

F. No. U.11019/15/2022-HR
Government of India
Ministry of Health and Family Welfare
(Department of Health Research)

New Delhi, the 3rd May, 2023

To,

Principal Secretary (Health)/Secretary (Health)
[All States/UTs]

Subject: Instructions regarding **Non-Genetic** relation of Surrogate mother with child to be borne out of surrogacy and other conditions of Surrogate mother.

Sir/Madam,

I am directed to draw attention to the following:-

Section 4(iii) (b) of Surrogacy(Regulation) Act, 2021

(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;

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

Section 4(ii) (a) of Surrogacy(Regulation) Act, 2021

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

Accordingly, the Act clearly prescribes that the surrogate mother should not be genetically related to the child to be borne out of surrogacy.

2. Further attention is drawn to the Section 2 (1) (zg) of Surrogacy(Regulation) Act, 2021 which reads as under:-

“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;

The said Section clearly provide that condition of genetically related pertains to the child (child to be borne out of surrogacy to be genetically related to the intending couple/intending woman) and not the surrogate mother.

The National Board decided to constitute a Committee to look into whether the child to be born through surrogacy should be genetically related to both the parents (i.e. oocytes from mother and sperms from father constituting the intending couple) OR to either one of the parents [i.e. (i) oocytes from mother and sperms from donor or (ii) oocytes from donor and sperms from father constituting the intending couple]. The section 2(1)(zg) of the Surrogacy (Regulation) Act, 2021 was looked into by the Committee from amongst the Members of National Board(duly

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constituted on the directions of National Board) and their opinion is that the term “genetically related” must be interpreted as :-

- (1) ***Couple undergoing Surrogacy must have both gamete from the intending couple & donor gametes is not allowed***
 (2) ***Single Woman (widow/divorcee) undergoing Surrogacy must use self eggs& donor sperms to avail surrogacy procedure.***

Accordingly, this Department issued notification no. U.11019/15/2022-HR dated 14.03.2023 was issued.

3. As regards the fulfillment of conditions of Surrogate mother, attention is drawn to Section 4(iii) (b) of the Surrogacy(Regulation) Act, 2021 which reads as under:-

“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;

Accordingly, it is reiterated that any willing woman can act as surrogate mother on fulfillment of above conditions and hence it is not mandatory that the surrogate mother is genetically related to the Intending Couple or Intending Woman [as defined in the Surrogacy(Regulation) Act, 2021].

4. This issues with the approval of Secretary (DHR).

Yours sincerely,



(S.N. Jasra)
 Director (Coordination)
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Copy to: (i) All Nodal Officers – ART/Surrogacy (States/UTs).
 (ii) Petitioners before Hon’ble Supreme Court (through their advocates/ASG office)