

## EMBARKING ON THE SURROGACY JOURNEY: LEGAL FOUNDATIONS AND PROTECTION

Surrogacy is a life-altering experience that offers hope and joy to individuals and couples facing various fertility challenges. While the legal landscape around surrogacy can be intricate and subject to regional variations, understanding the foundational rights and responsibilities of parents is essential. Seeking professional legal guidance from experts well-versed in surrogacy law is recommended to navigate the complexities of this journey successfully. By crafting a meticulously structured surrogacy agreement and adhering to legal requirements, the rights and interests of all parties involved can be safeguarded, contributing to a harmonious and fulfilling surrogacy experience.

Surrogacy in India is governed by the Surrogacy (Regulation) Act, 2021 (hereinafter referred to as “**The Act**”), which replaced the previous Surrogacy (Regulation) Bill, 2019. The Act provides a comprehensive framework that regulates surrogacy arrangements to protect the rights of all parties involved, including the intended parents, the surrogate, and the child.

Under Indian law, the following individuals or couples can consider surrogacy:

1. Heterosexual married couples who have been unable to conceive or carry a pregnancy to term.
2. Indian citizens living abroad for work, education, or other reasons, with an overseas citizenship.
3. Single women who are medically unfit to carry a pregnancy.

However, the Act excludes single men, same-sex couples, and foreign couples from accessing surrogacy services in India.

This legislation was enacted to provide a clear and regulated framework for surrogacy arrangements. Key provisions of the act include:

- **Eligibility Criteria:** The act prescribes certain eligibility criteria for intended parents. They must be heterosexual couples who have been married for at least two years and have a medically certified need for surrogacy.
- **Altruistic Surrogacy:** The act allows for altruistic surrogacy, where the surrogate mother is not to be compensated beyond medical expenses and an agreed-upon token of appreciation.
- **Ban on Commercial Surrogacy:** Commercial surrogacy, where surrogates are compensated beyond medical expenses, is prohibited.
- **Legal Parentage:** The act explicitly states that the child born through surrogacy is the legal child of the intended parents. This legal parentage is recognized from the moment of birth.

## **Drafting a Surrogacy Agreement**

One of the most critical aspects of a surrogacy journey is the surrogacy agreement. This legally binding contract is the foundation on which the entire surrogacy arrangement is built. It should address various crucial elements, including:

1. **Consent:** The surrogate mother's informed and voluntary consent to carry and deliver the child on behalf of the intended parents.
2. **Parentage:** The agreement should explicitly state that the intended parents are the legal parents of the child, and the surrogate mother has no legal claim to the child.
3. **Compensation and Expenses:** Outlining the financial aspects of the surrogacy journey, including compensation for the surrogate mother's medical expenses and any permissible token of appreciation.
4. **Medical Procedures:** Detailing the medical procedures involved, the responsibilities of all parties, and the expected timeline.
5. **Confidentiality:** Ensuring that the surrogacy arrangement remains confidential, protecting the privacy and interests of all parties involved.
6. **Contingency Plans:** Anticipating and addressing unforeseen circumstances or medical complications that may arise during the surrogacy journey.

## **Legal Compliance and Due Diligence**

To navigate the legal landscape successfully, all parties involved must adhere to the legal requirements. This includes obtaining permissions from the relevant surrogacy regulation authorities, ensuring that the surrogate mother meets the eligibility criteria, and following the mandated medical and procedural standards. Any deviations from these legal requirements can pose a risk to the legal parentage of the child.

## **Conclusion**

Surrogacy has become an increasingly popular option for couples struggling with infertility or other reproductive challenges. It offers a pathway to parenthood for those who may not be able to conceive or carry a child themselves. However, navigating the complex legal landscape of surrogacy is crucial to ensure that the rights of intended parents are protected, particularly in establishing legal parentage.