Couple of Indian Origin means the couple where both husband (male) and wife (female) are Overseas Citizens of India cardholders in accordance with the Acts/Rules/Instructions/Guidelines being followed by the Ministry of Home Affairs from time to time subject to fulfilment of various criteria as per the Surrogacy (Regulation) Act, 2021.

(B) Eligibility Criteria for availing Surrogacy services

9. Is commercial Surrogacy allowed in India?

Reply: No. As per the Surrogacy (Regulation) Act, 2021 commercial surrogacy is prohibited in India.

10. What is the age criteria for an intending couple to avail Surrogacy?

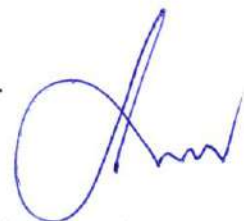
Reply: The age criteria for an intending couple to avail surrogacy services in India is between 23 to 50 years for female and 26 to 55 years for male respectively.

11. Whether unmarried single woman is allowed to avail Surrogacy?

Reply: No. Unmarried single woman is not allowed to avail surrogacy.

12. Can foreigners avail Surrogacy services in India?

Reply: No. Foreigners cannot avail Surrogacy services in India.



13. Can NRIs, OCI Card holders or Indian origin citizens who hold passports of different countries undergo surrogacy in India?

Reply: The NRIs, OCI Card holders or Indian origin citizens can avail surrogacy services in accordance with the prescribed eligibility criteria under Section 4 & other provisions of the Surrogacy (Regulation) Act, 2021 and Rules made thereunder.

14. Can Single man avail Surrogacy in India?

Reply: No. Single man cannot avail Surrogacy in India.

15. What is the eligibility criteria for a woman to act as a Surrogate Mother?

Reply: Any willing ever married woman having a child of her own and between the age of 25 to 35 years can act as a surrogate mother not more than once in her lifetime subject to the fulfilment of the other criteria prescribed under Section 4 of the Surrogacy (Regulation) Act, 2021.

16. Can the surrogate mother be genetically related to the child to be born through surrogacy?

Reply: No. The Act clearly prescribes that the surrogate mother should not be genetically related to the child to be born through surrogacy. *[Notification dated 3rd May 2023 and Section 4 (ii)(a) of Surrogacy (Regulation) Act, 2021]*

17. Can a woman act as a Surrogate mother by providing her own gametes?

Reply: No. A woman shall not act as a surrogate mother by providing her own gametes. *[Section 4 (III)(b)(I) of Surrogacy (Regulation) Act, 2021]*

18. Is it mandatory that the surrogate mother should be close relative of the intending couple?

Reply: No. It is not mandatory that the surrogate mother should be closely related to the intending couple.

19. Can surrogacy be availed without any medical conditions?

Reply: No. Surrogacy cannot be availed without medical condition which is certified by the District Medical Board. The medical indications under which surrogacy can be availed are clearly prescribed under Rule 14 of the Surrogacy Rules, 2022.



20. Do a couple of Indian origin or intending woman require certificate of recommendation from National Board for availing surrogacy?

Reply: Yes. A couple of Indian Origin or an intending woman who intends to avail surrogacy must obtain certificate of recommendation issued by National Board on an application as prescribed under Form 1 of Schedule 1 of the Surrogacy (Regulation) Rules, 2022 .

21. Whether gametes (sperms/eggs) donation is allowed in Surrogacy?

Reply: Couple undergoing surrogacy must have both gamete from the intending couple. However, in case when the District Medical Board certifies that either husband or wife constituting the intending couple suffers from medical condition necessitating use of donor gamete then surrogacy using donor gamete is allowed subject to the condition that the child to be born through surrogacy must have at least one gamete from the intending couple. However, single woman (widow/divorcee) undergoing surrogacy must use self-eggs and donor sperms to avail surrogacy procedure. *[Notification dated 21.02.2024]*

22. Can an intending couple avail surrogacy procedures for a second child?

Reply: An intending couple having any surviving child biologically or through adoption or through surrogacy earlier cannot avail surrogacy procedures for a second child. However, if the surviving child is mentally or physically challenged or suffers from life threatening disorder or fatal illness with no permanent cure, the couple can avail surrogacy for a second child after obtaining medical certificate from a District Medical Board and with the approval of the Appropriate Authority.

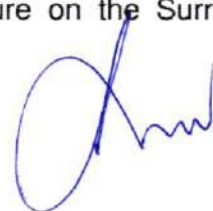
(C) General Provisions

23. How many times can a woman act as a Surrogate mother?

Reply: A woman shall not act as a surrogate mother more than once in her lifetime.

