

## **Surrogacy in India: A Sociological Analysis**

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*India is a traditional society. The distinct features of Indian society are existence of joint family system, family values, adherence to traditions, transcendental belief and community feeling etc. In such a traditional society like India people lives revolve around marriage, family and traditions. But due to various forces of change like liberalization, globalization, privatization, and modernization, advancement in science and technology and spread of information and communication technology, individualism, materialistic attitude, our social structure and social institutions are passing through structural and functional changes. Many changes are taking place in attitude, values, belief, and nature of family relationships and thinking of people. Individuals and couples married and unmarried are taking help of advanced medical facilities for starting a family.*

*Due to modern life style and other reasons many couples face problem of infertility. Infertility is a growing problem in modern times. And surrogacy is an important mean for those who are unable to have children naturally. Surrogacy is a practice whereby a woman becomes pregnant usually by artificial insemination or surgical implantation of a fertilized egg for the purpose of carrying the fetus to term for another individual/couple, who will become parent/parents of the new born after birth. Surrogacy is bliss under some circumstances where infertile individuals/ couples could not become parents due to medical complications, but some wealthy individuals / couples from India and abroad opt for surrogacy due to class divide. This is because they have resources to hire womb of other woman for having a biological child of their own through surrogacy. In India and across the globe people indulge in hazardous and undignified jobs due to large scale poverty. So is true about paid surrogacy. Large numbers of our impoverished women agree for surrogacy for helping their families and children with the money, they get for renting their wombs. Sometimes these women are pushed by their own families to quickly earn money through surrogacy.*

*Surrogacy involves various issues like legal, ethical, nationality, family, socio-cultural, religious, emotional and women's rights. Sociological analysis of surrogacy, issues around surrogacy, and their impact on society is done in present paper.*

**[Key Words: Surrogacy, Women, Types of Surrogacy, Issues of surrogacy.]**

*“The surrogate mother as a woman who is a citizen of India and is resident in India, who agrees to have an embryo generated from the sperm of a man who is not her husband and the oocyte of another women, implanted in her to carry the*

*pregnancy to viability and deliver the child to the couple/individual that had asked for surrogacy”- The ART Regulation Bill 2010*

## **Introduction**

India is a traditional society. The distinct features of Indian society are existence of joint family system, family values, adherence to traditions, transcendental beliefs and community feeling etc. In such a traditional society like India people lives revolve around marriage, family and traditions. But due to various forces of change like liberalization, globalization, privatization, and modernization, advancement in science and technology and spread of information and communication technology, individualism, materialistic attitude, our social structure and social institutions are passing through structural and functional changes. We can see noticeable major changes in attitude, values, belief, and nature of family relationships and thinking of people. Individuals and couples married and unmarried are taking help of advanced medical facilities for starting a family. This has resulted in significant changes in families, relationships, values, beliefs, traditions and customs.

Infertility is a growing problem in modern times. Nature has bestowed the beautiful capacity to procreate a life to women and every woman cherishes the experience of motherhood. But, unfortunately some women due to certain physiological and medical complications could not give birth to their own children. Such women opt for assisted reproductive technologies like In-Vitro Fertilization (IVF), and Intra-Uterine Injections (IUI). Surrogacy is a method of assisted reproduction, whereby a woman becomes pregnant usually by artificial insemination or surgical implantation of a fertilized egg for the purpose of carrying the fetus to term for another individual/couple, who will become parent/parents of the new born after birth. Surrogacy existed in ancient civilizations. There are some examples in the Code of Hammurabi in the Bible's Old Testament. The first documented agreement for surrogacy by means of artificial insemination took place in 1976.

Surrogacy is bliss under some circumstances where infertile individuals/ couples could not become parents due to medical complications, but some wealthy individuals / couples from India and abroad opt for surrogacy due to class divide. This is because they have resources to hire womb of other woman/surrogate for having a biological child of their own, because of her poor economic background.

In India and across the globe people indulge in hazardous and undignified jobs due to large scale poverty. So is true about paid surrogacy. Large numbers of our impoverished women agree for surrogacy for helping their families and children with the money, they get for renting their wombs. Sometimes these women are pushed by their own families to quickly earn money through surrogacy. There are various aspects of surrogacy i.e. socio-cultural, ethical- religious, familial, and legal. Surrogacy affects all the parties involved in it.

## **Objectives of the Paper**

1. To understand the concept of surrogacy and issues around it.
2. To discuss types of surrogacy.
3. To analyse causes and motivating factors behind surrogacy.
4. To examine social impact of surrogacy.

