

To,

ALL the ART Clinic/ART Bank & Surrogacy Clinic

Under the Jurisdiction of GNCTD

**Subject: GESTATIONAL SURROGACY under SURROGACY
(REGULATION), ACT 2021**

Sir/Madam,

In reference to the various queries raised by the centers regarding the above mentioned subject following self-explanatory facts are quoted below in accordance with the aforesaid act -

- **All kinds of Commercial Surrogacy are prohibited under this Act**
- By the expression “**Commercial Surrogacy**” means commercialization 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;
- For the intending couple or the intending woman shall apply to the Appropriate Authority GNCTD with a willing woman who agrees to act as a surrogate mother, @

**SPO, ART & Surrogacy Act,
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➤ **WHO CAN APPLY FOR GESTATIONAL SURROGACY UNDER THIS SAID ACT?**

As per the said act following facts are to be consider by the applicant-

1. An **Intending Couple** are married and between the age of 23 to 50 years in case of female and between 26 to 55 years in case of male **on the day of certification**

or

An **Intending Women** 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.

2. The **Intending Couple/Women** have not had any surviving child biologically or through adoption or through surrogacy earlier:

Provided that nothing contained in this item shall affect the Intending Couple/Women who have a child and who is mentally or physically challenged or suffers from life threatening disorder or fatal illness with no permanent cure and approved by the appropriate authority with due medical certificate from Specific Medical board as prescribed in the act.

3. When an Intending Couple/Women has a medical indication necessitating gestational surrogacy: Provided that a couple of Indian origin or an intending woman who intends to avail surrogacy.

Explanation. — the expression **“Gestational Surrogacy”** means a practice whereby a surrogate mother carries a child for the intending couple through implantation of embryo in her womb and the child is not genetically related to the surrogate mother;

4. Medical indications necessitating gestational surrogacy. - A woman may opt for surrogacy if; -

(a) she has no uterus or missing uterus or abnormal uterus (like hypoplastic uterus or intrauterine adhesions or thin endometrium or small uni-cornuate uterus, T-shaped uterus) or if the uterus is surgically removed due to any medical conditions such as gynaecological cancer;

- (b) Intended parent or woman who has repeatedly failed to conceive after multiple In-vitro fertilization (IVF) or Intracytoplasmic sperm injection (ICSI) attempts. (Recurrent implantation failure);
- (c) Multiple pregnancy losses resulting from an unexplained medical reason. Unexplained graft rejection due to exaggerated immune response;
- (d) Any illness that makes it impossible for woman to carry a pregnancy to viability or pregnancy that is life threatening.

- 5. When it is **not** for **commercial purposes or for commercialization** of surrogacy or surrogacy procedures.
- 6. When it is **not** for producing children for sale, prostitution or any other form of exploitation;

➤ **WHO CAN BE A SURROGATE MOTHER UNDER THE ACT?**

As per the said act following facts are to be consider by the applicant-

- 1. No woman, other than an ever married woman having a child of her own and between the age of 25 to 35 years **on the day of implantation**, shall be a surrogate mother or help in surrogacy by donating her egg or oocyte or otherwise;
- 2. A willing woman shall act as a surrogate mother and be permitted to undergo surrogacy procedures as per the provisions of this Act
- 3. No woman shall act as a surrogate mother by providing her own gametes;
- 4. No woman shall act as a surrogate mother more than once in her lifetime: Provided that the number of attempts for surrogacy procedures on the surrogate mother shall be such as may be prescribed;
- 5. A certificate of medical and psychological fitness for surrogacy and surrogacy procedures from a registered medical practitioner.

6. Written informed consent of surrogate mother that-

- (I) she has been explained about all known side effects and after effects of such procedures to the surrogate mother concerned. The written informed consent of the surrogate mother to undergo such procedures should be in the language she understands.
- (II) The surrogate mother shall have an option to withdraw her consent for surrogacy before the implantation of human embryo in her womb.

7. Prohibition of Abortion: - No person, organization, surrogacy clinic, laboratory or clinical establishment of any kind shall force the surrogate mother to abort at any stage of surrogacy except in such conditions as may be prescribed.

➤ **WHAT ARE THE CERTIFICATES TO BE OBTAINED UNDER THIS ACT?**

1. **Certificate of Eligibility** for the **Surrogate Mother** from the Appropriate Authority.
2. **Certificate of Eligibility** for the **Intending Couples** from the Appropriate Authority.
3. **Certificate of Essentiality** for the **Intending Couple** from the Appropriate Authority.
 - (a) Certificate of MEDICAL INDICATION for GESTATIONAL SURROGACY from the Specific Medical board as prescribed in the act for the intending couple.
 - (b) An order concerning the parentage and custody of the child to be born through surrogacy, has been 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.

- (c) An insurance coverage of such amount and in such manner as may be prescribed in favor of the surrogate mother for a period of thirty-six months covering postpartum delivery complications from an insurance company or an agent recognized by the Insurance Regulatory and Development Authority established under the Insurance Regulatory and Development Authority Act, 1999;

It is pertinent to mention that; to avail Surrogacy procedures/ services in the jurisdiction of GNCTD, it is mandatory that Surrogacy center should be registered under the Appropriate Authority of GNCTD only, and moreover all the above mentioned certificates are to be obtained from the competent authorities under GNCTD only.

This is for your kind information and necessary action.

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