

# Surrogacy India's perspective

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■ **ABSTRACT** : Surrogacy refers to the act of bearing a biological child of another woman with any financial or sentimental object. Surrogacy define to a contract in which a woman carries a pregnancy for another couple. Number of infertile couples from all over the World approach India where commercial surrogacy is legal. Although this arrangement appears to be beneficial for all parties concerned, there are certain delicate issues which need to be addressed through carefully framed laws in order to protect the rights of the surrogate mother and the intended parents.

■ **KEY WORDS**: Surrogacy, Commercial, Altruistic, IVF

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The word 'surrogate' originates from the Latin word *surrogatus* implying a substitute (Chandra, 2011). Surrogacy is a mode of outsourcing pregnancy, which obviously is a deviation from normal pregnancy demanding hierarchies of negotiations between the commissioning parents, doctors, surrogates and often the anonymous oocyte and sperm donors (Barua, 2016; Majumdar, 2014a, b; Rudrappa, 2015), thereby, transforming the outsourced pregnancy into a commercial contract

A surrogacy arrangement or surrogacy agreement is the carrying of a pregnancy for intended parents. There are two main types of surrogacy, gestational surrogacy (also known as host or full surrogacy) and traditional surrogacy (also known as partial, genetic, or straight surrogacy). In gestational surrogacy, the pregnancy results from the transfer of an embryo created by *in vitro* fertilization (IVF), in a manner so the resulting child is genetically unrelated to the surrogate. Gestational surrogates are also referred to as gestational carriers.

In traditional surrogacy, the surrogate is impregnated naturally or artificially, but the resulting child is genetically related to the surrogate (Imrie and Jadv, 2014). Surrogacy in its modern avatar has its roots originating from ancient Egypt, where infertile women were allowed to undertake the practice of allowing another women bear the biological child of her husband in order to avoid divorce. It was a practice though not held commonplace but was still considered an act and not a criminal offence. In modern times, it was in the year 1978 that in the United Kingdom, the first successful IVF procedure was carried out and resulted in the birth of baby Mary Louise. This heralded a new found hope for childless couples as well as ushering in a new branch of science. This deed however also raise a multitude of questions in morality, law and ethics with regards to the field of assisted reproductive techniques (Merino, 2010).

## Indian scenario and international scenario :

In the year 2005 ICMR (Indian Council for Medical

Research) drafted and enacted a set of guidelines that must be followed by any and all individuals or organizations associated with the field of assisted reproductive techniques or surrogacy. It laid down specific protocols to be followed in the process of surrogacy and also specifically mentioned that gestational surrogacy is the accepted modality to be followed in a commercial sense in India. There were detailed provisions for the accreditation and recognition of ART clinics in the country as well as state and district level forums were constituted to monitor these clinics. Thereafter, the Assisted Reproductive Techniques Bill (ART, 2010) was proposed but not yet enacted in the country. The bill was based on the guidelines that were mentioned in the notification by the ICMR, however as was the case in the ICMR guidelines so is with the proposed bill. There were many issues that were addressed and appropriately moderated yet there is scope for further improvement still. There was no single point redressal system enacted or proposed to be enacted by the law, through which a surrogate mother or the intended parents can seek to solve their complaints. The proposed law mentioned many factors like age, number of embryo implantations, blood transfusion etc. for the surrogate but was as yet silent on whether a specific demographic criteria must be laid for the intended parents or not. Though the act has not yet made distinction in the caste, creed or otherwise, the authors feel a minimum standard of care must be exercised in making sure that the intended parents are in fact genuine and not criminal elements, are they stable and can support a new member in their family, and finally are the children being treated fairly and without discrimination in their new household. This is a long process and should be done in a method as followed in the western countries where parents of adopted children are subjected to repeated, but un-intrusive verification of their child's welfare. In India this can be achieved by the Integrated Child Development Services (ICDS) scheme started by the Government (Satpathy, 2012).