24. How many attempts of surrogacy procedure can be undertaken on a surrogate mother?

Reply: The number of attempts of any surrogacy procedure on the Surrogate Mother shall not be more than three times.



25. How many embryos can be transferred in the uterus of Surrogate Mother during a treatment cycle?

Reply: Only one embryo shall be transferred in the uterus of a surrogate mother during a treatment cycle. However, in special circumstances up to three embryos may be transferred. *[Rule 8 of Surrogacy (Regulation) Rules, 2022]*

26. Who issues certificate of medical indication for an intending couple or intending woman willing to avail Surrogacy Services?

Reply: The District Medical Board issues a certificate of a medical indication in favour of the intending couple or intending woman necessitating gestational surrogacy.

27. Who will issue certificate of essentiality and eligibility to intending couple/woman and surrogate mother?

Reply: The State/UT Appropriate Authority will issue certificate of essentiality and eligibility to the intending couple/woman and Surrogate mother.

28. How is parentage order executed for availing surrogacy?

Reply: An order concerning the parentage and custody of the child to be born through surrogacy, shall be passed by a court of the Magistrate of the first class or above on an application made by the intending couple or the intending woman and the surrogate mother, which shall be the birth affidavit after the surrogate child is born.

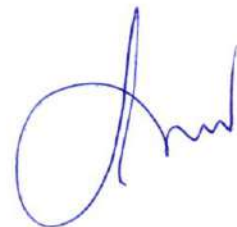
29. Whether Surrogate mother is required to undergo any tests before surrogacy procedure?

Reply: Yes. The surrogate mother must undergo medical and psychological fitness tests conducted by a registered medical practitioner.

(D) Ethical Practices and Safeguards

30. Is the consent of the surrogate mother mandatory for surrogacy procedures?

Reply: Yes. The surrogate mother must provide written informed consent before undergoing surrogacy procedures.



31. Can the consent form of the Surrogate mother be in a local language?

Reply: Yes. The written informed consent of the surrogate mother to undergo surrogacy procedure has to be in a language that she understands.

32. Can a surrogate mother withdraw her consent for surrogacy?

Reply: Yes. The surrogate mother can withdraw her consent for surrogacy before the implantation of human embryo in her womb.

33. Is sex selection allowed in surrogacy?

Reply: No. Sex selection in surrogacy is strictly prohibited under the Act.

34. How does the Act address the issue of abortion in surrogacy?

Reply: Abortion during surrogacy is only allowed with the written consent of the surrogate mother and authorization from the Appropriate Authority in accordance with the Medical Termination of Pregnancy Act, 1971.

35. Can intending parents abandon a child born through surrogacy?

Reply: No. Intending parents cannot abandon a child born through surrogacy, and doing so is a punishable offence under the Act.

(E) Rights and welfare

36. What rights does a child born through surrogacy have under the Act?

Reply: A child born out of surrogacy procedure, shall be deemed to be a biological child of the intending couple or intending woman and the said child shall be entitled to all the rights and privileges available to a natural child under any law for time being in force. *[Section 8 of Surrogacy (Regulation) Rules, 2021]*

37. Is the surrogate mother insured under the Surrogacy Act?

Reply: Yes. Surrogate mother is entitled for insurance coverage which will be purchased by the intending couple/ intending woman for a period of 36 months in favour of surrogate mother covering postpartum delivery complications.



38. Who will compensate the medical expenses/loss of wages of the surrogate mother?

Reply: The intending couple/intending woman will compensate the medical expenses/loss of wages of the surrogate mother.

39. What are the insurance coverage products available for a surrogate mother?

Reply: The detailed list of products for insurance coverage of surrogate mother for general health and life cover has been finalized by DHR and endorsed by IRDAI are widely available in the market. The list of insurance products for both life and general health are available on the following link:

<https://artsurrogacy.gov.in/public/fornt/assets/images/Notifications/rules/List%20of%20Insurance%20Products.pdf>

40. Can a surrogate mother claim parental rights?

Reply: No. The surrogate mother must relinquish all parental rights over the child born through surrogacy.

(F) Registration of Surrogacy clinics & Fee

41. What is the amount of registration fees of a Surrogacy clinic?

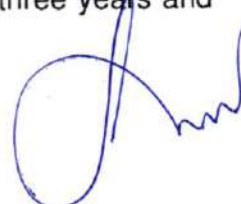
Reply: The registration fee of a surrogacy clinic is Rupees Two lakhs (Rs. 2,00,000).

42. What is the process for applying for registration of a surrogacy clinic?

Reply: Clinics must apply for registration online through an application form devised on the National Registry Portal and submit the hard copy of the application to the State/UT Appropriate Authority prescribed under the Act along with requisite documents and registration fees.

