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KPA DECODED
SURROGACY LAWS

India's surrogacy legislation prohibits commercial surrogacy and only allows altruistic arrangements. In altruistic surrogacy, the surrogate mother receives no payment or incentives beyond necessary medical expenses and an insurance coverage. The law treats commercial surrogacy as a serious offence, making it non-bailable and non-compoundable. Those found guilty face up to 10 years in prison and fines of up to 10 lakh rupees.

The law restricts who can avail surrogacy in India. It excludes single men (whether unmarried, divorced, or widowed), unmarried women, transgender individuals, homosexuals, couples in live-in relationships, married couples who already have children, and married couples capable of conceiving naturally.

Regulation of Surrogacy under the Surrogacy [Regulation] Act, 2021

I. Surrogacy shall not be conducted, undertaken, performed or availed of, except for the following purposes, namely:

(a) when an intending couple has a **medical indication** necessitating gestational surrogacy

Provided that a couple of Indian origin or an intending woman who intends to avail surrogacy, shall obtain a **certificate of recommendation from the Board**.

II. Surrogacy shall not be conducted, undertaken, performed or initiated, unless the Director or in-charge of the surrogacy clinic and the person qualified to do so are satisfied, for reasons to be recorded in writing, that the following conditions have been fulfilled, namely:

(a) the intending couple is in possession of a **certificate of essentiality** issued by the appropriate authority, after satisfying itself, for the reasons to be recorded in writing, about the fulfilment of the following conditions, namely:

(i) a **certificate of a medical indication** in favour of either or both members of the intending couple or intending woman necessitating gestational surrogacy from a District Medical Board.

(ii) 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; and

(iii) an **insurance coverage** of such amount and in such manner as may be prescribed in favour of the surrogate mother for a period of thirty-six months covering postpartum delivery complications from an insurance company or an agent recognised by the Insurance Regulatory and Development Authority established under the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999);

(b) an **eligibility certificate** for intending couple is issued separately by the appropriate authority on fulfilment of the following conditions, namely:

(i) the 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;

(ii) the intending couple 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 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 a District Medical Board; and

(iii) such other conditions as may be specified by the regulations.

Surrogate Mother

The surrogate mother should be in possession of **an eligibility certificate** issued by the appropriate authority on fulfilment of the following conditions, namely:

(I) 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;

(II) a willing woman shall act as a surrogate mother and be permitted to undergo surrogacy procedures as per the provisions of this Act.

Provided that the intending couple or the intending woman shall approach the appropriate authority with a willing woman who agrees to act as a surrogate mother;

(III) no woman shall act as a surrogate mother by providing her own gametes;

(IV) 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; and

(V) a **certificate of medical and psychological fitness** for surrogacy and surrogacy procedures from a registered medical practitioner;

Medical Indication

Medical indications necessitating gestational surrogacy under the Act, 2021:

(a) the intended woman 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 or Intracytoplasmic sperm injection 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.

District Medical Board

means a medical board under the Chairpersonship of Chief Medical Officer or Chief Civil Surgeon or Joint Director of Health Services of the district and comprising of at least two other specialists, namely, the chief gynaecologist or obstetrician and chief paediatrician of the district;

Certificate of Medical Indication is to be obtained from the District Medical Board

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

Intending Couple

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

Appropriate Authority

The appropriate authority, when appointed for the whole of the State or the Union territory, consists of:

- (i) **Ex officio Member:** An officer of or above the rank of the Joint Secretary of the Health and Family Welfare Department-Chairperson, ;
- (ii) **Ex officio Member:** An officer of or above the rank of the Joint Director of the Health and Family Welfare Department-Vice Chairperson.
- (iii) **Member:** An eminent woman representing women's organisation;
- (iv) **Member:** An officer of Law Department of the State or the Union territory concerned not below the rank of a Deputy Secretary-member; and
- (v) **Member:** An eminent registered medical practitioner.

Certificate of essentiality is to be obtained from Appropriate Authority

Surrogacy Law Practice

KPA delivers comprehensive legal services in the dynamic field of surrogacy law. We offer specialised guidance to intended parents/woman and fertility centres, ensuring adherence to current regulations.

Our services include:

1. Detailed consultations on surrogacy legislation and procedures
2. Crafting and examining surrogacy contracts
3. Navigating clients through complex domestic and international surrogacy regulations
4. Securing parentage orders via court processes for intended parents
5. Advising on immigration and citizenship matters for international arrangements
6. Supporting fertility clinics with legal compliance and ethical policy development

Our strengths lie in our deep understanding of current surrogacy laws and cross-border regulations. As the legal landscape evolves, KPA remains dedicated to providing empathetic and thorough legal support throughout the surrogacy process, aiming for optimal outcomes for all involved.

Whether you're an intended parent or a fertility industry professional, our surrogacy law team is ready to address your specific legal requirements with expertise and care.

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