## **Types of Surrogacy**

The ART Regulation Bill 2010 defines the surrogate mother as a woman who is a citizen of India and is resident in India, who agrees to have an embryo generated from the sperm of a man who is not her husband and the oocyte of another women, implanted in her to carry the pregnancy to viability and deliver the child to the couple/individual that had asked for surrogacy.

**1) Traditional surrogacy:** Traditional surrogacy is the simplest and least expensive form of surrogacy and is also known as artificial insemination. The surrogate uses an insemination kit to become pregnant using the intended father's or donor's semen. The baby will therefore be conceived using the surrogate's egg, thus she will be the genetic mother of the resulting child. Usually, the intended father's name is put directly on the birth certificate and the intended mother will need to do a step parent adoption, however laws regarding this issue vary from state to state.

Some people prefer to use a clinic for inseminations, but it can also happen at home and can therefore seem a more natural and less 'medical' way of becoming pregnant than host surrogacy. It can, however, be harder emotionally for both the surrogate and the intended parents. In ancient Indian society *Niyoga Pratha* was allowed, in which a woman who is childless because of her husband's impotency, was allowed to conceive through surrogate father. We find its examples in *Mahabharat* and *Manu Smriti*.

**2) Gestational surrogacy:** It is when IVF is used, either with the eggs of the intended mother, or with donor eggs. The surrogate therefore does not use her own eggs, and is genetically unrelated to the baby. Eggs are extracted from the intended mother or egg donor and mixed with semen from the intended father or sperm donor in vitro. The embryos are then transferred into the surrogate mother's uterus. It is physically more complicated and considerably more expensive than traditional/straight surrogacy.

Some Surrogates prefer this method as they may not be comfortable with using their own eggs in surrogacy. And intended mother will also like to have genetically related child through donating her own eggs.

**3) Altruistic Surrogacy:** Altruistic surrogacy refers to those surrogacy agreements where the surrogate does not receive monetary compensation. In most altruistic surrogacy agreements, the surrogate is a close relative to the intended parents. In India the recent surrogacy bill advocates altruistic surrogacy.

**4) Commercial Surrogacy:** A commercial gestational surrogacy agreement includes a pre-determined monetary compensation to the surrogate, in addition to covering medical costs, etc. In commercial surrogacy the intended parents are

economically more powerful than the woman who rents her womb for the child. In this type of surrogacy surrogate mothers take to surrogacy to meet their financial needs. Since 2002 commercial surrogacy has become very popular in India. In India, world class fertility clinic are available at very competitive prices. Large numbers of foreign nationals from developed countries come here for renting poor, illiterate women through middleman for surrogacy services. Women who engage in surrogacy may face serious health issues, like depression, low self-esteem, poor health, physical weakness and problems of marital and family adjustments. Commercial surrogacy is a controversial method of conception because people, governments and religious groups have questioned the ethics of involving money in a child's birth.

New Surrogacy Regulation Bill 2016 in India approves altruistic surrogacy and bans commercial surrogacy agreements. Arguments are posted that accuse commercial surrogacy of using women's wombs for profit, demoralizing the surrogates, baby selling, breeding farms and sending "motherless" babies into the world. In Ukraine, Russia, and Israel surrogacy arrangements are legal, whereas commercial surrogacy is illegal in England, and many states of United States, and in Australia, which recognize only altruistic surrogacy. In contrast, countries like Germany, Sweden, Norway, and Italy do not recognize any surrogacy agreements. India has become a favourite destination of commercial surrogacy. Each year, couples from abroad are attracted to India by so-called surrogacy agencies because cost of the whole procedure in India is as less as one third of what it is in United States and United Kingdom. But the newsurrogacy bill in India will certainly curb growing number of surrogacy pregnancies, if implemented effectively.

### **5) Domestic Surrogacy**

Surrogacy is an ART process that is completed around the world. However, many countries have strict laws regulating this process, so depending on where one lives; types of surrogacy are: domestic and international. If one's own country allows surrogacy and regulates it properly, then it's usually economical, safe and eliminates the legal processes that occur with bringing a baby born abroad back into own country.

**6) International Surrogacy:** For intended parents who live in a country that restricts or outlaws surrogacy, completing an international surrogacy in a surrogacy-friendly country like the U.S. is safer and easier. Surrogates who carry a child for an international intended parent can receive a base compensation that, due to exchange rates and different standards of living, can drastically change their life situation.

**7) Agency Surrogacy:** If intended parents and a surrogate work with a trusted surrogacy agency or similar service to safely enter into surrogacy contract, is known as agency surrogacy. In such cases surrogacy agency or program will take the majority of the responsibility out of their clients.

