

## **“Boon for Paid Mothers” Or “Human Rights Violations”?: An Exploratory Study On Commercial Surrogacy In India**

### **Introduction**

Infertility is a global problem affecting 8 to 12 % of the couples worldwide (Inhorn, 2002) and it has huge social implications. It is associated with a lot of stigma and shame. For women being able to give birth to a child leads to her physical and mental fulfilment and gives her a completeness, which an infertile couple lacks. Surrogacy is touted as a boon for infertility as it enables them to have a child of their own with the help of ‘IVF’, a part of Assisted Reproductive Technologies (ARTs). In many societies, where children are highly desired, parenthood is culturally compulsory and childlessness is socially unacceptable, these technologies are rapidly becoming popular.

A ‘surrogate mother’ is a woman who conceives, gestates and delivers the baby on behalf of another woman who subsequently is seen as the ‘real’ (socially and legally) mother of the child and to whom the custody of the child is transferred immediately after birth.

Surrogacy has increasingly become an issue of national and international debate. Factors such as increase in infertility in modern society coupled with the rising demand for having one’s own child, adoption restrictions, the development of surrogacy contract and commercial surrogacy agencies has resulted in the increasing publicity and interest in such agreements between infertile couples and ‘surrogate’ women. In Indian context we have very little on “what does it mean to be a surrogate woman?” and “who are they and why?”

Pande (2010), in her study based at made an attempt to understand this new and unusual form of women’s labour emerging in India.

### **Indian Scenario and legality**

Most countries like China, Germany, France, Hungary, Japan, Canada, Italy, Mexico, Spain, Taiwan, Turkey, Australia, Switzerland and some US states has banned surrogacy altogether. Some has imposed partial bans as in Brazil, Israel, and United Kingdom. Others like India, Finland, Belgium and Greece have no regulations at all.

Commercial surrogacy or what has been called as ‘wombs for rent’ is growing in India. While there is no record for tracking the number of such pregnancies, doctors work with surrogates in almost all major cities. India has been regarded by many as the ‘surrogacy capital of the world’. Surrogacy is part of India’s Assisted Reproductive Technology industry estimated to be about 50 billion USD, also known as “reproductive tourism” (Datta 2010). The ‘industry of reproductive outsourcing’ referring particularly to commercial gestational surrogacy, is estimated to be worth over 4 billion USD (Kohli 2011). While annually it was

estimated to be a business of 0.5 billion USD in the year 2008 (Warner 2008), it has been estimated to be 2.3 billion USD industry in India in 2012 (Raja and Ajay, 2013).

Commercial surrogacy became legal in India since 2002. Currently there are no laws governing the surrogacy. In the 'Assisted Reproductive Technology Regulation Bill 2010', some stipulations have been incorporated to regulate the ART clinics, as well as the rights and obligations of parties to a surrogate.

### **What makes India an attractive destination for surrogacy?**

The major reasons for India becoming the favoured destination of intended parents are as follows:

- i. In India, cost of surrogacy is quite low. In many western countries, surrogacy costs up to \$120,000 whereas in India the total cost of having a baby through surrogacy is one-third of that. The total cost of surrogacy arrangement in India is around Rs 4 to 20 lakhs, depending on the IVF clinic.
- ii. The lack of regulation of the ART sector, making India an easy place to have a surrogate baby.
- iii. Women in India are less prone to smoking and drinking and other addictions.
- iv. The intending parents have their names in the birth certificate as the parents of the baby, which is taken care of by the hospital itself.
- v. Moreover, Indian surrogates are usually between 21-35 years of age and married with a child. The younger age of surrogate women have a higher chance of a successful pregnancy.

With surrogacy having a quasi-legal status along with the wide supply of women working at low rates, made India the preferred place for surrogacy. Cultural and financial factors also ensure that surrogate mothers rarely want to keep the baby. The taboo around surrogacy forces most women to keep their pregnancy largely a secret. Even though it is associated with lot of stigma, people have started accepting it. Earlier they used to be ashamed of it, but now they are becoming more open about it. However there is no record of such arrangements or any reliable source of data. Due to this paucity of information, very few studies have been conducted in India on this subject. Not many know how the surrogacy arrangement actually 'work' with many 'players' involved in it.

