



## **THE IMPACT OF COMMERCIAL SURROGACY ON SURROGATE WOMEN**

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**Abstract-** A type of assisted reproduction known as surrogacy involves a woman agreeing to carry a child for another woman or couple. Surrogacy is frequently the substitute approach to childrearing for single parents or married couples facing reproductive health issues. For most couples who struggle with natural conception, surrogate mothers have become a source of hope. Gestational and conventional surrogacy is the two separate categories. The collaboration to take on parental duties following the birth of the child between the surrogate mother and the intended parent may be based on non-compensation (altruistic surrogacy) or money (commercial surrogacy). The latest study focuses on the advantages and disadvantages of commercial surrogacy for both intended parents and surrogate moms. This study aims to investigate the impact of these practices on women's lives in society, as well as the factors that increase surrogate mothers' susceptibility to exploitation and the tactics that can be used to shield them from various forms of social manipulation.

**Keywords** - - Surrogacy, natural conception, reproduction, gestational, agreement

### **Introduction-**

Surrogacy is an arrangement in which a woman (the surrogate) agrees to carry and give birth to a child on behalf of another person or couple (the intended parent/s). "Surrogate" derives from the Latin word "surrogates" implicates "a substitute" a person supposed to act in the place of another. According to the Black's Law Dictionary, surrogacy means the process of carrying and delivering a child for another person and the "Surrogate parent" defined as the term applied to a parent who is not a natural parent of the child but assumes the role of the human race now has a variety of alternatives for childrearing thanks to technological breakthroughs like artificial insemination and in vitro fertilisation. However, the commercialization of surrogacy has resulted in heated debates between supporters and opponents in recent years. The women who work in this industry suffer in silence, even in nations where commercial surrogacy is permitted by law. Financial exploitation of surrogate mothers occurs, and they are frequently paid inadequate compensation. The labour they perform and the nature of the service they offer are both intricate. Thus, many of them are duped into agreeing to terms and conditions that are either incomplete or render them lesser powers. The surrogates and the baby suffer in the event that expected couples divorce before the child is delivered. Since the contracts lack certain information, the mother is subjected to unplanned parenthood and has to meet the parental obligations.

In some situations, the surrogate is coerced to meet her contractual agreement regardless of her health condition. Many women have lost their lives once they commit to commercial surrogacy terms and have accepted half or more of the agreed reimbursement amounts. When complications arise, it is the life of the child that matters as opposed to that of the mother. Therefore, it is deduced that in situations where a surrogate's life can be saved through safe termination of the pregnancy, the contracting couple prefers to push through with the process in spite of the uncertainties of the outcomes regarding safety and the right to life.

A woman who becomes pregnant, carries, and gives birth to a child on behalf of another individual or couple (intended parent(s)) is known as a surrogate, often known as a gestational carrier.

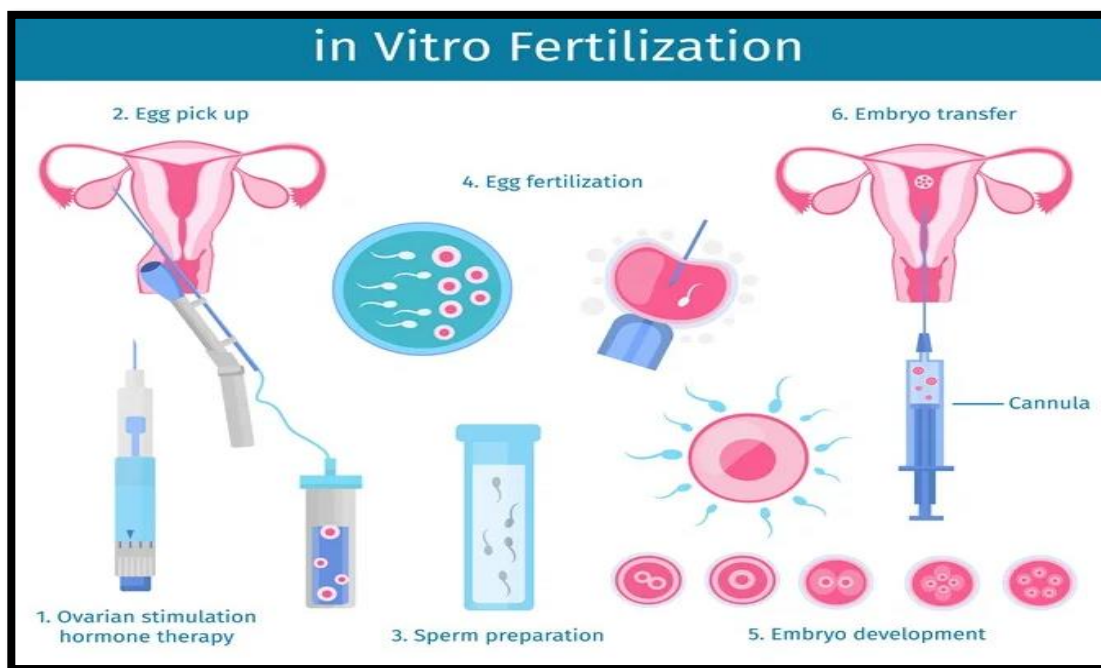
The ethical concerns of medical advocacy and consent are brought up by surrogacy. A number of societal issues, including literacy and unemployment, are important in the surrogacy process. In addition to the medical burden, surrogacy poses a public health risk due to declining sex ratios, female feticide, domestic abuse, and other issues.

