The Surrogacy (Regulation) Act, 2021

Act 47 of 2021. 54 sections. Bare Act with the official footnotes.

Source: India Code, Legislative Department, Ministry of Law and Justice, as updated to 24 August 2026. This is the official text as held in Law Maker's Bare Acts library, checked against the official file; for use in court or an exam hall, check the Gazette or India Code copy.

Official file: https://indiacode.gov.in/server/api/core/bitstreams/83685387-4e21-455b-8b87-c407b357b809/content

Every section online, with the old and new law side by side and exam questions:
https://www.lawmaker.in/bare-acts/surrogacy-regulation-act-2021

Contents

CHAPTER I PRELIMINARY (Sections 1 to 2)
CHAPTER II REGULATION OF SURROGACY CLINICS (Sections 3)
CHAPTER III REGULATION OF SURROGACY AND SURROGACY PROCEDURES (Sections 4 to 10)
CHAPTER IV REGISTRATION OF SURROGACY CLINICS (Sections 11 to 16)
CHAPTER V NATIONAL ASSISTED REPRODUCTIVE TECHNOLOGY AND SURROGACY BOARD AND STATE ASSISTED REPRODUCTIVE TECHNOLOGY AND SURROGACY BOARDS (Sections 17 to 34)
CHAPTER VI APPROPRIATE AUTHORITY (Sections 35 to 37)
CHAPTER VII OFFENCES AND PENALTIES (Sections 38 to 45)
CHAPTER VIII MISCELLANEOUS (Sections 46 to 54)

[25th December, 2021.]

An Act to constitute National Assisted Reproductive Technology and Surrogacy Board, State Assisted Reproductive Technology and Surrogacy Boards and appointment of appropriate authorities for regulation of the practice and process of surrogacy and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Seventy-second Year of the Republic of India as follows:-

CHAPTER I PRELIMINARY

Section 1. Short title, extent and commencement

(1) This Act may be called the Surrogacy (Regulation) Act, 2021.

(2) It shall come into force on such date[1] as the Central Government may, by notification in the Official Gazette, appoint.

[1] 25th January, 2022, vide Notification no. S.O. 292(E), dated 20th January, 2022, see Gazette of India, Extraordinary, Part II, sec. 3 (ii).

Section 2. Definitions

(1) In this Act, unless the context otherwise requires,-

(a) "abandoned child" means a child born out of surrogacy procedure who has been deserted by his intending parents or guardians and declared as abandoned by the appropriate authority after due enquiry;

(b) "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;

(c) "appropriate authority" means the appropriate authority appointed under Section 35;

(d) "Assisted Reproductive Technology Act" means the Assisted Reproductive Technology (Regulation) Act, 2021;

(e) "Board" means the National Assisted Reproductive Technology and Surrogacy Board constituted under Section 17;

(f) "clinical establishment" shall have the same meaning as assigned to it in the Clinical Establishments (Registration and Regulation) Act, 2010 (23 of 2010);

(g) "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;

(h) "couple" means the legally married Indian man and woman above the age of 21 years and 18 years respectively;

(i) "egg" includes the female gamete;

(j) "embryo" means a developing or developed organism after fertilisation till the end of fifty-six days;

(k) "embryologist" means a person who possesses any post-graduate medical qualification or doctoral degree in the field of embryology or clinical embryology from a recognised university with not less than two years of clinical experience;

(l) "fertilisation" means the penetration of the ovum by the spermatozoan and fusion of genetic materials resulting in the development of a zygote;

(m) "foetus" means a human organism during the period of its development beginning on the fifty-seventh day following fertilisation or creation (excluding any time in which its development has been suspended) and ending at the birth;

(n) "gamete" means sperm and oocyte;

(o) "gynaecologist" shall have the same meaning as assigned to it in the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (57 of 1994);

(p) "implantation" means the attachment and subsequent penetration by the zona-free blastocyst, which starts five to seven days following fertilisation;

(q) "insurance" means an arrangement by which a company, individual or intending couple undertake to provide a guarantee of compensation for medical expenses, health issues, specified loss, damage, illness or death of surrogate mother and such other prescribed expenses incurred on such surrogate mother during the process of surrogacy;

(r) "intending couple" means a couple who have a medical indication necessitating gestational surrogacy and who intend to become parents through surrogacy;

(s) "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;

(t) "Member" means a Member of the National Assisted Reproductive Technology and Surrogacy Board or a State Assisted Reproductive Technology and Surrogacy Board, as the case may be;

(u) "notification" means a notification published in the Official Gazette;

(v) "oocyte" means naturally ovulating oocyte in the female genetic tract;

(w) "Paediatrician" means a person who possesses a post-graduate qualification in paediatrics as recognised under the Indian Medical Council Act, 1956 (102 of 1956);

(x) "prescribed" means prescribed by rules made under this Act;

(y) "registered medical practitioner" means a medical practitioner who possesses any recognised medical qualification as defined in clause (h) of Section 2 of the Indian Medical Council Act, 1956 (102 of 1956) and whose name has been entered in a State Medical Register;

(z) "regulation" means regulations made by the Board under this Act;

(za) "sex selection" shall have the same meaning as assigned to it in clause (o) of Section 2 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (57 of 1994);