In order to explore the world of the 'surrogate women', a study was conducted in Kolkata city in 2012. The information /data collected includes case studies of 9 surrogate mothers (see Table 1), 2 biological parents, and 3 agents/ brokers who help the clinics by bringing the surrogates. Each of them was personally interviewed. Along with this, the family members of few surrogates (husbands and mothers) were also interviewed to understand their attitudes and perceptions towards surrogacy and their willingness to be part of it. Gynaecologists, doctors, infertility specialists, communication executives, embryologists, geneticists, patient co-ordinators, IVF co-ordinators, nurses and managers of hospitals were also interviewed to

get understanding of the surrogacy process since they are involved at one stage or the other or a party to this 'deal'.

Surrogate women interviewed are quiet apprehensive about their identity being revealed. Thus, face to face interviews, maintaining the privacy as far as possible, where respondents were given the comfort to talk about themselves without having the fear of being known as a surrogate. The interviews were conducted mostly in clinics and centres.

### **Understanding the Process**

A lot of secrecy is maintained in the whole arrangement of surrogacy. Thus, the scope of recruitment of a surrogate is limited through word of mouth. Doctors/clinics mostly have to rely on the agents/ brokers to bring in women who are willing to be surrogate mother.

A number of steps are involved, starting from screening of the patients (surrogates) till the delivery of the child.

Before screening, woman wanting to be a surrogate have to fulfil the following basic criterion:

1. She must preferably be between the ages of 21 and 30 years. The younger she is, the better it is.
2. She must not be a spinster.
3. She must have given birth to at least on healthy child and is parent to that child.
4. She should not be lactating at the time of the treatment and her baby should not be very young.
5. She must have had no complications with previous pregnancy.
6. It is important that she has the support of her husband in her decision to be a surrogate mother.
7. She must not have any current/chronic medical condition.
8. It is preferred that she should not have addictions like smoking, khaini, guthka etc. In case she has any addiction, she should be ready to leave them during pregnancy.

Once the woman is satisfying these criterions, she is ready for the counselling. It has to be ensured that the potential surrogates are psychologically and medically fit for the process.

The various steps involved in the surrogacy arrangements are the following:

1. **Counselling:** It is done to mentally and physically prepare both the parties for surrogacy. Counselling is provided before initiation of the pregnancy to permit the potential surrogate mothers and the intended biological parents explore the possible outcomes and the long term effects of surrogacy and it continues till process end.
2. **Medical check-up:** This is to ensure that they are medically fit to be a surrogate. Women is checked for hormonal status, blood pressure, endometrium thickness,

carrying capacity of the uterus, infection of the uterus, etc. and undergoes all blood tests and a series of infectious disease testing. These tests are also done for the biological mothers. This is to ensure that all parties are clear of all transmittable diseases such as AIDS, herpes, hepatitis, etc.

3. **Signing of the consent form:** This consent form is in accordance to the guidelines of Indian Council of Medical Research (ICMR). It is an agreement saying that the financial works have been worked out with the biological parents and that confidentiality will be maintained. It is a consent that the surrogate women allow the child to grow in her womb and then hand over the baby to the biological parents.
4. **Embryo transfer:** The surrogate needs to prepare her uterus for implantation. Thus, she goes through a mock cycle to check her uterine lining's response to estrogen replacement. The angle of the cervix and the length of the uterus are also measured. The menstrual cycles of the surrogate and intended genetic mother are synchronised in order to obtain mature eggs and embryos and transfer these back into a perfectly prepared endometrium (uterine lining) to maximize the chances of pregnancy success. Once it is synchronised, the preparation for pregnancy begins. When the eggs are mature and ready to be retrieved and the endometrial lining is appropriately grown, the intended genetic mother is scheduled for retrieval. On that same day as the egg retrieval, genetic father provides a fresh sperm sample. They are taken to the IVF laboratory and placed with sperm in the incubator. The embryos are left to grow in the lab for some days to ensure they are healthy and dividing properly and are later transferred to the surrogate. This takes place during 2 to 3 days of post-egg collection. Generally 2 to 3 embryos are transferred to the uterus as it maximises the success of the cycle.