- **Objective-** The objective of this study was to analyze the current scenario of commercial Surrogacy in India.
  - i. To learn about surrogacy practices and legality of it
  - ii. To Understand Contexts, Concepts and Ideas behind surrogacy
  - iii. To know The Impact of Commercial Surrogacy

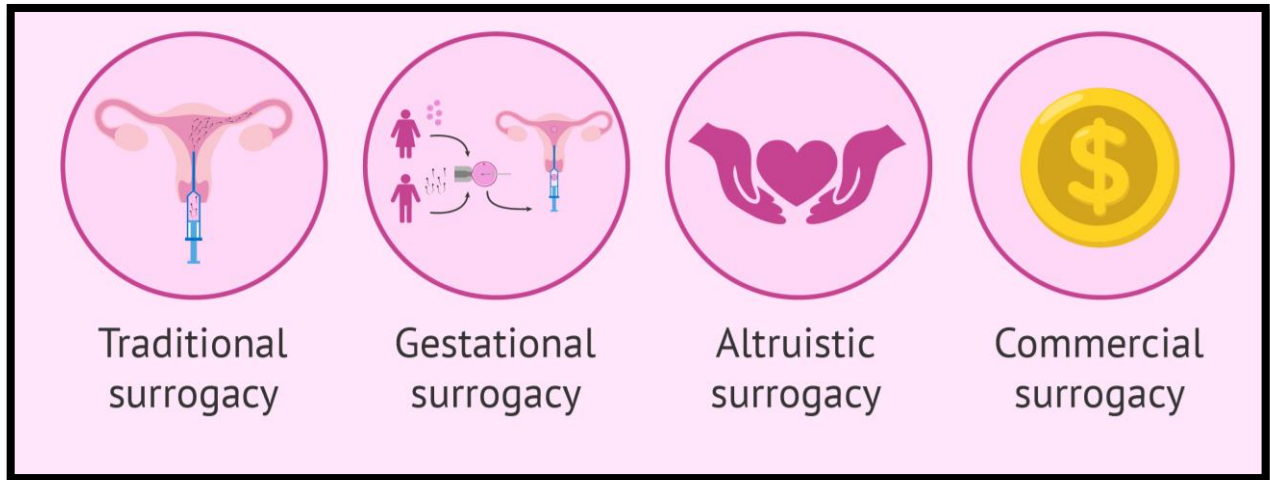
- iv. To explore the effect of surrogacy on surrogate mother Lives in the Community
- v. To suggest strategies for the protection of rights through legal provisions of surrogate mother, child and the commissioning parents

➤ **Types of surrogacy**- However, this classification can be subdivided into two major groups, which are not mutually exclusive:

1. **Traditional vs. gestational surrogacy**-A traditional surrogate is inseminated via IUI using the intended father's sperm, or donor sperm, and she will be the biological mother of the baby. Conversely, a gestational carrier is a woman whose role is to just carry the pregnancy for the intended parents, and the technique of choice is IVF.



2. **Altruistic vs. commercial surrogacy**-As the names suggest, with altruistic surrogacy arrangements, the surrogate does not receive a financial compensation for carrying the pregnancy, whilst commercial surrogacy means that she is economically rewarded for the effort made.
  - **Altruistic surrogacy**-It involves no monetary compensation to the surrogate mother other than the medical expenses and insurance coverage during the pregnancy.
  - **Commercial surrogacy**-It includes surrogacy or its related procedures undertaken for a monetary benefit or reward (in cash or kind) exceeding the basic medical expenses and insurance coverage.



➤ **Commercial surrogacy** - Commercial surrogacy refers to any [surrogacy arrangement](#) where the surrogate mother is compensated for her services beyond reimbursement of medical expenses.