(zb) "State Board" means the State Assisted Reproductive Technology and Surrogacy Board constituted under section 26;

(zc) "State Government" in relation to Union territory with Legislature, means the Administrator of the Union territory appointed by the President under article 239 of the Constitution;

(zd) "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;

(ze) "surrogacy clinic" means surrogacy clinic, centre or laboratory, conducting assisted reproductive technology services, invitro fertilisation services, genetic counselling centre, genetic laboratory, Assisted Reproductive Technology Banks conducting surrogacy procedure or any clinical establishment, by whatsoever name called, conducting surrogacy procedures in any form;

(zf) "surrogacy procedures" means all gynaecological, obstetrical or medical procedures, techniques, tests,

practices or services involving handling of human gametes and human embryo in surrogacy;

(zg) "surrogate mother" means a woman who agrees to bear a child (who is genetically related to the intending couple or 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;

(zh) "zygote" means the fertilised oocyte prior to the first cell division.

(2) Words and expressions used herein and not defined in this Act but defined in the Assisted Reproductive Technology Act shall have the meanings respectively assigned to them in that Act.

CHAPTER II REGULATION OF SURROGACY CLINICS

Section 3. Prohibition and regulation of surrogacy clinics

On and from the date of commencement of this Act, -

(i) no surrogacy clinic, unless registered under this Act, shall conduct or associate with, or help in any manner, in conducting activities relating to surrogacy and surrogacy procedures;

(ii) no surrogacy clinic, paediatrician, gynaecologist, embryologist, registered medical practitioner or any person shall conduct, offer, undertake, promote or associate with or avail of commercial surrogacy in any form;

(iii) no surrogacy clinic shall employ or cause to be employed or take services of any person, whether on honorary basis or on payment, who does not possess such qualifications as may be prescribed;

(iv) no registered medical practitioner, gynaecologist, paediatrician, embryologist or any other person shall conduct or cause to be conducted or aid in conducting by himself or through any other person surrogacy or surrogacy procedures at a place other than a place registered under this Act;

(v) no surrogacy clinic, registered medical practitioner, gynaecologist, paediatrician, embryologist or any other person shall promote, publish, canvass, propagate or advertise or cause to be promoted, published, canvassed, propagated or advertised which-

(a) is aimed at inducing or is likely to induce a woman to act as a surrogate mother;

(b) is aimed at promoting a surrogacy clinic for commercial surrogacy or promoting commercial surrogacy in general;

(c) seeks or aimed at seeking a woman to act as a surrogate mother;

(d) states or implies that a woman is willing to become a surrogate mother; or

(e) advertises commercial surrogacy in print or electronic media or in any other form;

(vi) no surrogacy clinic, registered medical practitioner, gynaecologist, paediatrician, embryologist, intending couple or any other person shall conduct or cause abortion during the period of surrogacy without the written consent of the surrogate mother and on authorisation of the same by the appropriate authority concerned:

Provided that the authorisation of the appropriate authority shall be subject to, and in compliance with, the provisions of the Medical Termination of Pregnancy Act, 1971 (34 of 1971);

(vii) no surrogacy clinic, registered medical practitioner, gynaecologist, paediatrician, embryologist, intending couple or any other person shall store a human embryo or gamete for the purpose of surrogacy:

Provided that nothing contained in this clause shall affect such storage for other legal purposes like sperm banks, IVF and medical research for such period and in such manner as may be prescribed;

(viii) no surrogacy clinic, registered medical practitioner, gynaecologist, paediatrician, embryologist, intending couple or any other person shall in any form conduct or cause to be conducted sex selection for surrogacy.

CHAPTER III REGULATION OF SURROGACY AND SURROGACY PROCEDURES

Section 4. Regulation of surrogacy and surrogacy procedures

On and from the date of commencement of this Act, -

(i) no place including a surrogacy clinic shall be used or cause to be used by any person for conducting surrogacy or surrogacy procedures, except for the purposes specified in clause (ii) and after satisfying all the conditions specified in clause (iii);

(ii) no surrogacy or surrogacy procedures shall 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 on an application made by the said persons in such form and manner as may be prescribed.

Explanation.-For the purposes of this sub-clause and item (I) of sub-clause (a) of clause

(iii) 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;

(b) when it is only for altruistic surrogacy purposes;

(c) when it is not for commercial purposes or for commercialisation of surrogacy or surrogacy procedures;

(d) when it is not for producing children for sale, prostitution or any other form of exploitation; and

(e) any other condition or disease as may be specified by regulations made by the Board;

(iii) no surrogacy or surrogacy procedures shall 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.

Explanation.-For the purposes of this item, the expression "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;

(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) the surrogate mother is 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;

(c) 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.

Section 5. Prohibition of conducting surrogacy

No person including a relative or husband of a surrogate mother or intending couple or intending woman shall seek or encourage to conduct any surrogacy or surrogacy procedures on her except for the purpose specified in clause (ii) of section 4.

Section 6. Written informed consent of surrogate mother

(1) No person shall seek or conduct surrogacy procedures unless he has-

(i) explained all known side effects and after effects of such procedures to the surrogate mother concerned; and

(ii) obtained in the prescribed form, the written informed consent of the surrogate mother to undergo such procedures in the language she understands.