### **Few Observations from Case Studies:**

#### **Surrogate mothers**

All surrogate women interviewed are married, with at least one child and maximum of three children. Three of the surrogates were separated from their husbands. The age of the surrogate women ranged from 22 years to 35 years. All of them are from Kolkata, either living in the city or in the outskirts. Most of them were either unemployed or without any fixed or regular job. Their education level ranged from being illiterate to 6<sup>th</sup> standard (see Table 1).

The husbands of these surrogates were between the ages 25 to 50 years. They had no fixed income, mostly engaged in seasonal work or unemployed. They were mostly illiterate.

All of these women had decided to be a surrogate only for financial reasons. All of them reported without any hesitation that they were in extreme need of money. The various reasons given for the severe need for money were to buy a small piece of land to build a proper house to reside, open a small shop from where they could earn a daily living, to be able to send their

children to school, to repay the loans, to economically support the family and save something for daughter's marriage.

*"I am hardly able to feed my children properly even for once during a day. It's a shame for a mother. Thus, I have to do this". (Nisha, 22)*

*"I am doing it only because God has left me with no other choice". (Rita, 27)*

*"I am doing this not for me, but for my children and family. God is with me". (Sangeeta, 25)*

Interviews with these women have revealed various dimensions/complications of their life. Surprisingly, every surrogate women interviewed had no complains about their husband and instead reported that their husbands were very supportive towards her decision and also justified the position of their husbands.

*"My husband did not want me to do this. He feared that my life would be at risk. But after many discussions, he agreed. He realised money was important for us and this was an opportunity. He is a good man. He does not drink nor has any kind of bad habits. He said he will support me as long as I do not get involved into any bad work". (Geeta, 25)*

*"My husband has always been with me and has accompanied me every time I had to come here to the clinic". (Rita, 27, had visited the clinic almost 7 to 8 times since her treatment began)*

For surrogate women who were either separated or divorced, their family members (especially mothers) played an important role in decision making. Jyoti's husband has left her 6 years ago. Since then she and her son are living with her mother and sister. She is financially dependent on them and thus wants to be a surrogate and earn some money. However, her mother is the decision-maker in the family and is taking care of all the negotiations and the 'deals' between them, the doctors and the biological couples.

*"My mother wants me to have a normal delivery since I will not be able to do all the heavy household work soon after a caesarean operation. But the doctor is not agreeing at all. She will request him again". (Jyoti, 25)*

Shanta, 5 months pregnant at the time of interview had been separated from her husband for the last two years now. Though her parents were reluctant to permit her, they finally agreed after the agent came and made them understand citing examples of other surrogates who were from their own village. However, her children knew nothing about surrogacy.

*"I had told my children that I have to leave Kolkata and stay in Delhi for some temporary work which would last for few months and I would be returning with a lot of money". (Shanta, 26)*

Most of these women displayed immense mental strength and to them the societal stigma or criticism were only secondary to their ultimate need to be a surrogate mother. *"If my children do not have food to eat, will the people who might be criticising now, come and feed*

*them every day? I cannot pay heed to what they say. If I do, I will see my children die out of hunger. I being a mother cannot let that happen". (Geeta, 25)*

Even under the veil of strength and courage, worries of the surrogate women are not long hidden.

*"I am quite worried about going to Ranchi (for embryo transfer). I am illiterate. I have never been out of Kolkata. What if I miss the station? What if anything happens there? What if I am sold out there? The doctors have asked me not to take my husband there in order to prevent any sexual intimacy after the transfer. But I cannot go without him. He is my support". (Rita, 27)*

*"I fear I have to stay away from my family and children. Who is going to take care of them? I was not aware of all this when I agreed to be a surrogate!" (Rina, 28)*

*"I do not have my husband living with me for 6 years. What will my neighbours think if they suddenly see me pregnant? The party (the intending parents) has to arrange for my stay, at least from the fifth month onwards. As far as my son is concerned I will tell him that the baby died while in the womb. He is only 4 years, so convincing him will not be a problem". (Jyoti, 25)*

*"Once I give birth they will take the baby away. What is going to happen to my breast milk then? Is there no means by which I can stop the milk from being secreted?" (Nisha, 22)*

