

Surrogacy: The Need, Usage, Misuse, and the much Needed Rectification Step – The Proposed Surrogacy Bill 2016

Simranpreet Kaur

How to cite this article: Kaur S. Surrogacy: The Need, Usage, Misuse, and the much Needed Rectification Step – The Proposed Surrogacy Bill 2016. *Curr Trends Diagn Treat* 2017;1(1):46-49.

Source of support: Nil

Conflict of interest: None

INTRODUCTION

Assisted reproductive technologies (ARTs) have revolutionized infertility treatment in the last century. Assisted reproductive technology has given hope to hapless couples, and it enables children who have no genetic relationship to one or both of their parents to be conceived. Assisted reproductive technology is also being used by people without infertility problems to minimize the risk of transmitting certain genetic disorders like in case of people who are recessive carriers of abnormalities, such as sickle cell anemia, thalassemia, and Tay-Sachs disease. Surrogacy comes to the rescue, which is part of ART. The term “surrogate” literally means “substitute.” A surrogate mother is therefore a “substitute mother.”¹ Issues of human infertility are extremely complex physiologically, psychologically, financially, legally, and ethically.²

The objective of this article is to focus on surrogacy and its ethical implications.

SURROGATE MOTHERHOOD

Surrogacy is a kind of agreement between the intended parents and the surrogate mother. It is a practice by which a woman becomes pregnant and gives birth to a baby in order to give it to someone who cannot have children. Intended parents may seek a surrogacy

arrangement when pregnancy is medically impossible, pregnancy risks present an unacceptable danger to the mother’s health, to avoid manifestation of a genetic abnormality, or is a same-sex couple’s preferred method of procreation.³

Many developments in medicine, social customs, and legal proceedings worldwide have paved the way for modern commercial surrogacy.

TYPES OF SURROGACY

Some types of surrogacy refer to genetic circumstances and other types refer to arrangements where money is involved.

Subtypes of Genetic Surrogacy Circumstances

- *Genetic surrogacy or partial surrogacy:* This is the most common type of surrogacy. In this type, the egg of the surrogate mother is fertilized by the commissioning male’s sperm. In this way, the surrogate mother is the biological mother of the child.
- *Total surrogacy:* The surrogate mother’s egg is fertilized with the sperm of a donor, not with male part of the intended couple.
- *Gestatory surrogacy or full surrogacy:* The intended couple’s egg and sperm have gone through *in vitro* fertilization and the surrogate mother is not linked to the child.⁴

Types of Surrogacy Arrangements

- *Altruistic surrogacy:* The surrogate mother is not paid for her services. She “offers her womb” as an act of altruism. Most often, there will be a preestablished bond between the surrogate mother and the intended couple. Typically, the surrogate mother is a friend or a relative.
 - *Commercial surrogacy:* In this type of surrogacy, the surrogate mother receives compensation for carrying the child. Mostly, a surrogacy agency deals with all the practical arrangements from finding a suitable surrogate to dealing with all the paperwork.⁵
- Surrogates in countries like India form ties with intended mothers that cross boundaries based on class, caste, religion, and sometimes even race and nation.⁶

Embryologist and Counselor

Department of Gynecology and Obstetrics, Sri Guru Ram Das Institute of Medical Sciences and Research, Amritsar Punjab, India

Corresponding Author: Simranpreet Kaur, Embryologist and Counselor, Department of Gynecology and Obstetrics Sri Guru Ram Das Institute of Medical Sciences and Research Amritsar, Punjab, India, e-mail: simranpreet_sandhu@yahoo.com

Genetic Implications of Surrogacy

Gestational surrogacy has given a new life to couples who are recessive carriers of various genetic diseases like cystic fibrosis, sickle cell anemia, thalassemia, Tay-Sachs disease, various mitochondrial diseases, and Duchenne muscular dystrophy. In various genetic disorders, diseased gene is manifested in a recessive form: When two recessive carriers of a particular genetic disorder carry out a pregnancy, the chances of the child getting that genetic disorder increases.⁷

To protect a child from various life-threatening recessive genetic disorders, genetic or partial surrogacy helps to deliver disease-free babies. If the intended couple wants their child to be free of carrier state of a particular genetic disorder, they can go for total surrogacy.⁸

It has been reported in many studies that there were no major psychological differences between children born with surrogacy, other types of ARTs, or after natural conception.⁹ But when the third-party reproduction is carried out in which a third person enters into the baby-making process, it involves risks and raises many important ethical concerns.