43. What is the duration of validity of the registration certificate for surrogacy clinics?

Reply: The registration certificate for surrogacy clinics is valid for three years and can be renewed.



44. Does change in the address of a registered clinic/bank require re-registration of the clinic by the State/UT Appropriate Authority?

Reply: Yes. As per the Instructions dated 19.12.2024, for any change in the address of the registered surrogacy clinic the complete process of re-registration of the new premises must be carried out including inspection of the premises along with the payment of registration fee.

45. Does change in the name of a registered clinic/bank or manpower working in the registered Surrogacy clinic require complete registration of clinic/bank?

Reply: No. As per the Instructions dated 19.12.2024, any change either in name of the registered clinic/bank or in the manpower working in the clinic can be done with the approval of the State/ UT Appropriate Authority in accordance with Para B and Para C of instructions dated 19.12.2024.

46. What is the stipulated time period for taking action on the applications for change of name, address and manpower of clinic/bank by State authorities?

Reply: As per the Instructions dated 19.12.2024, application for change of name, address and manpower of clinic/bank should be addressed by State/UT AA within one month from date of receipt of application.

47. Is editing/corrections in the application for registration of clinic/banks allowed?

Reply. Yes. It is allowed only when the orders for grant of registration or rejection of application have not been issued by State/UT Appropriate Authority provided that State/UT AA has conveyed its consent to the request made by the applicant.
[Instructions dated 23.02.2023]

(G) Compliance and Monitoring

48. Does the Appropriate Authority have the power of search and seizure?

Reply: Yes. The Appropriate Authority can search and seize records if it has reason to believe that an offence under the Act has been or is being committed at any surrogacy clinic or any other place.

49. How long must surrogacy clinics maintain records?

Reply: Surrogacy clinics must maintain all records, charts, forms, and reports, consent letters, agreements and all the documents for a minimum period of 25 years.



50. What is the period of validity of the certificate of Essentiality/ Eligibility issued by the State/ UT Appropriate Authority to the intending couple/ intending woman for the purpose of surrogacy?

Reply: The period of validity of the certificate of Essentiality/ Eligibility issued by the State/ UT Appropriate Authority to the intending couple/ intending woman for the purpose of surrogacy is **one year from the date of issuance of the said certificate.** *[Instruction dated 14.11.2024]*

51. Is it allowed to shift/mass transfer the cryopreserved embryos/gametes from one clinic/bank to another?

Reply: Yes. On account of the closure of a clinic/bank, the shifting/ mass transfer of the cryopreserved embryos/ gamete from one clinic/bank to another is allowed in accordance with Instructions U.11019/24/2024-HR dated 23.12.2024.

52. Who is competent to issue the certificate of medical indication to the applicant for availing surrogacy?

Reply: For the issuance of Certificate of Medical Indication necessitating gestational surrogacy the applicant may approach the District Medical Board under the jurisdiction of the State of his/her place of residence or the place where residing due to employment. *[Instruction dated 06.01.2023]*

53. Who is competent to issue the certificate of Essentiality to the applicant for availing surrogacy?

Reply: For the issuance of Certificate of Essentiality necessitating gestational surrogacy the applicant may approach the Appropriate Authority having jurisdiction over the District Medical Board. *[Instruction dated 06.01.2023]*

(H) Appeals and Legal Proceedings

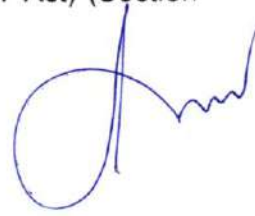
54. What is the process for appealing against a decision made by the Appropriate Authority?

Reply: Appeal can be filed by the surrogacy clinic or the intending couple or the intending woman against an order of the Appropriate Authority, within a period of 30 days from the date of receipt of the communication or order passed by the Appropriate Authority.

(a) The Appellant may file an appeal to the State Government, where the appeal is against the order of the Appropriate Authority of a State;

(b) The Appellant may file an appeal to the Central Government, where the appeal is against the order of the Appropriate Authority of a Union territory.

The format of filing appeal is given under Form 4 (Rule 9 of the ART Act) (Section 14 Surrogacy Act & Para 5 of Surrogacy Rules).



55. Are offences under Surrogacy Act cognizable and non-bailable?

Reply: Yes. All the offences under the Surrogacy Act are cognizable, non-bailable and non-compoundable.

56. What are the penalties for undertaking commercial surrogacy?

Reply: Conducting commercial surrogacy can result in imprisonment for up to 10 years and a fine of up to 10 lakh rupees.

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