When asked about the child they would have to give away after carrying him/her for months in her womb, their answers revealed that they are mentally prepared for it from day one itself and they preferred money over the child. *"I need money, not another child. I cannot be weak and sentimental". (Geeta, 25)*

*"I do not want to see the child nor do I want to know whether it is a boy or a girl. On doing that I might get emotionally attached and that will not help me in any way. I already have one daughter and the desire to have one's own child is fulfilled. I am only concerned with the money now." (Sapna, 35)*

Only one of the surrogate women interviewed had expressed her little weakness for the child. *"The baby is going to stay in my womb for so many days, and I will be the one helping her grow up and yet I will not be allowed to see her even for once? How can I live without having a glimpse of her?" (Rita, 27)*

The relationship projected by the surrogate women with the respective couples who have hired them was reported to be healthy and caring. Most of them were happy to have been hired by them. Naina had an embryo transplanted but it did not turn out to be a successful pregnancy. She has developed a fat layer in the uterus which is creating the problem. Thus, she is still being treated to make her uterus ready so that it can well accept the embryo. Her commissioning couple was from Bihar and has agreed to pay her 1 lakh 40 thousand rupees. They have paid her Rs 3000 for food, Rs 1500 for transport cost and in addition have bought the medicines for her as referred by the doctor too.

*“They are extremely good. They enquire about my health regularly, does make an effort to know what food I like, what my children likes and every time they visit me they bring something or the other. In fact every time they come they take us out to restaurants and treat us really well. Didi (the intending mother) treats me like her younger sister.....Though I am doing this for money, money is not everything. The family needs to be good too. I am happy to have hired by them. I did not like the couple I met before them. I rejected them though they were ready to pay more money. I am renting my womb, but I am giving them a child. I cannot bargain on this”.* (Naina, 28)

However, Shanta had demanded a sum of 3 lakhs but the couple hiring her has agreed to pay only 2 lakhs. *“However, they have ensured me that after the delivery they will see if anything else could be done about it”.* She was paid 3000 rupees when all legal documents and consent forms were signed. Later she was given 2000 rupees more. She was also paid for her medicines, transport, food etc. They also called her regularly to check if she was fine and if she needed anything. She is staying in a rented room in Kolkata and she has been provided with a maid who does all the work. Shanta describes the commissioning couple to be very caring. *“I do not know how they will behave after the child is born. But only thing that matters to me is they are very good to me now. I am happy. I trust them and they trust me. They know that I will not let any harm to their child. I just pray to God so that the remaining few months passes without any problem”.*

Some of these women also expressed how happy they were to have helped these childless couples.

*“When they keep on thanking me and tell me how happy I have made them, I truly feel that I am doing something good and that makes me feel very satisfied”.* (Nisha, 22)

*“When I see the happiness of the couple, who is going to get a baby, I forget everything. Let god bless the baby and the couple”.* (Naina, 28)

One aspect which came out through the interviews with these women was they were not aware of all the details of the procedures of surrogacy.

*“I am in a lot of pain. I cannot even move. These many injections and medicines are making me weak. I was not told about all this before. I too had my own child but then things were simpler. I do not understand why it is so complicated and painful this time”.* (Rina, 28)

*“I am illiterate I do not understand about all the medical aspects the doctors talk about and neither do I understand English. I do not know exactly what was written in the agreement. I just know whatever they told me”.* (Rita, 27)

When asked whether she will be agreeing to do this again when in need of money, they were prompt in their negative reply. According to them one needs immense strength to do such work but doing this the again will not be easy at all. *“I needed money and I have been a surrogate mother. But once was enough for me, not again”*, Shanta is very clear on this. Rita even termed it as a ‘punishment’ and justified her decision saying *“I am doing it only because God has left me with no other choice”*.