- India had become a hub of commercial surrogacy and surrogate mothers were being exploited.
- There have been several reports about the exploitation of surrogate mothers, women who are kept confined in “hostels” during pregnancy and not allowed to meet their families, women who do it repeatedly for a paltry amount thus putting their own bodies at risk.



➤ **Some of the advantages and disadvantages of commercial surrogacy**

#### 1 Advantages of commercial surrogacy

- Through commercial surrogacy, women can get just compensation for the physical and mental strains of pregnancy as well as their year-long commitment to the intended parents.



- For intended parents who do not want to put pressure on close friends or family members to make the sacrifices necessary for altruistic surrogacy, commercial surrogacy is an option that is legally regulated to protect the rights of the surrogate and the intended parents in states and nations with well-defined legal frameworks.
- In commercial surrogacy, contracts are negotiated ahead of time to determine the monetary compensation the surrogate will receive, which can prevent disputes over reimbursements during and after the pregnancy.
- At least in the United States, most commercial surrogates do not pursue surrogacy solely for the compensation. All surrogacy involves some level of altruism, as every surrogacy requires compassion and sacrifice. Most women pursue surrogacy because they want to help build other families.

## **2. Disadvantages of commercial surrogacy**

- i. The cost of commercial surrogacy is higher than that of altruistic surrogacy because intended parents must pay surrogate compensation in addition to the expenditures of medical care and legal fees.
- ii. Commercial surrogacy is opposed by some who claim that it takes advantage of weak women.
- iii. Since commercial surrogacy is prohibited in some nations, some intended parents are forced to seek foreign surrogacy, which might provide moral and legal challenges.

### **➤ Decision on Intended parents Whether One Should opt for a Commercial Surrogacy or not**

Commercial surrogacy, when completed legally and ethically, can be a wonderful way for people to come together to help hopeful parents add to their families. Intended parents who are concerned about the legal or ethical implications of commercial surrogacy should work with an experienced professional in a country or state with clear surrogacy laws, and ensure their surrogate is compensated and treated fairly.

#### **❖ Benefits of commercial surrogacy for intended parents**

The main advantage of using a commercial surrogate is that you can select from a large pool of pre-screened and eligible applicants. An alternative would be to do background checks, interview each surrogate, and oversee all necessary medical examinations associated with the surrogacy procedure. While it is feasible to do it alone, working with a seasoned commercial surrogacy service that will screen and qualify candidates on your behalf will be far more economical and time-efficient.

The simple fact is that your surrogate has less incentive to include you in the pregnancy when you aren't paying her for her time or services; commercial surrogacy is an exception to this rule because a contract is required. Since state laws governing surrogacy might differ greatly, a well-written commercial surrogacy contract helps to avoid any potential conflicts or legal problems. Certain legislatures might even forbid commercial surrogacy and only permit selfless surrogacy under specific conditions. For intended parents, the biggest advantage of commercial surrogacy is that an agency can guide you through the entire process from beginning to end.

#### **❖ Benefits of commercial surrogacy for surrogates**

There are many benefits of commercial surrogacy for surrogates as well. For starters, surrogates can share their pregnancy journey with the intended parents instead of bringing the child to term alone. Her health and emotional well-being count for a lot, especially at a reputable commercial surrogacy agency that will take the time to screen candidates properly and provide continuous support throughout the process.

From a financial perspective, surrogacy can be very expensive. She will have greater access to resources and financial support if the pregnancy is the result of a commercial surrogacy. Furthermore, we do not intend for her to get a larger basic salary. Rather, we are discussing further assistance for any unforeseen circumstances that may occur, such time off from work and many other costs.

However, keep in mind that not all commercial surrogates are solely motivated by financial gain. By assisting someone else in becoming a parent for the first time, many surrogates experience a profound sense

of fulfilment. At Surrogate First, we witness this frequently, and when everything goes according to plan, it is simply remarkable.

➤ **Moral, ethical and legal grounds of surrogacy**

As surrogacy involves the commercial use of a woman's reproductive capacity for the benefit of a third party in accordance with contractual terms and conditions, it violates human rights to dignity and integrity. The surrogate mother and surrogate child are also commodities in this process, as they become the subject of contracts and objects of commercial exchange. For these reasons, surrogacy is frequently associated with prostitution and is stigmatized in society.

For these contesting issues surrogacy has not received religious approval, many religious heads have even issued fatwa against the same by calling it a form of an adultery and some religious section of society have held it as an act against the will of god thus imposed ban on it.