## 8) Independent Surrogacy

If intended parents are working with a surrogate they know (usually a friend or family member), they may feel comfortable without the mediation services offered by a surrogacy agency, called independent surrogacy.

### Causes of Surrogacy

The word surrogate is rooted in Latin word “subrogate” which means substitute. Surrogacy is a method of assisted reproduction, where by a women agrees to become pregnant for giving birth to a child for others to raise. Individuals/ parents choose surrogacy for various reasons. There are different types of infertility and in some cases it would be physically or medically impossible/ undesirable to carry a baby to term and hence, to fulfill the desire of such infertile couple to have a child, then surrogacy comes as an important option. Couples and individuals go for surrogacy due to various reasons:

**Infertility:** Infertile couples opt for surrogate pregnancy. Infertility is generally known as a social stigma in India. Major causes of infertility are medical and social. Medical infertility is usually defined as the inability to conceive a child after a year or two of trying to do so. In the past few decades a new type of infertility termed as social infertility has emerged. Social infertility results due to various social circumstances like-singlehood, widowed, divorce, homosexuality, disability and sterilization etc. Every human being has an innate desire to have a natural offspring. The reasons are many, to love, and to be loved, to perform social and religious rituals etc. It is hypothesized that the agony and trauma of infertility is best felt and described by the infertile couples themselves. Though, infertility does not claim the life of an individual but it inflicts devastating influence on life of the person for not fulfilling the biological role of parenthood for no fault of his or her own. In India earlier times people used to follow unscientific practices for offspring like eating certain food, fasting and giving sacrifice of animals to please God so that they are blessed with a child. The desire for children is so strong, that very often we come across heinous crimes in newspapers, where childless couples indulged in abducting and sacrificing the child of neighbours, relatives or others to please the deity to have children of their own. The stigma of childlessness sometimes forces a woman to indulge in illicit relationship with or without her husband’s consent. Not only illiterate and less educated but educated women also turn to *babas* and saints for desire to have biological child; but in return they are being physically and emotionally blackmailed and exploited. But in modern times educated couples go for surrogacy to get rid of stigma of infertility. Thus we see surrogacy is bliss for infertile couple and it is certainly functional for individuals and society at large.

**Social factors:** Indian society has got a very stable family structure, strong desire for children and particularly for son to carry forth the lineage or *Vansh(leanage)* and for attainment of *Moksha( salvation)* . In Hindus male progeny is necessary for performing funeral pyre and attainment of *moksha* (salvation). Male children are also heir of the family property and traditions.

They are considered pride of the family. The significance and need of a child is also emphasized in almost all the religions of the world. For most couples, the procreation of a child is one of the simplest tasks, Melissa Williams, the renowned Political Scientist, commented, “Reproduction of child, after all is the oldest production known to humankind, a process that is programmed into the biological fiber of our beings and define our very survival.” So due to social pressure and for social acceptance individuals choose any method to become parents including hiring surrogate mothers.

**Advance Fertility services:** Infertility causes serious stress and pain to the couples. It can have a grave impact on every aspect of an individual’s life affecting self-esteem and relationship with others in family. Mankind strived to find a solution for overcoming childlessness. The general belief in most of the ancient societies was that childlessness occurs due to destiny and curse of God and therefore the childless couples would be asked to undertake various rituals and prayers as well as offerings to appease the God. They use to visit god men for the sake of having their own child with their blessings and *matras*. In certain religions the practice of marrying another woman was allowed while some permitted begetting a child with the help of a male relative. But these methods sometimes exploited the couples monetarily, emotionally and spiritually and never provided desired level of satisfaction. With the development of society and legal system the method of adoption of child came into practice, but it failed to fulfill the natural innate desire to have a biological child of one’s own. The desire for genetically related child led to experiments and research in the field of human reproduction and resulted in development of various reproductive techniques.

With the enormous advances in the field of medicine, the infertility can now be treated using the new medical technologies collectively called as Assisted Reproductive Technology (ART) such as In Vitro Fertilization (IVF) or Intra Cytoplasmic Sperm Injection (ICSI) *etc.* The birth of the world's first child, Louise Brown on July 25, 1978, through the technique of *in vitro* fertilization was a path-breaking step in control of infertility; and is considered as one of the most important medical advances of the last century. Today fertility treatment is very advanced and it is in reach of every family. Now, the treatment is very affordable and available even in small cities. Sperm bank and egg freezing, IVF treatment and surrogacy have become now very familiar terms.