### **Agents of surrogate women**

*“I had come to this clinic first for donating eggs. Now I bring patients who are willing to be surrogates,”* Radha smiled. It was not a big problem for her to convince her family members including her in-laws to grant permission for this kind of work. *“I have studied till class 4. I am the most educated in my family. Thus, all asks me for advice including my husband. In my family, everything happens in accordance with what I say,”* she said proudly. She says that in getting hold of such women who could probably be a surrogate is not easy. All of them are poor and in desperate need of money. In the process of casual conversation, she lets them know about it. It also gets spread by hearing from others who in turn had heard from her. But the difficult part is convincing them, *“If someone says a ‘no’ promptly after hearing about it, I cannot pester her anymore. I have to let it go, after all it is a sensitive issue. Again, if someone agrees, the woman needs to take the permission of her husband. These women often ask me to go and talk to their husbands or the family members personally and explain. Often there is an absolute rejection from their side too”*. When asked whether she ever will want to be a surrogate herself, she said, *“It is very true that I try hard to convince women to be surrogate saying that no risk is involved at all, everything will be fine and that it is just a matter of few months, but I myself would never do it. Once when I had come to donate my eggs, I was asked by the doctor if I wanted to rent my womb. I denied instantly. I am very afraid of this whole arrangement”*.

*“I have brought quite a number of women who wanted to be a surrogate, but not all can be one. Many get rejected and many refuse to be one after few days”,* said Ragini, another agent. In fact she was telling the surrogate that she had brought to the clinic, *“you already have 3 children and I am sure you do not want any more. So I do not think that having a caesarean baby will be a problem for you.”* However, she had one query, *“why are we being paid so less? When a film actor in Mumbai had a son, the surrogate was paid so much but it is not the same in our case. My neighbour said that since we are illiterates and do not hold much knowledge about the outside world, we are fooled.”*

Rohini is 50 years old. She has been working as an agent for three years. In these years she has brought 7 to 8 egg donors and 3 surrogates. One of them who have already delivered long back and two are presently pregnant. She said, *“Whomever I bring to the clinic, they come here entirely keeping trust on me. Not only the woman, but her family members too are totally depended upon me. If anything happens to them, it is my responsibility. Their family will come and question me and not the doctors. So I really need to be very careful with this. Money is not everything. I might be getting few thousands less but I have to see that the persons involved are trustworthy”*. She said that she receives 5000 rupees for every egg donor she brings and 15,000- 20,000 rupees for every woman who could be a surrogate successfully. *“I have regular contacts with my surrogates and the clients hiring them. The surrogates call me and share their difficulties with me. Taking so many injections is not easy. It is quite painful to them. It is not at all an easy task. I feel sorry for them,”* she sighed. Rohini however was confident in continuing this job for the next few more years. *“I am*



*helping many poor women to get good money. More than that, I am helping many couples who are desperate to have a baby. It's a blessing. Tell me am I doing anything wrong?"* She sounded very convincing in her approach and was at ease while answering the questions.

According to one agent, Rohini, *"we make these women understand that it is like renting a room. Just like many people rent a room and starts living there, it is like renting the womb and letting the child grow and a good amount is paid for the rent. In my area and village many know about surrogacy. It is becoming very common!"*

## **Findings**

Commercial gestational surrogacy is found to be more common in Kolkata than the traditional one. The women wanting to be surrogates can enrol themselves in the websites of the centres or the clinics providing this service. However, all of the women interviewed for this study belong to very low socio-economic status and do not have the access to computers and internet. Moreover, they are mostly illiterate or with very low level education. They are mostly brought by agents and relatives who directly or indirectly are connected to the infertility clinics or the persons involved.

When a commissioning couple comes to the clinics/infertility centres wanting to go for a surrogacy arrangement, they are first asked by the doctors to find a surrogate for themselves. Sometimes, they bring their sisters, friends or relatives. However, most of the time they fail to bring one for themselves. In such cases the centre arranges one for them. The work of the clinic is to introduce and initiate the communication between the two parties- the biological parents and the surrogate mother, so that they can interact with each other and clarify their doubts and desires. The clinic does not hold any responsibility regarding this. Once the treatment for the embryo transfer begins, the surrogate is strictly asked not to have any physical relation with her husband till she has given a safe delivery. In fact there are cases where the husband of the surrogate mother is not allowed to stay with her after the embryo transfer till the safe delivery.

The baby born through surrogacy has no genetic link with the surrogate. The baby only shares the blood and nutrition of the surrogate mother. There is no way in which a surrogate mother can pass on genes to the baby during pregnancy in a gestational surrogacy. However, diseases can pass on to the baby from her, and that is the reason why a thorough medical check-up of the surrogate mother is very important before she can be permitted to carry the baby. The biological parents have to bear all the expenses of the surrogate mother's food and medicines to see that she and their baby is getting proper nutrition and keeping well.