(2) Notwithstanding anything contained in sub-section (1), the surrogate mother shall have an option to withdraw her consent for surrogacy before the implantation of human embryo in her womb.

Section 7. Prohibition to abandon child born through surrogacy

The intending couple or intending woman shall not abandon the child, born out of a surrogacy procedure, whether within India or outside, for any reason whatsoever, including but not restricted to, any genetic defect, birth defect, any other medical condition, the defects developing subsequently, sex of the child or conception of more than one baby and the like.

Section 8. Rights of surrogate child

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 9. Number of oocytes or human embryos to be implanted

The number of oocytes or human embryos to be implanted in the uterus of the surrogate mother for the purpose of surrogacy, shall be such as may be prescribed.

Section 10. Prohibition of abortion

No person, organisation, 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.

CHAPTER IV REGISTRATION OF SURROGACY CLINICS

Section 11. Registration of surrogacy clinics

(1) No person shall establish any surrogacy clinic for undertaking surrogacy or to render surrogacy procedures in any form unless such clinic is duly registered under this Act.

(2) Every application for registration under sub-section (1) shall be made to the appropriate authority in such form, manner and shall be accompanied by such fees as may be prescribed.

(3) Every surrogacy clinic which is conducting surrogacy or surrogacy procedures, partly or exclusively, referred to in clause (ii) of section 4 shall, within a period of sixty days from the date of appointment of appropriate authority, apply for registration:

Provided that such clinic shall cease to conduct any such counselling or procedures on the expiry of six months from the date of commencement of this Act, unless such clinic has applied for registration and is so registered separately or till such application is disposed of, whichever is earlier.

(4) No surrogacy clinic shall be registered under this Act, unless the appropriate authority is satisfied that such clinic is in a position to provide such facilities and maintain such equipment and standards including specialised manpower, physical infrastructure and diagnostic facilities as may be prescribed.

Section 12. Certificate of registration

(1) The appropriate authority shall after holding an enquiry and after satisfying itself that the applicant has complied with all the requirements of this Act and the rules and regulations made thereunder, grant a certificate of registration

to the surrogacy clinic, within a period of ninety days from the date of application received by it, in such form, on payment of such fees and in such manner, as may be prescribed.

(2) Where, after the inquiry and after giving an opportunity of being heard to the applicant, the appropriate authority is satisfied that the applicant has not complied with the requirements of this Act or the rules or regulations made thereunder, it shall, for reasons to be recorded in writing, reject the application for registration.

(3) Every certificate of registration shall be valid for a period of three years and shall be renewed in such manner and on payment of such fees as may be prescribed.

(4) The certificate of registration shall be displayed by the surrogacy clinic at a conspicuous place.

Section 13. Cancellation or suspension of registration

(1) The appropriate authority may, suo motu or on receipt of a complaint, issue a notice to the surrogacy clinic to show cause as to why its registration should not be suspended or cancelled for the reasons mentioned in the notice.

(2) If after giving a reasonable opportunity of being heard to the surrogacy clinic, the appropriate authority is satisfied that there has been a breach of the provisions of the Act or the rules or regulations made thereunder, it may, without prejudice to any criminal action that it may take against such clinic, suspend its registration for such period as it may think fit or cancel its registration, as the case may be.

(3) Notwithstanding anything contained in sub-sections (1) and (2), if the appropriate authority is of the opinion that it is necessary or expedient to do so in the public interest, it may, for reasons to be recorded in writing, suspend the registration of any surrogacy clinic without issuing any notice under sub-section (1).

Section 14. Appeal

The surrogacy clinic or the intending couple or the intending woman may, within a period of thirty days from the date of receipt of the communication relating to order of rejection of application, suspension or cancellation of registration passed by the appropriate authority under section 13 and communication relating to rejection of the certificates under section 4, prefer an appeal against such order to-

(a) the State Government, where the appeal is against the order of the appropriate authority of a State;

(b) the Central Government, where the appeal is against the order of the appropriate authority of a Union territory,

in such manner as may be prescribed.

Section 15. Establishment of National Assisted Reproductive Technology and Surrogacy Registry

There shall be established a Registry to be called the National Assisted Reproductive Technology and Surrogacy Registry for the purposes of registration of surrogacy clinics under this Act.

Section 16. Application of provisions of Assisted Reproductive Technology Act with respect to National Registry

The National Assisted Reproductive Technology and Surrogacy Registry referred to in section 15 and to be established under section 9 of the Assisted Reproductive Technology Act shall be the National Registry for the purposes of this Act and the functions to be discharged by the said Registry under the Assisted Reproductive Technology Act shall, mutatis mutandis, apply.

CHAPTER V NATIONAL ASSISTED REPRODUCTIVE TECHNOLOGY AND SURROGACY BOARD AND STATE ASSISTED REPRODUCTIVE TECHNOLOGY AND SURROGACY BOARDS

Section 17. Constitution of National Assisted Reproductive Technology and Surrogacy Board

(1) The Central Government shall, by notification, constitute a Board to be known as the National Assisted Reproductive Technology and Surrogacy Board to exercise the powers and perform the functions conferred on the Board under this Act.