### **Is surrogacy profitable to all :**

At a glance, surrogacy seems like an attractive alternative as a poor surrogate mother gets very much needed money, an infertile couple gets their long-desired biologically related baby and the country earns foreign currency, but the real picture reveals the bitter truth. Due

to lack of proper legislation, both surrogate mothers and intended parents are somehow exploited and the profit is earned by middlemen and commercial agencies. There is no transparency in the whole system, and the chance of getting involved in legal problems is there due to unpredictable regulations governing surrogacy in India.

Although in 2005, ICMR issued guidelines for accreditation, supervision, and regulation of ART clinics in India, these guidelines are repeatedly violated. Frustration of cross border childless couples is easily understandable who not only have to cope up with language barrier, but sometimes have to fight a long legal battle to get their child. Even if everything goes well, they have to stay in India for 2-3 months for completion of formalities after the birth of baby. The cross border surrogacy leads to problems in citizenship, nationality, motherhood, parentage, and rights of a child. There are occasions where children are denied nationality of the country of intended parents and this results in either a long legal battle like in case of the German couple with twin surrogate children or the Israeli gay couple who had to undergo DNA testing to establish parentage or have a bleak future in orphanage for the child. There are incidences where the child given to couple after surrogacy is not genetically related to them and in turn, is disowned by the intended parent and has to spend his life in an orphanage.

If we look upon the problem of surrogate mothers, things are even worse and unethical. The poor, illiterate women of rural background are often persuaded in such deals by their spouse or middlemen for earning easy money. These women have no right on decision regarding their own body and life. In India, there is no provision of psychological screening or legal counseling, which is mandatory in USA. After recruitment by commercial agencies, these women are shifted into hostels for the whole duration of pregnancy on the pretext of taking antenatal care. The real motive is to guard them and to avoid any social stigma of being outcast by their community. These women spend the whole tenure of pregnancy worrying about their household and children. They are allowed to go out only for antenatal visits and are allowed to meet their family only on Sundays. The worst part is that in case of unfavorable outcome of pregnancy, they are unlikely to be paid, and there is no provision of insurance or post-pregnancy medical and psychiatric support for them. Rich career women who

do not want to take the trouble of carrying their own pregnancy are resorting to hiring surrogate mothers. There are a number of moral and ethical issues regarding surrogacy, which has become more of a commercial racket, and there is an urgent need for framing and implementation of laws for the parents and the surrogate mother.

### Social and psychological context of surrogacy :

Commercialization of surrogacy creates several social conflicts. Given the extreme vulnerability, one-third of the Indian women due to poverty, exclusion from and marginalization in labour and job markets, patriarchal social and family structures and low educational levels, the financial gain through surrogacy become a key push factor. Since most surrogate mothers are not from well-off sections and the motive primarily is monetary so they are easily exploited by the agents working for commissioning parents. Secrecy and anonymity creates a negative environment that affects human relations within and outside families.

Surrogacy carry social stigma in the society as it is equated with prostitution and by virtue of that it is argued that it should be disallowed on moral grounds. Surrogate mothers are kept in isolation from families and allowed to meet families in weekends, which are against the human rights. Hence, there are number of ethical, social, legal and psychological issues associated with surrogacy, which require urgent need for framing and implementation of law

### Conclusion:

In India, surrogacy is purely a contractual bond between the parties and proper care has to be taken while drafting any such agreement so that it won't violate laws or ethics. India is probably the only nation in the world which exclusively enshrines female deities in artistically built temples. However, the history of reproduction politics in India shows a proliferation of rhetoric and policies that discourage poor women from reproducing. Ironically, such contradictory mindset of the state is manifested in everyday negotiations by the surrogates themselves. On the one hand, by using their bodies to earn income, the surrogates seem to subvert notions of wasteful fertility, as historically portrayed by the state. The fertility, bodies, and reproductive decisions

of lower-class women get revalued only insofar as these women serve as human incubators for their richer sisters. Laws of India should not be thoughtlessly imposed on women of weaker social and educational attribute just for the sake of validating a developmental and welfare measure.

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