In case of spontaneous abortion or abortion due to any medical reasons, the biological parents bear all the cost. The surrogate then does not get any further payment. She gets whatever she had received till the time when the abortion took place. However, the surrogate mother has the right to willingly terminate the pregnancy, but in that case she needs to refund all the money spent on her, including medicines and treatment. But this is a very rare and hardly any surrogate willingly does so.

All the surrogate mothers interviewed for this study were more or less mentally prepared for the 'work'. However, some apprehensions do bother them. Most of them have a fear of leaving their home town and staying somewhere away during pregnancy. They fear they will be sold out or never be able to come back and meet the family. Another fear is to having a Caesarean section. The concept of *'cutting open the stomach and taking out the baby'* as described by many surrogates, dreads them. Also the fact that they have to take a good long rest after the delivery and not being able to start off with work immediately is a concern for them. Most of them fear the huge number of injections and medicines prescribed to take. It causes a lot of pain. One of the surrogates was worried about her breast milk and the consequences if she is not able to breast feed. Surprisingly, none of them reported to have had a serious problem with their husbands or with other family members regarding being a surrogate. The fear of surrogacy arrangement is that the surrogate mother will not be ready to give away the baby and claim the baby instead; this is a very rare event. All of the surrogates have reported that though it will be a little hard for them, they are ready to give the baby away since it never did belong to them. In fact many who has been given the option of seeing the baby after the birth, has refused to do so in fear of any emotional attachment. The asymmetric power relationship within surrogacy gives hardly any decision-making power to the gestational mothers as compared to the intended parents and medical practitioners (Saravanan 2010).

The infertile couples are never tired of trying to have their own baby. In cases when all the methods fail, the doctors give them the next set of probable options, where surrogacy is one. Only if a couple feels that they are okay with surrogacy and they themselves tell the doctor that they want to hire a surrogate mother, it is then that the doctor or the clinic to arrange for it. Genuine medical issues need to be considered before a couple is allowed to have a baby through surrogacy. Women with congenital absence of uterus, surgical removal of the uterus, malformed uterus, repeated miscarriages or IVF failure, medical conditions like diabetes or cardiovascular diseases or Rh incompatibility, generally go for surrogacy.

Payment of the surrogate is done at instalments. The total money paid to the surrogate varied from Rs. 1.4 to 2.5 lakhs. At the time of recruitment, the biological parents pay them around 3000 to 4000 rupees and other medical costs for medicines, scans, injections etc. When the embryo is transferred and the surrogate becomes pregnant, a sum of 30,000 to 35,000 rupees is paid to her. Later, after a period of 9 months when the baby is safely delivered, the rest of the money as agreed in the contract is paid to her. Besides this contractual money, the biological parents also bear the expenses of transport, food and even living costs: (It is difficult for many surrogates to live in their own place while being pregnant).

Why surrogacy and not adoption? According to doctors, there is a high demand from couples to have their own biological child. It does not matter to them how long it takes but they never give up trying. *"Couples want their baby to look like them. Even suppose a donor sperm is needed, the wife requests us to arrange a sperm such that the baby becomes fair that since her husband is fair. Looks are important and that is why people want to go for surrogacy and not adoption,"* said a Geneticist. The couples fear that if they adopt a child, the child might not get the care and love from the relatives that their own child would have got. Also, since

there is no assurance about the background of the child or the genetic makeup of the child, hence the couples hesitate to adopt a child.

When it comes to the agents for surrogate, they get 15,000 to 20,000 rupees per case. According to the agents, they are only paid by the biological parents. However, one of them revealed that they do not ask anything from the surrogate mothers, but if the surrogate mothers feel happy and satisfied with their service and support, they might gift them something in cash or kind to show their gratitude. They said that they do not get any extra money from the doctors or clinics. There is lot of competition between the agents regarding their patients. Each of them wants to have a hold on their patients and do not easily disclose their identity of being an agent to other agents.