Stumbling Blocks

In last few years, surrogacy, which was started as an altruistic gesture for welfare of mankind, has taken the form of commercial surrogacy. Intercountry gestational surrogacy with monetary remuneration is one of the products of medical tourism.¹⁰ India is considered one of the world leaders in surrogacy, second only to Thailand. There are several factors working in favor of India, such as cheap costs, large numbers of well-qualified doctors, and well-equipped private clinics.¹¹ Medical travel is in fact a campaign. The Indian structure is closest to the liberal market model of surrogacy in California, where surrogacy births are primarily managed by private, commercial agencies that screen, match, and regulate agreements according to their own criteria and without state interference.¹² Mushrooming of surrogacy clinics in India has created many social, ethical, and legal issues, which can be seen by studying the following cases.

In one of the cases in 2008, a Japanese doctor couple commissioned a baby in a small town in Gujarat. The surrogate mother gave birth to a healthy baby girl. But by then, the couple had separated, and the baby was both parentless and stateless, caught between the legal systems of two countries. The child has not obtained citizenship, as surrogacy is not legal in Japan.

In 2012, another case arose in which an Australian couple who had twins by surrogacy arbitrarily rejected one and took home the other.¹³

In yet another case, a single mother of two decided to become a surrogate mother in the hope of money for her own kids. She delivered a healthy child, but her hopes bore little fruit as she was exploited by a middleman who took away 50% of the money, leaving behind nothing much for her and her kids. Surrogate mothers also face high levels of social stigma and ostracism in India. This social stigma may be due to several contributing factors. Surrogacy is a practice that involves the bodies of poor women, which in India's socially conservative culture is cause enough for disparagement.¹⁴

Due to financial and legal considerations, international surrogacy has become an emerging industry; especially in India, this practice has exacerbated the already difficult ethical and legal issues surrounding gestational carriers. At present, various issues of individual rights, commodification, exploitation, citizenship of the offspring of international gestational carriers, and fair trade are unresolved internationally.¹⁵

In recent years, Bollywood celebrities have turned what was a necessity into a fashionable act just because they do not want to go through labor pain. In the recent past, one such celebrity who had no infertility history procreated his third kid by taking the route of surrogacy. Another celebrity who is unmarried fathered a baby boy through surrogacy.

These and many more incidents of this type have highlighted the total disregard for the rights of the surrogate mother and child and have resulted in a number of public interest litigations in the Supreme Court.¹⁶

Altruistic and noncommercial surrogacy should be promoted. Laws need to be framed and implemented to cover the gray areas and to protect the rights of women and children.¹⁷

Proposed Surrogacy Bill 2016

To curb misuse of surrogacy, the Union Cabinet on August 25, 2016, approved the surrogacy regulation bill 2016 banning commercial surrogacy in India.¹⁸

The bill states the following:

- According to the bill, only Indian couples who have been married for at least 5 years can opt for surrogacy, provided at least one of them has been proven to have fertility-related issues.
- Only close relatives not necessarily related by blood will be able to offer altruistic surrogacy to the eligible couples.
- The new bill has put a complete ban on commercial surrogacy.
- It also bans unmarried people, live-in couples, and homosexuals from opting for altruistic surrogacy. Now foreigners and even nonresident Indians cannot commission surrogacy.

- Surrogacy regulation board will be set up at central and state level.
- A woman can become a surrogate mother only for altruistic purpose and under no circumstances she will be paid for it, although payment can be made toward medical expenses.
- All ART clinics will need to be registered.
- Commercial surrogacy, abandoning the surrogate child, exploitation of surrogate mother, and selling/import of human embryo have all been categorized as relations that are punishable by a jail term of at least 10 years and a fine of up to Rs. 10 lakhs. The law will be applicable to the whole of India, except for the state of Jammu & Kashmir.
- Under the new bill, the clinics will have to maintain records of surrogacy for 25 years.
- The surrogate child will have the same rights as that of a biological child.¹⁹

“This is a revolutionary step for women’s welfare,” said Sushma Swaraj, India’s foreign minister who presided over the panel. “Many so called childless couples were misusing the wombs of poor women. It was a matter of great worry because there were instances where a girl child or disabled child has been abandoned soon after birth.”²⁰

The surrogacy bill aims to prohibit potential exploitation of surrogate mothers and children born through surrogacy.