(2) The Board shall consist of-

(a) the Minister in-charge of the Ministry of Health and Family Welfare, the Chairperson, ex officio;

(b) the Secretary to the Government of India in-charge of the Department dealing with the surrogacy matter, Vice-Chairperson, ex officio;

(c) three women Members of Parliament, of whom two shall be elected by the House of the People and one by the Council of States, Members, ex officio;

(d) three Members of the Ministries of the Central Government in-charge of Women and Child Development, Legislative Department in the Ministry of Law and Justice and the Ministry of Home Affairs, not below the rank of Joint Secretary, Members, ex officio;

(e) the Director General of Health Services of the Central Government, Member, ex officio;

(f) ten expert Members to be appointed by the Central Government in such manner as may be prescribed and two each from amongst-

(i) eminent medical geneticists or embryologists;

(ii) eminent gynaecologists and obstetricians;

(iii) eminent social scientists;

(iv) representatives of women welfare organisations; and

(v) representatives from civil society working on women's health and child issues,

possessing such qualifications and experience as may be prescribed;

(g) four Chairpersons of the State Boards to be nominated by the Central Government by rotation to represent the States and the Union territories, two in the alphabetical order and two in the reverse alphabetical order, Member, ex officio; and

(h) an officer, not below the rank of a Joint Secretary to the Central Government, in-charge of Surrogacy Division in the Ministry of Health and Family Welfare, who shall be the Member-Secretary, ex officio.

Section 18. Term of office of Members

(1) The term of office of a Member, other than an ex officio Member, shall be-

(a) in case of election under clause (c) of sub-section (2) of section 17, three years:

Provided that the term of such Member shall come to an end as soon as the Member becomes a Minister or Minister of State or Deputy Minister, or the Speaker or the Deputy Speaker of the House of the People, or the Deputy Chairman of the Council of States or ceases to be a Member of the House from which she was elected; and

(b) in case of appointment under clause (f) of sub-section (2) of section 17, three years:

Provided that the person to be appointed as Member under this clause shall be of such age as may be prescribed.

(2) Any vacancy occurring in the office whether by reason of his death, resignation or inability to discharge his functions owing to illness or other incapacity, shall be filled by the Central Government by making a fresh appointment within a period of one month from the date on which such vacancy occurs and the Member so appointed shall hold office for the remainder of the term of office of the person in whose place he is so appointed.

(3) The Vice-Chairperson shall perform such functions as may be assigned to him by the Chairperson from time to time.

Section 19. Meetings of Board

(1) The Board shall meet at such places and times and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as may be determined by the regulations:

Provided that the Board shall meet at least once in six months.

(2) The Chairperson shall preside at the meeting of the Board and if for any reason the Chairperson is unable to attend the meeting of the Board, the Vice-Chairperson shall preside at the meetings of the Board.

(3) All questions which come up before any meeting of the Board shall be decided by a majority of the votes of the members present and voting, and in the event of an equality of votes, the Chairperson, or in his absence, the Vice-Chairperson shall have a second or casting vote.

(4) The Members, other than ex officio Members, shall receive only compensatory travelling expenses for attending the meetings of the Board.

Section 20. Vacancies, etc., not to invalidate proceedings of Board

No act or proceeding of the Board shall be invalid merely by reason of-

(a) any vacancy in, or any defect in the constitution of, the Board; or

(b) any defect in the appointment of a person acting as a Member of the Board; or

(c) any irregularity in the procedure of the Board not affecting the merits of the case.

Section 21. Disqualifications for appointment as Member

(1) A person shall be disqualified for being appointed and continued as a Member if, he-

(a) has been adjudged as an insolvent; or

(b) has been convicted of an offence, which in the opinion of the Central Government, involves moral turpitude; or

(c) has become physically or mentally incapable of acting as a Member; or

(d) has acquired such financial or other interest, as is likely to affect prejudicially his functions as a Member; or

(e) has so abused his position, as to render his continuance in office prejudicial to the public interest; or

(f) is a practicing member or an office-bearer of any association representing surrogacy clinics, having financial or other interest likely to affect prejudicially, his function as a Member; or

(g) is an office-bearer, heading or representing, any of the professional bodies having commercial interest in surrogacy or infertility.

(2) The Members referred to in clause (f) of section 17 shall not be removed from their office except by an order of the Central Government on the ground of their proved misbehaviour or incapacity after the Central Government, has, on an inquiry, held in accordance with the procedure prescribed in this behalf by the Central Government, come to the conclusion that the Member ought on any such ground to be removed.

(3) The Central Government may suspend any Member against whom an inquiry under sub-section (2) is being initiated or pending until the Central Government has passed an order on receipt of the report of the inquiry.

Section 22. Temporary association of persons with Board for particular purposes

(1) The Board may associate with itself, in such manner and for such purposes as may be determined by the regulations, any person whose assistance or advice it may desire in carrying out any of the provisions of this Act.

(2) A person associated with the Board under sub-section (1) shall have a right to take part in the discussions relevant to that purpose, but shall not have a right to vote at a meeting of the Board and shall not be a Member for any other purpose.

Section 23. Authentication of orders and other instruments of Board

All orders and decisions of the Board shall be authenticated by the signature of the Chairperson and all other instruments issued by the Board shall be authenticated by the signature of the Member-Secretary of the Board.