However, not every surrogacy procedure is a smooth one and not every surrogate is a good one. There have been quite a few cases where a woman comes to the clinic wanting to be a surrogate, starts off with her treatment, gets paid a share of the actual sum of money in the contract and then with some medication deliberately disrupts the treatment and gets away with whatever she had already received. There are cases where 'bad' surrogates have aborted the child and left with the big sum paid to her after she was detected to be pregnant. For such women, it is just another way of earning quick money. In order to restrict such acts, the clinics have started taking away the identity card of all the women wanting to be surrogate and keep it with them until the baby is delivered safe and handed over to the biological parents. Again, there have been few incidents, where after the delivery, the biological parents have taken away the surrogate mother and kept her with them for few months, solely for breast feeding purpose.

### **Concluding Observation**

Infertility among couples is on rise in India due to various factors like life style, late marriage, early sexual intercourse, infections, etc. and both the need and demand for surrogacy is increasing. Though the stigma associated with the couple going in for the procedure has lessened considerably, the pregnancy of the surrogate still has to be kept secret. Moreover, there are considerable possibilities for legal, financial, emotional and health complications, but still there is no proper legislation. This sector is loosely governed by the Indian Council of Medical Research (ICMR) guidelines and the draft of Assisted Reproductive Technology Bill and Rules, 2010. A proper legislation is very important to have control over the "surrogacy industry" and for the safety of the women involved. Many infertility clinics in India are catering to the service of surrogacy and proper monitoring of these clinics are very important. As equality and volunteerism may be rare in surrogacy arrangements, mechanism to ensure informed consent, proper counselling and legal assistance for drawing up contracts for safe procedures, as well as health care insurance and compensation, must be ensured through the state regulatory institutions proposed in the bill (Qadeer and John 2009).

In the entire process of commercial gestational surrogacy, the most vulnerable group are the surrogate mothers, whose dismal socio-economic condition make them more susceptible to

exploitation. The first thing that needs to be answered is that what are their vulnerability in the real world of surrogacy? As they are mostly uneducated with hardly some primary education, they lack the knowledge about the intricacies of surrogacy. Even if someone helps them understand, it is but obvious that they will not be able to comprehend the particulars of the medical procedure, the details of what treatment their body will have to go through and most importantly what their side effects could be. In most of the cases, the outline of how she is going to become pregnant with someone else's baby, keep the baby safe and then hand the baby over to the biological parent without getting involved in any immoral activity is explained. The fact that she is unaware of specificities that could be questioned, she enters into the contract ignorant. It is only later that she realises the difficulties of being artificially pregnant.

The one question which observably arises is to what extent are these women given the autonomy of speech where they are the ones playing the most important role in the play? Is it their natural demure and submissiveness in front of the wealthy and educated doctors and couples belonging to a much higher socio-economic status or is it their acute monetary need that makes them to surrender to whatever situation they are being faced with. The reality of the huge amount which they never even dreamt of before, just in return of a baby to whom she just needs to provide a home in her womb and thus a way to escape from the vicious circle of poverty is all that she knows about. Is it that she does not want to know the implications beyond this simple equation or is it that she is deliberately not allowed to form a complex equation with other implicative variables?

The lack of virility of the surrogate's husbands is yet another issue which remains unquestioned. Is it natural for a man with a family but with hardly any or no income, gladly support his wife to accept the offer of renting the womb disregarding the social stigma and health risks ( if at all aware) attached? Do the mushrooming clinics and the doctors abide by morality more than their means of growing this opportunistic business? How do they decide whom to save if only one between the surrogate mother and the baby could be saved? As reported by media one of the surrogate women Premila, who was eight months pregnant, died due to unexplained complications in 2012 and doctors are clueless as to why she developed a fatal health incident. Where is the entire story of the insurance for these surrogate women mentioned in the ART Bill? Are the women themselves aware of it? Do the new suggestions made by the ministry be able to protect the interest of the surrogate mothers at all or is it just an uncertain attempt to regulate this unregulated business growing into an unregulated industry!