Significance of New Surrogacy Bill in India

Surrogacy involves a contract of sale between the married couple and the surrogate mother. The most serious ethical objection to commercial surrogacy is that it reduces children to objects of barter by putting a price tag on them.²¹ Legally also, it is no less than selling or trafficking of human beings violating the basic fundamental rights of a human being. Some women are pressurized into surrogacy by their husbands for money. Ethically, surrogacy raises many issues like tempering with the normal process of procreation, undermining the institution of marriage and family life, and treating children as objects of sale.

The Indian surrogacy regulation bill 2016 has tried to curb/suppress all the maleffects of commercial surrogacy as strict advertent laws are available in countries worldwide banning commercial surrogacy.

CONCLUSION

Assisted reproductive technology has emerged as one of the most widely adopted and successful medical technologies in the last century. Surrogacy has been a boon

for infertile couples and for couples who are carriers of various genetic disorders, but with time it has taken the form of a lucrative business for some. The introduction of a new surrogacy regulation bill 2016, which is going to be a new law soon, will help to suppress the misuse of surrogacy. The law will provide altruistic surrogacy to the eligible/infertile married Indian couples after examination by a competent authority.

REFERENCES

1. Shah, D; Rasool, S; Nagarajan, N. Assisted reproductive technologies in the global south and north: issues, challenges and the future. In: Rozee, V; Unisa, S, editors. Surrogacy in India: the good, the bad and the ugly. 1st ed. London: Routledge; 2016. p. 103-111.
2. Available from: <http://ispub.com/IJLHE/412/13110> [cited 2016 Aug 30].
3. Available from: www.dolphnsix.com/news/India-propose-commercial-surrogacy-ending-lucrative [cited 2016 Aug 30].
4. Available from: www.positive-parenting-ally.com/ethics-of-surrogacy.html [cited 2016 Aug 29].
5. Available from: <http://www.livemint.com/opinion/1e8HICp09ZjEeNPU5U/surrogacy-bill-Modi-govt-sets-new-terms.html> [cited 2016 Aug 30].
6. Pande A. “It may be her eggs but its my blood”: surrogates and everyday formers of kinship in India. *Qual Social* 2009 Dec;32(4):379-397.
7. Available from: www.hopkinsmedicine.org [cited 2016 Aug 29].
8. Available from: http://www.babycenter.com/303_health-when-planning-to-conceive_10317243.bc [cited 2016 Aug 29].
9. Söderström-Anttila V, Wennerholm UB, Loft A, Pinborg A, Aittomäki K, Romundstad LB, Bergh C. Surrogacy: outcomes for surrogate mothers, children and the resulting families – a systematic review. *Hum Reprod Update* 2015 Mar-Apr;22(2):260-276.
10. Rainskold L, Posner MP. Commercial surrogacy: how provisions of monetary remuneration and powers of international law can prevent exploitation of gestational surrogates. *J Med Ethics* 2013 Jun;39(6):397-402.
11. Pande A. Transnational commercial surrogacy in India: gifts for global sisters. *Reprod Biomed Online* 2011 Nov;23(5): 618-625.
12. Teman, E. The birth of a mother: my theologies of surrogate motherhood in Israel [PhD dissertation]. Department of Sociology and Social Anthropology, The Hebrew University of Jerusalem; 2006.
13. Available from: <http://www.SurrogacylawsIndia.com/legality.php> [cited 2016 Aug 29].
14. Wadekar, N. Wombs for rent: a bioethical analysis of commercial surrogacy in India; 2011. Available from http://s3.amazonaws.com/tuftslope_articles/.../2011-s3.amazonaws.com
15. Brezina PR, Zhao Y. The ethical, legal, and social issues impacted by modern assisted reproductive technologies. *Obstet Gynecol Int* 2012;2012:686253.
16. Available from: www.technewscoverage.com [cited 2016 Aug 30].
17. Saxena P, Mishra A, Malik S. Surrogacy: ethical and legal issues. *Indian J Community Med* 2012 Oct;37(4):211-213.

Surrogacy: The Need, Usage, Misuse, and the much Needed Rectification Step – The Proposed Surrogacy Bill 2016

18. Available from: www.huffingtonpost.in [cited 2016 Aug 29].
19. Available from: www.PMindia.gov.in [cited 2016 Aug 29].
20. Storrow RF. Quests for conception: fertility tourists, globalization and feminist legal. *Hastings Law J* 2005;57:294-300.
21. Wikipedia: the free encyclopedia [Internet]. St. Petersburg (FL): Wikimedia Foundation, Inc.; 2001 [modified 2016 Sep 7; cited 2016 Sep 7]. Available from: <http://en.wikipedia.org/wiki/surrogacy>