Section 24. Eligibility of Member for re-appointment

Subject to other terms and conditions of service as may be prescribed, any person ceasing to be a Member shall be eligible for re-appointment as such Member:

Provided that no Member other than an ex officio Member shall be appointed for more than two consecutive terms.

Section 25. Functions of Board

The Board shall discharge the following functions, namely: -

(a) to advise the Central Government on policy matters relating to surrogacy;

(b) to review and monitor the implementation of the Act, and the rules and regulations made thereunder and recommend to the Central Government, changes therein;

(c) to lay down the code of conduct to be observed by persons working at surrogacy clinics;

(d) to set the minimum standards of physical infrastructure, laboratory and diagnostic equipment and expert manpower to be employed by the surrogacy clinics;

(e) to oversee the performance of various bodies constituted under the Act and take appropriate steps to ensure their effective performance;

(f) to supervise the functioning of State Assisted Reproductive Technology and Surrogacy Boards; and

(g) such other functions as may be prescribed.

Section 26. Constitution of State Assisted Reproductive Technology and Surrogacy Board

Each State and Union territory having Legislature shall constitute a Board to be known as the State Assisted Reproductive Technology and Surrogacy Board or the Union territory Assisted Reproductive Technology and Surrogacy Board, as the case may be, which shall discharge the following functions, namely:-

(i) to review the activities of the appropriate authorities functioning in the State or Union territory and recommend

appropriate action against them;

(ii) to monitor the implementation of the provisions of the Act, and the rules and regulations made thereunder and make suitable recommendations relating thereto, to the Board;

(iii) to send such consolidated reports as may be prescribed, in respect of the various activities undertaken in the State under the Act, to the Board and the Central Government; and

(iv) such other functions as may be prescribed.

Section 27. Composition of State Board

The State Board shall consist of.-

(a) the Minister in-charge of Health and Family Welfare in the State, Chairperson, ex officio;

(b) the Secretary in-charge of the Department of Health and Family Welfare, Vice-Chairperson, ex officio;

(c) Secretaries or Commissioners in-charge of the Departments of Women and Child Development, Social Welfare, Law and Justice and Home Affairs or their nominees, members, ex officio;

(d) Director-General of Health and Family Welfare of the State Government, member, ex officio;

(e) three women members of the State Legislative Assembly or Union territory Legislative Council, members, ex officio;

(f) ten expert members to be appointed by the State Government in such manner as may be prescribed, two each from amongst-

(i) eminent medical geneticists or embryologists;

(ii) eminent gynaecologists and obstetricians;

(iii) eminent social scientists;

(iv) representatives of women welfare organisations; and

(v) representatives from civil society working on women's health and child issues,

possessing such qualifications and experiences as may be prescribed;

(g) an officer not below the rank of Joint Secretary to the State Government in-charge of Family Welfare, who shall be the Member-Secretary, ex officio.

Section 28. Term of office of members

(1) The term of office of a member, other than an ex officio member, shall be.-

(a) in case of nomination under clause (e) of section 27, three years:

Provided that the term of such member shall come to an end as soon as the member becomes a Minister or Minister of State or Deputy Minister, or the Speaker or the Deputy Speaker of the Legislative Assembly, or the Deputy Chairman of the Legislative Council or ceases to be a member of the House from which she was elected; and

(b) in case of appointment under clause (f) of section 27, three years:

Provided that the person to be appointed as member under this clause shall be of such age, as may be prescribed.

(2) Any vacancy occurring in the office whether by reason of his death, resignation or inability to discharge his functions owing to illness or other incapacity, shall be filled within a period of one month from the date on which such vacancy occurs by the State Government by making a fresh appointment and the member so appointed shall hold office for the remainder of the term of office of the person in whose place he is so appointed.

(3) The Vice-Chairperson shall perform such functions as may be assigned to him by the Chairperson from time to time.

Section 29. Meetings of State Board

(1) The State Board shall meet at such places and times and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as may be specified by the regulations:

Provided that the State Board shall meet at least once in four months.

(2) The Chairperson shall preside at the meetings of the Board and if for any reason the Chairman is unable to attend the meeting of the State Board, the Vice-Chairperson shall preside at the meetings of the State Board.

(3) All questions which come up before any meeting of the State Board shall be decided by a majority of the votes of the members present and voting, and in the event of an equality of votes, the Chairperson, or in his absence, the

Vice-Chairperson shall have a second or casting vote.

(4) The members, other than ex officio members, shall receive only compensatory travelling expenses for attending the meetings of the State Board.

Section 30. Vacancies, etc., not to invalidate proceedings of State Board

No act or proceeding of the State Board shall be invalid merely by reason of-

(a) any vacancy in, or any defect in the constitution of, the State Board; or

(b) any defect in the appointment of a person acting as a member of the State Board; or

(c) any irregularity in the procedure of the State Board not affecting the merits of the case.