The reproductive and overall health of the surrogate women should be as important as the primary aim of surrogacy i.e. the delivery of the healthy baby to the commissioning couple. But to what point the importance is given to the health needs of these women, needs to be investigated. Doctors and clinics are majorly concerned with the health of the baby to be born and in turn seldom focus on the health of the surrogate mother. The well-being and health of the surrogate mother is rarely addressed in the surrogacy arrangement and it attracts attention only in relation to the health of the foetus. Besides health of the surrogate mother before and during the pregnancy, there are possibilities of many minor and major post-pregnancy health

problems like postpartum infections, pain in perineal area, breast engorgement which may even lead to breast infection, haemorrhoid, constipation, post-partum depression, urinary and faecal incontinence etc. which she often might have to suffer. For example, usually between second and fifth day of the deliver, the breast milk increases to larger volume and breasts become hard. Breast engorgement can then happen if the lactating women miss several nursing and not enough milk is expressed. The situation worsens with insufficient breastfeeding and / or blocked ducts and might lead to mild to extreme pain and even infection. For a surrogate mother, who does not get a chance to breast feed the child born, this is a common problem. Who should be taking the responsibility of her health after the completion of the procedure, whether at all it is taken care of and who bears the cost of all her treatments then, needs to be questioned and explored.

In a country like India, where there is an alarmingly high maternal death rate, surrogacy might lead to exploitation of poor women by rich couples and foreigners. According to the 'Assisted Reproductive Technology Regulation Bill 2010', a woman cannot give more than five live births including her own children and no surrogate shall undergo embryo transfer more than three times for the same couple. But, this number is quite high and might have an adverse effect on the health of these women who already belong to a low socio-economic background and with a poor health! The news was barely covered by the media – after all, she had completed the task she had been contracted for, and the eight-month-old foetus meant for an American "commissioning" parent survived (The Guardian, 2012). Doctors use the social context and ideology of motherhood to exploit the gestational mothers in taking care of the baby during the pregnancy and after birth (Saravanan 2010).

There are many other complications that may be related to such an arrangement. If an abnormal child is born, it might be rejected by both the genetic and host parents. The long term effects on the child born through surrogacy are not known and how the health of those children differs from the babies growing up in the womb of their own mother is not known either. Also the long term psychological effects on both the genetic couple and host surrogates remain unexplored. Currently, India is one of the few countries that permit this 'business' in a completely unregulated manner. Regulating it and permitting it, will put us in the unique situation, of a country proud to sell women's surplus reproductive labour, much like slave owners did (Rao 2012).

Surrogacy is certainly a gift of medical innovation that is capable of giving the biggest gift of your life, but a shift from the humanitarian ground to that of business and money making only and adhering to illegal procedures neglecting life and health and thus exploitation, is what need to be regulated and restricted. It is only then one can claim surrogacy to be a win-win situation and symbiotic arrangement, without having to suffer from criticism and condemnation.

**Table 1: Characteristics of Surrogate mothers interviewed**

Names of surrogate women	Age	Marital Status	Occupation	Education	Husband's Age	Husband's Occupation	Husband's Education	Number of children	Amount being paid /Amount offered (Rs.)	Heard about surrogacy from whom?	Reason to be a surrogate
Rita	27	Married	Beggar	Illiterate	29	Unemployed	Illiterate	2	2 lakhs	Relative	Money
Rina	28	Married	Housewife	Illiterate	40	Rickshaw Puller	Illiterate	2	2.5 lakhs	Another Surrogate	Money
Jyoti	25	Separated	Housewife	4 <sup>th</sup> Standard	29	Unemployed	Illiterate	1	2 lakhs	Agent	Money
Sapna	35	Separated	House Maid	6 <sup>th</sup> Standard	50	Factory worker	Illiterate	1	2 lakhs	Land lady	Money
Naina	28	Married	Agent in infertility clinic	5 <sup>th</sup> Standard	36	Unemployed	Illiterate	2	1.4 lakhs	Doctor	Money
Sangeeta	25	Married	Housewife	Illiterate	31	Agricultural Worker	Illiterate	3	2 lakhs	Cousin who was a surrogate	Money
Nisha	22	Married	Housewife	Illiterate	25	Agricultural Worker	Illiterate	2	2 lakhs	Agent	Money
Geeta	25	Married	Cook in a SHG	5 <sup>th</sup> standard	30	Unemployed	Illiterate	2	2 lakhs	Agent	Money
Shanta	26	Separated	Housewife	Illiterate	31	Unemployed	Illiterate	2	2 lakhs	Agent	Money

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