Surrogacy has generating concern in society with the rise of “celeb or social surrogacy” where in the individual or couple resorts to surrogacy for reasons other than biological which may career or otherwise. Many film celebrities in the Hindi and in the south film industries have resorted to surrogacy in the course of their second marriage or to have their second or third child which has great influence on society by representing the notion that having child through surrogacy is a matter of personal choice, it may be stated that the ICMR 2005 Guidelines and the ART Bill 2010 both permit surrogacy only upon the grounds of infertility established through prescribed medical test.

Many couples in Bollywood are becoming parents in their late 30s and 40s and it is only possible because of the wonders of modern science of surrogacy. The actress, who is based abroad now, has joined the list of Bollywood celebrities who became parents via surrogacy just like Shah Rukh Khan, Karan Johar and Shilpa Shetty, Preity Zinta, Sunny Leone, Lisa Ray and others.



Another issue that is deeply connected with surrogacy is that it has made motherhood or pregnancy another source of commercial avenue ( particularly for poor women) popularly termed as womb renting business wherein women's bodies are offered in market , subject to commercial hiring under a contract just like any other wage contract.



While surrogacy is held as legal by the supreme court of India however it never the less raises complex socio legal issues. At the outset it may be stated that the need of hour is not only the early enactment of law but also necessary reconsideration on the social implications of the use of technology for making the practice of surrogacy socially ethically desirable and legally regulated.

In India surrogacy is purely a contractual understanding between the parties, so care has to be taken while drafting an agreement to avoid violation of human laws.

➤ **Various strategies towards addressing challenges associated with the practice of surrogacy**

1. Countries that allow the commercialization of surrogacy should have clear laws that explain in detail the aspects of surrogacy contracts. The rights of both the surrogate, the child (if delivered), and the intending parents should be well-stipulated. Domestic regulatory bodies are necessary if the practice is to be tolerated. In India and Thailand, there are commercial agencies with no bodies to oversee their actions.

2. The countries where the commercialization of surrogates is in the public domain should establish international regulatory measures. There is a greater need to deter agencies and intending parents from exploiting women who agree to commit to commercial surrogate contracts. The child's and surrogate's safety should come first. However, the absence of international laws has seen intended parents travel from abroad to seek service where they divorce during the gestation period. Since there are no clear laws, the child's citizenship is not easily determined apart from lacking basic necessities. Moreover, mothers often lack post-maternal care and are forced to raise children/children they never planned for. With such a perspective, international regulatory approaches would compel commercial surrogacy practicing nations to have clear guidance towards the practice.

3. There should be well-stipulated laws regarding the protection of the interests of the child and approaches for compensating the surrogate. According to Voskoboynik, the practice's legalization should be accompanied by basic requirements. There should be provisions clearly outlining legal parentage and nature of acquiring citizenship for children born of surrogacy, fundamental laws governing rights and well-being of the surrogate mother, and protection of the intended parents from breach of contract and discrimination.

### **Conclusion and Suggestions**

It seems ironical that people are engaging in the practice of surrogacy when nearly 12 million Indian children are orphans. Adoption of a child in India is a complicated and a lengthy procedure for those childless couples who want to give a home to these children. Even 60 years of Independence have not given a comprehensive adoption law applicable to all its citizens, irrespective of the religion or the country they live in as Non-Resident Indians (NRIs), Persons of Indian Origin (PIOs) or Overseas Citizens of India (OCIs). As a result, they resort to the options of IVF or surrogacy. The Guardian and Wards Act, 1890 permits Guardianship and not adoption. The Hindu Adoption and Maintenance Act, 1956 does not permit non-Hindus to adopt a Hindu child, and requirements of immigration after adoption have further hurdles. There is a strong need to modify and make the adoption procedure simple for all. This will bring down the rates of surrogacy. Altruistic and not commercial surrogacy should be promoted. Laws should be framed and implemented to cover the grey areas and to protect the rights of women and children.

Surrogacy has its merits and demerits. While it offers a solution of parenthood to infertile couples, it has also been established that disadvantages women are exposed to comprise stigmatization, vulnerability and exploitation, post-maternity health issues, and legal battles that arise from taking advantage of economic/non-economic situations. However, the challenges have solutions only if and when certain strategies could be put into action.

The most imperative approaches towards resolving the dangers arising from commercial surrogacy include formulating clear and well-explained laws embedded in the constitution to protect the rights of the surrogates, the child, and intended parents and formulizing domestic measures to regulate the industry locally and internationally. Only when such recommendations are actualized, there will be less debate concerning ethics, morality, and the pros/cons equations of surrogacy.



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