Section 31. Disqualifications for appointment as member

(1) A person shall be disqualified for being appointed and continued as a member if, he -

(a) has been adjudged as an insolvent; or

(b) has been convicted of an offence, which in the opinion of the State Government, involves moral turpitude; or

(c) has become physically or mentally incapable of acting as a member; or

(d) has acquired such financial or other interest, as is likely to affect prejudicially his functions as a member; or

(e) has so abused his position, as to render his continuance in office prejudicial to the public interest; or

(f) is a practicing member or an office-bearer of any association representing surrogacy clinics, having financial or other interest likely to affect prejudicially, his functions as a member; or

(g) is an office-bearer, heading or representing, any of the professional bodies having commercial interest in surrogacy or infertility.

(2) The members referred to in clause (f) of section 27 shall not be removed from their office except by an order of the State Government on the ground of their proved misbehaviour or incapacity after the State Government, has, on an inquiry, held in accordance with the procedure prescribed in this behalf by the State Government, come to the conclusion that the member ought on any such ground to be removed.

(3) The State Government may suspend any member against whom an inquiry under sub-section (2) is being initiated or pending until the State Government has passed an order on receipt of the report of the inquiry.

Section 32. Temporary association of persons with State Board for particular purposes

(1) The State Board may associate with itself, in such manner and for such purposes as may be determined by the regulations, any person whose assistance or advice it may desire in carrying out any of the provisions of this Act.

(2) A person associated with it by the State Board under sub-section (1) shall have a right to take part in the discussions relevant to that purpose, but shall not have a right to vote at a meeting of the State Board and shall not be a member for any other purpose.

Section 33. Authentication of orders and other instruments of State Board

All orders and decisions of the State Board shall be authenticated by the signature of the Chairperson and all other instruments issued by the State Board shall be authenticated by the signature of the Member-Secretary of the State Board.

Section 34. Eligibility of member for re-appointment

Subject to the other terms and conditions of service as may be prescribed, any person ceasing to be a member shall be eligible for re-appointment as such member:

Provided that no member other than an ex officio member shall be appointed for more than two consecutive terms.

CHAPTER VI APPROPRIATE AUTHORITY

Section 35. Appointment of appropriate authority

(1) The Central Government shall, within a period of ninety days from the date of commencement of this Act, by notification, appoint one or more appropriate authorities for each of the Union territories for the purposes of this Act and the Assisted Reproductive Technology Act.

(2) The State Government shall, within a period of ninety days from the date of commencement of this Act, by notification, appoint one or more appropriate authorities for the whole or any part of the State for the purposes of this Act and the Assisted Reproductive Technology Act.

(3) The appropriate authority, under sub-section (1) or sub-section (2), shall,-

(a) when appointed for the whole of the State or the Union territory, consist of-

(i) an officer of or above the rank of the Joint Secretary of the Health and Family Welfare Department--Chairperson, ex officio;

(ii) an officer of or above the rank of the Joint Director of the Health and Family Welfare Department--Vice Chairperson, ex officio;

(iii) an eminent woman representing women's organisation--member;

(iv) an officer of Law Department of the State or the Union territory concerned not below the rank of a Deputy Secretary--member; and

(v) an eminent registered medical practitioner--member:

Provided that any vacancy occurring therein shall be filled within one month of the occurrence of such vacancy;

(b) when appointed for any part of the State or the Union territory, be officers of such other rank as the State Government or the Central Government, as the case may be, may deem fit.

Section 36. Functions of appropriate authority

The appropriate authority shall discharge the following functions, namely:-

(a) to grant, suspend or cancel registration of a surrogacy clinic;

(b) to enforce the standards to be fulfilled by the surrogacy clinics;

(c) to investigate complaints of breach of the provisions of this Act, rules and regulations made thereunder and take legal action as per provision of this Act;

(d) to take appropriate legal action against the use of surrogacy by any person at any place other than prescribed, suo motu or brought to its notice, and also to initiate independent investigations in such matter;

(e) to supervise the implementation of the provisions of this Act and rules and regulations made thereunder;

(f) to recommend to the Board and State Boards about the modifications required in the rules and regulations in accordance with changes in technology or social conditions;

(g) to take action after investigation of complaints received by it against the surrogacy clinics; and

(h) to consider and grant or reject any application under clause (vi) of section 3 and sub-clauses

(a) to (c) of clause (iii) of section 4 within a period of ninety days.

Section 37. Powers of appropriate authorities

(1) The appropriate authority shall exercise the powers in respect of the following matters, namely:-

(a) summoning of any person who is in possession of any information relating to violation of the provisions of this Act, and rules and regulations made thereunder;

(b) production of any document or material object relating to clause (a);

(c) search any place suspected to be violating the provisions of this Act, and the rules and regulations made thereunder; and

(d) such other powers as may be prescribed.

(2) The appropriate authority shall maintain the details of registration of surrogacy clinics, cancellation of registration, renewal of registration, grant of certificates to the intending couple and surrogate mothers or any other matter pertaining to grant of license, etc., of the surrogacy clinics in such format as may be prescribed and submit the same to the National Assisted Reproductive Technology and Surrogacy Board.

