**Surrogacy: A world of renting a womb**

* **Introduction**

Human is a wonderful machine and to understand such machine is still a brain-teaser. In 21st century new technologies have introduced unbelievable and incredible possibilities that were not possible in earlier. With fertility technology now infertile mother can be a mother.

Parenthood is one of the most challenging responsibilities and also one of the biggest joys a family can ever experience. But Inability to have a child is painful for the parents who are infertile. Rising infertility rate has led to advancement of assisted reproductive techniques. These techniques are also known as fertility techniques. Surrogacy is a social agreement whereby a woman agrees to carry the foetus for a different family, who will be the child’s parents after birth with the help of assisted reproductive technologies. Thus, it is considered to be an effective method of obtaining children. Surrogacy is a social arrangement in which a woman is known as a gestational mother or a surrogate. Surrogacy is a process followed by Assisted Reproductive Technologies (ARTs). This social arrangement is usually bounded by contract that should not be breached.

* **Forms of Surrogacy**

Surrogacy has different procedures and can be classified into five kinds, which are stated as follows:-

1. Domestic Surrogacy
2. Traditional Surrogacy
3. Gestational Surrogacy
4. Altruistic Surrogacy
5. Commercial Surrogacy

**Domestic Surrogacy is a** surrogacy arrangement between a gestational mother and intended parents who are living in the same country. **International Surrogacy is** in between a gestational mother living in one country and intended parents who are living in another country.

**Traditional Surrogacy is** arrangement that uses artificial insemination to fertilize a gestational mother’s eggs with sperm from the intended father.

**Gestational Surrogacy** vitro fertilization is used to create an embryo in a laboratory, with eggs and sperm from intended parents.

**Altruistic Surrogacy is** a surrogacy arrangement in which a gestational mother receives no financial reward associated with the pregnancy.

**Commercial Surrogacy is the one** in which a gestational carrier receives payment from the intended parents for carrying and giving birth to a child.

* **History and Current scenario of Surrogacy**

**Assisted Reproductive Technologies or ARTs are developed** as Fertility treatments used to assist with pregnancy, in birth where both eggs and sperm are handled outside the body. In 1884, the first known birth through donor insemination took place in Philadelphia. The method of cryopreservation of human sperm was perfected in 1950s. In 1978, the world’s first test-tube baby, Louise Brown, was born in England, the product of first successful IVF. In 1986, "Baby M” (Melissa) was born in the U.S.A. The surrogate and biological mother, Mary Beth Whitehead, refused to cede custody of Melissa to the couple with whom she made the surrogacy agreement.

The courts of [New Jersey](https://en.wikipedia.org/wiki/New_Jersey) found that Whitehead was the child's legal mother and declared contracts for surrogate motherhood illegal and invalid. However, the court found it in the best interest of the infant to award custody of Melissa to the child's biological father, William Stern and his wife Elizabeth Stern, rather than to Whitehead, the surrogate mother.

Rights to marry establish a home, and raise children are fundamental but still it might look different for people to go for surrogacy, but prohibiting the method of surrogacy also seems to be in violation to the Constitution .In surrogacy, surrogate mother dynamically interacts with the child for her development and hence it will be immoral to term surrogate mother acting as “human incubator”, They must also recognize that the demand for the surrogacy is so high that prohibiting it entirely would not solve the legal and moral problems. Instead, necessary steps needs to be followed to regulate and minimize the negative effects of surrogacy, such as:

* For married couples, Surrogacy arrangements should be the last resort.
* It should be approved only upon a medical evolution as to the inability of the designated mother to become pregnant.
* All parties must be of full age and resident that state where surrogacy arrangement will take place.
* The surrogate mother should be a married woman with experience of pregnancy.
* Need to have a statutory committee
* For the carrying mother to cover Actual costs in addition to compensation for suffering, loss of time & income, or any other reasonable compensation, the committee must approve monthly payments.
* A surrogacy which is bounded by contract should be enforceable only if is approved by the concerned committee and court.
* **Surrogacy and adoption**

Permanent relinquishment is there of parental rights in both surrogacy and adoption. Commentators who want to establish, that the surrogates should not be forced to surrender custody, they often point towards the adoption case law. In order to stop situational coercion upon mother, grace period is provided to change her mind towards adoption. Consequently there should be a grace period in cases of surrogacy as well.

In respect to above argument, biological tie is there of commissioning parents and that the surrogate has no such link to prove. Also, there would be no pregnancy if there is no agreement between surrogate and intended parents.

Sex and rape both includes ‘sexual intercourse’ as analogous point, but one may lead to continuance and later it might amount to crime, as a result different situations and liabilities arises. Similarly giving birth to child and permanent renounce of child is common in both surrogacy and adoption, but due to these similarity it doesn’t means that similar kind of situation are being created and an advantage of grace period is need to be given in such situation to surrogate mother as given in adoption. There is no harm in adoption; there is no pre-existing biological bond with parent who are going to adopt the child and there will be no harm or pain even if they are not allowed to adopt, and then they have an option to switch over to other parents for adoption.