CHAPTER VII OFFENCES AND PENALTIES

Section 38. Prohibition of commercial surrogacy, exploitation of surrogate mothers and children born through surrogacy

(1) No person, organisation, surrogacy clinic, laboratory or clinical establishment of any kind shall.-

(a) undertake commercial surrogacy, provide commercial surrogacy or its related component procedures or services in any form or run a racket or an organised group to empanel or select surrogate mothers or use individual brokers or intermediaries to arrange for surrogate mothers and for surrogacy procedures, at such clinics, laboratories or at any other place;

(b) issue, publish, distribute, communicate or cause to be issued, published, distributed or communicated, any

advertisement in any manner regarding commercial surrogacy by any means whatsoever, scientific or otherwise;

(c) abandon or disown or exploit or cause to be abandoned, disowned or exploited in any form, the child or children born through surrogacy;

(d) exploit or cause to be exploited the surrogate mother or the child born through surrogacy in any manner whatsoever;

(e) sell human embryo or gametes for the purpose of surrogacy and run an agency, a racket or an organisation for selling, purchasing or trading in human embryos or gametes for the purpose of surrogacy;

(f) import or shall help in getting imported in, whatsoever manner, the human embryo or human gametes for surrogacy or for surrogacy procedures; and

(g) conduct sex selection in any form for surrogacy.

(2) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), contraventions of the provisions of clauses (a) to (g) of sub-section (1) by any person shall be an offence punishable with imprisonment for a term which may extend to ten years and with fine which may extend to ten lakh rupees.

(3) For the purposes of this section, the expression "advertisement" includes any notice, circular, label, wrapper or any other document including advertisement through internet or any other media, in electronic or print form and also includes any visible representation made by means of any hoarding, wall-painting, signal light, sound, smoke or gas.

Section 39. Punishment for contravention of provisions of Act

(1) Any registered medical practitioner, gynaecologists, paediatrician, embryologists or any person who owns a surrogacy clinic or employed with such a clinic or centre or laboratory and renders his professional or technical services to or at such clinic or centre or laboratory, whether on an honorary basis or otherwise, and who contravenes any of the provisions of this Act (other than the provisions referred to in section 38) and rules and regulations made thereunder shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to ten lakh rupees.

(2) In case of subsequent or continuation of the offence referred to in sub-section (1), the name of the registered medical practitioner shall be reported by the appropriate authority to the State Medical Council concerned for taking necessary action including suspension of registration for a period of five years.

Section 40. Punishment for not following altruistic surrogacy

Any intending couple or intending woman or any person who seeks the aid of any surrogacy clinic, laboratory or of a registered medical practitioner, gynaecologist, paediatrician, embryologist or any other person for not following the altruistic surrogacy or for conducting surrogacy procedures for commercial purposes shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to five lakh rupees for the first offence and for any subsequent offence with imprisonment which may extend to ten years and with fine which may extend to ten lakh rupees.

Section 41. Penalty for contravention of provisions of Act or rules for which no specific punishment is provided

Whoever contravenes any of the provisions of this Act, rules or regulations made thereunder for which no penalty has been provided in this Act, shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to five lakh rupees and in the case of continuing contravention with an additional fine which may extend to ten thousand rupees for every day during which such contravention continues after conviction for the first such contravention.

Section 42. Presumption in the case of surrogacy

Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), the court shall presume, unless the contrary is proved, that the women or surrogate mother was compelled by her husband, the intending couple or any other relative, as the case may be, to render surrogacy services, procedures or to donate gametes for the purpose other than those specified in clause (ii) of section 4 and such person shall be liable for abetment of such offence under section 40 and shall be punishable for the offence specified under that section.

Section 43. Offence to be cognizable, non-baliable and non-compoundable

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence under this Act shall be cognizable, non-bailable and non-compoundable.

Section 44. Cognizance of offences

(1) No court shall take cognizance of any offence punishable under this Act except on a complaint in writing made by--

(a) the appropriate authority concerned, or any officer or an agency authorised in this behalf by the Central Government or the State Government, as the case may be, or the appropriate authority; or

(b) a person including a social organisation who has given notice of not less that fifteen days in the manner prescribed, to the appropriate authority, of the alleged offence and of his intention to make a complaint to the court.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

Section 45. Certain provisions of Code of Criminal Procedure, 1973 not to apply

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), Chapter XXI A of the said Code relating to plea bargaining shall not apply to the offences under this Act.

CHAPTER VIII MISCELLANEOUS

Section 46. Maintenance of records

(1) The surrogacy clinic shall maintain all records, charts, forms, reports, consent letters, agreements and all the documents under this Act and they shall be preserved for a period of twenty-five years or such period as may be prescribed:

Provided that, if any criminal or other proceedings are instituted against any surrogacy clinic, the records and all other documents of such clinic shall be preserved till the final disposal of such proceedings.

(2) All such records shall, at all reasonable times, be made available for inspection to the appropriate authority or to any other person authorised by the appropriate authority in this behalf.

Section 47. Power to search and seize records, etc

(1) If the appropriate authority has reason to believe that an offence under this Act has been or is being committed at any surrogacy clinic or any other place, such authority or any officer authorised in this behalf may, subject to such rules as may be prescribed, enter and search at all reasonable times with such assistance, if any, as such authority or officers considers necessary, such surrogacy clinic or any other place and examine any record, register, document, book, pamphlet, advertisement or any other material object found therein and seize and seal the same if such authority or officer has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act.

(2) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to search and seizure shall apply, as far as may be, to all action taken by the appropriate authority or any officer authorised by it under this Act.

Section 48. Protection of action taken in good faith

No suit, prosecution or other legal proceeding shall lie against the Central Government or the State Government or the appropriate authority or any officer authorised by the Central Government or the State Government or by the appropriate authority for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act.

Section 49. Application of other laws not barred

The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Section 50. Power to make rules

(1) The Central Government may, by notification and subject to the condition of pre-publication, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for--

(a) the prescribed expenses under clauses (b), (f) and (q) of sub-section (1) of section 2;

(b) the minimum qualifications for persons employed at a registered surrogacy clinic under clause (iii) of section 3;

(c) the period and manner in which a person shall store human embryo or gamete under clause

(vii) of section 3;

(d) the form and manner of application for obtaining certificate of recommendation from the Board under proviso to sub-clause (a) of clause (ii) of section 4;

(e) the insurance coverage in favour of the surrogate mother from an insurance company and the manner of such coverage under item (III) of sub-clause (a) of clause (iii) of section 4;

(f) the number of attempts of surrogacy or providing of gametes under the proviso to item (III) of sub-clause (b) of clause (iii) of section 4;

(g) the form in which consent of a surrogate mother has to be obtained under clause (ii) of section 6;

(h) the number of oocytes or embryos to be implanted in the uterus of the surrogate mother under section 9;

(i) the conditions under which the surrogate mother may be allowed for abortion during the process of surrogacy under section 10;

(j) the form and manner in which an application shall be made for registration and the fee payable thereof under sub-section (2) of section 11;

(k) the facilities to be provided, equipment and other standards to be maintained by the surrogacy clinics under sub-section (4) of section 11;

(l) the period, manner and form in which a certificate of registration shall be issued under sub-section (1) of section 12;

(m) the manner in which the certificate of registration shall be renewed and the fee payable for such renewal under sub-section (3) of section 12;

(n) the manner in which an appeal may be preferred under section 14;

(o) the qualifications and experiences of the Members as admissible under clause (f) of sub-section (2) of section 17;

(p) the procedures for conducting an inquiry against the Members under sub-section (2) of section 21;

(q) the conditions under which a Member of the Board eligible for re-appointment under section 24;

(r) the other functions of the Board under clause (g) of section 25;

(s) the manner in which reports shall be furnished by the State Assisted Reproductive Technology and Surrogacy Board and the Union territory Assisted Reproductive Technology and Surrogacy Board to the Board and the Central Government under clause (iii) of section 26;

(t) the other functions of the State Board under clause (iv) of section 26;

(u) the qualifications and experiences of the members as admissible under clause (f) of section 27;

(v) the age of the person to be appointed as a member, referred to in clause (f) of section 27, under the proviso to clause (b) of sub-section (1) of section 28;

(w) the procedures for conducting an inquiry against the members under sub-section (2) of section 31;

(x) the conditions under which the members of State Board eligible for re-appointment under section 34;

(y) empowering the appropriate authority in any other matter under clause (d) of section 36;

(z) the other powers of appropriate authority under clause (d) of sub-section (1) of section 37;

(za) the particulars of the details of registration of surrogacy clinics, cancellation of registration, etc., in such format under sub-section (2) of section 37;

(zb) the manner of giving notice by a person under clause (b) of sub-section (1) of section 44;

(zc) the period up to which records, charts, etc., shall be preserved under sub-section (1) of section 46;

(zd) the manner in which the seizure of documents, records, objects, etc., shall be made and the manner in which seizure list shall be prepared and delivered under sub-section (1) of section 47; and

(ze) any other matter which is to be, or may be, or in respect of which provision is to be made by rules.

Section 51. Power to make regulations

The Board may, with the prior approval of the Central Government, by notification, make regulations not inconsistent with the provisions of this Act and the rules made thereunder to provide for.-

(a) the fulfilment of any other condition under which eligibility certificate to be issued by the appropriate authority under sub-clause (d) of clause (v) of section 4;

(b) the time and place of the meetings of the Board and the procedure to be followed for the transaction of business at such meetings and the number of Members which shall form the quorum under sub-section (1) of section 19;

(c) the manner in which a person may be temporarily associated with the Board under sub-section (1) of section 22;

(d) the time and place of the meetings of the State Board and the procedure to be followed for the transaction of business at such meetings and the number of members which shall form the quorum under sub-section (1) of section 29;

(e) the manner in which a person may be temporarily associated with the Board under sub-section (1) of section 32; and

(f) any other matter which is required to be, or may be, specified by regulations.

Section 52. Rules and regulations to be laid before Parliament

Every rule made by the Central Government and every regulation made by the Board under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification.

Section 53. Transitional provision

Subject to the provisions of this Act, there shall be provided a gestation period of ten months from the date of coming into force of this Act to existing surrogate mothers' to protect their well being.

Section 54. Power to remove difficulties

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of the said Act as appear to it to be necessary or expedient for removing the difficulty:

Provided that no order shall be made under this section after the expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Prepared by Law Maker (lawmaker.in), operated by Bitola Industries Pvt Ltd, from the official text. Free judiciary mock tests, past papers, landmark judgments and the old and new criminal laws side by side: https://www.lawmaker.in