Both parties have to bear the pain and the commissioning parents can’t take another chance, which involves search for surrogate mother, expenses and wait for another long period of time in Surrogacy. Therefore, in order to minimize the pain of both surrogate mother and commissioning parents, surrogate mother should not be bestowed with grace period.

There are different laws related to International commercial surrogacy that differ from one country to another and within countries. In India, Commercial surrogacy has been legal since 2002. As in a Japanese baby case, 2008, Supreme Court of India held that commercial surrogacy is permitted in India with a direction to the Legislature to pass an appropriate Law governing surrogacy. At present the Surrogacy Contract between the parties and the Assisted Reproductive Technique Clinics guidelines are the guiding force. Giving due regard to the apex court directions, the legislature has enacted ART BILL, 2008. Now there has been several updates on the ART BILL, and the recent ART BILL was issued last year in 2017.

The Law Commission of India has submitted the 228th Report on “NEED FOR LEGISLATION TO REGULATE ASSISTED REPRODUCTIVE TECHNOLOGY CLINICS AS WELL AS RIGHTS AND OBLIGATIONS OF PARTIES TO A SURROGACY.” The following observations had been made by the Law Commission: -

* Surrogacy arrangement will continue to be governed by contract amongst parties, which will contain all the terms requiring consent of surrogate mother to bear child, agreement of her husband and other family members for the same, medical procedures of artificial insemination, reimbursement of all reasonable expenses for carrying child to full term, willingness to hand over the child born to the commissioning parent(s), etc. But such an arrangement should not be for commercial purposes.
* A surrogacy arrangement should provide for financial support for surrogate child in the event of death of the commissioning couple or individual before delivery of the child, or divorce between the intended parents and subsequent willingness of none to take delivery of the child.
* A surrogacy contract should necessarily take care of life insurance cover for a surrogate mother.
* One of the intended parents should be a donor as well, because the bond of love and affection with a child primarily emanates from biological relationship. Also, the chances of various kinds of child-abuse, which have been noticed in cases of adoptions, will be reduced. In case the intended parent is single, he or she should be a donor to be able to have a surrogate child. Otherwise, adoption is the way to have a child which is resorted to if biological (natural) parents and adoptive parents are different.
* Legislation itself should recognize a surrogate child to be the legitimate child of the commissioning parent(s) without there being any need for adoption or even declaration of guardian.
* The birth certificate of the surrogate child should contain the name(s) of the commissioning parents only.
* Right to privacy of donor as well as surrogate mother should be protected.
* Sex-selective surrogacy should be prohibited.
* **Cases of Surrogacy around the world**

Cases of abortions should be governed by the Medical Termination of Pregnancy Act 1971 only.

**India**

The Report has come largely in support of the Surrogacy in India, highlighting a proper way of operating surrogacy in Indian conditions. Exploitation of the women through surrogacy is another worrying factor, which the law has to address. The Law Commission has strongly recommended against Commercial Surrogacy. However, this is a great step forward to the present situation. We can expect a legislation to come by early 2011 with the passing of the Assisted Reproductive Technology Bill aiming to regulate the surrogacy business.

**United Kingdom**

In United Kingdom, Surrogacy have been legal since 2009. But it is illegal in the UK to pay more than expenses for a surrogacy, the relationship can be recognized under Section 30 of the Human Fertilization and Embryology Act, 1990 under which a court may make parental orders similar to adoption orders.

**United States**

Regarding the legality of surrogate parenting, many states have their own state laws. It is VERY common for surrogates to reside in Florida and California due to the surrogacy-accommodating laws in these two states. IN New York, It is illegal to hire a surrogate, and even embryonic transfers may not be done. At present, the laws surrounding surrogacy are well defined in the State of Pennsylvania, and surrogacy is beginning to become common in the state of Delaware.

* **CONCLUSION:**

Science and technology has evolved to such an extent that it has resulted in assistance to the procreation process and has made tremendous contributions to the society. Including India, this medical procedure is acceptable in several countries. Due to excellent medical infrastructure, high international demand are ready and availability of poor surrogates is reaching industry proportions in India. “Wombs for rent” is the potentially offensive term by the emotionally charged parents used for commercial surrogacy. The practice of surrogacy is been adopted by couples where in India nearly twelve million children are orphans. In India, adoption is complicated and a lengthy method for childless people who want to give a home to these children. Laws should be framed and implemented to cover the debatable issues and to control surrogacy. Provisions must be framed to protect the rights of woman and children.

Medical science has evolved to the extent that it has resulted in assistance to the procreation process. ARTs (Artificial Reproduction Technologies) in its various forms assist to infertile and same sex couples to have a child genetically related to them.

Such technology might face resistance from the society but state’s approach should in conformity to the demand and an attempt to regulate controversies arising out of such arrangements. In an attempt to harmonize the sexual and technological conception the laws need to have a consistent and updated approach in order to regulate and solve various disputes arising out of such arrangements. Thus an approach should be towards assisting in procreation process and building up a strong family policy.

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