**Late Marriage:** Nowadays due to education and employment men and women both marry late. Women freeze their eggs for having baby after marriage with the help of surrogacy pregnancy. Instances are there, when a woman is fertile and healthy but unwilling to conceive child and finds surrogacy a better option to become mother.

**Class Divede:** In contemporary society we also see a trend among middle aged couples or individuals of becoming parents of babies born through surrogacy. Middle aged couples who already have grown up children of 15-22 years of age

opt for surrogacy pregnancy out of charm to have another baby in family. Like bollywood actor Shahrookh Khan and film director Karan Johar many wealthy couples and individuals have become parents through surrogacy. Here we see how wealthy people using their money, to hire poor women, for becoming parents through surrogacy. This clearly shows class divide in society. Rich women can enjoy joy of motherhood without going through labour pain. Before this they have been avoiding laborious domestic chores and like cleaning, washing and moping by employing *bais* (domestic maids) and child care by hiring nannies. But as a society we aspire to achieve inclusive and equitable development. But if our large number of womenfolk forced to earn livelihood by selling their bodies, then as a nation where are we going? Proper policy and enforcement of law along with emphasis on human development can help us creating a just society where everybody has a right to dignified life.

**Desire for Male Child:** India is a male dominated society. Due to advancement in fertility treatment couples who have only girl children and want to have a male child go for surrogacy services. We have examples where wealthy couples want to have a baby for excitement or on the demand of their grown daughters for a brother to *tierakhi* and perform other rituals related to pious bond of brothers and sisters. It is a phrase in the state of Rajasthan, that one can't imagine *pihar* (parental house) without brother and his wife(sister in law). After independence women have been given equal constitutional right in every sphere of life. But still importance of male child is a social reality. Though sex selective surrogacy is banned in India, still people indulge in illegal activities due to narrow mindedness and conservatism. For gender sensitization, centre and state governments in India are running various awareness campaigns and programmes to save and empower girl child.

**Availability of Cost Competitive Fertility Treatment:** People from abroad hire surrogacy services in countries, which offer best medical services at low cost. That is why India has become a very popular destination for surrogacy services across the globe. Due to cost effectiveness, awareness and increased success rate of ART services upper middle class and middle class people are also getting benefitted by it.

**Poverty:** Poverty is another reason behind, poor women agreeing to surrogacy in return for earning money to support their families financially. 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 awareness and right to decide regarding their own body and life. India is a land of vast economic disparities. On the one hand we have very rich people residing here, who can afford all the luxuries of the world and on the other hand we have one third of our population living on margins. In such a society surrogacy business is also thriving because of favorable circumstances.

**Altruism:** Surrogacy is the union of science, society, services and persons that make it a reality. Surrogacy leads to a win-win situation for both the infertile couple and the surrogate mother. The infertile couple is able to fulfill their most

important desire and the surrogate mother receives the suitable reward. To give a womb for rent means to nurture the fertilized egg of another couple in your womb and give birth to the child with a specific intention, the intention here being either money, or service, or because of altruistic reasons. Altruistic surrogacy is where a surrogate mother agrees to gestate a child for intended parents without being compensated monetarily in any way. We can call it free surrogacy for human cause.

### **Social impact of Surrogacy**

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 surrogacy is a very complicated social medical phenomenon which involves human emotions, monetary compensation and human rights. It affects surrogate mother, their families, commissioning parents and the child born through surrogacy.

### **Impact of Surrogacy on Surrogate Mother**

Due to extreme poverty and exclusion from development benefits, vulnerable women opt for surrogacy to earn much needed money. Most of the surrogate mothers come from low socio-economic strata for earning money to support their families financially. But these women are exploited by the agents and middlemen engaged in this profession for earning easy money. Horsburgh believes surrogates are physically exploited once they have signed contracts agreeing to give birth to babies for clients. Surrogate mothers also face several health issues like dizziness, bloating, swelling, and hemorrhoids and problems associated with pregnancy. Serious health risks are associated with IVF, fertility medicines, pregnancy and child birth.

To make matters worse, if the pregnancy is indeed aborted, the surrogates often receive just a fraction of the original amount. Surrogacy is equated with prostitution and slavery, because no empowered woman enters into it. Hence it decreases self-respect of the woman involved in surrogacy. It is argued that commercial surrogacy should be banned on ethical and moral grounds. Surrogate mothers are kept in isolated accommodations / hostels away from their children and families, this leads to negative socio-psychological effects on the surrogate mother and her entire family. Surrogacy contracts are dehumanizing and alienating since they deny the legitimacy of the surrogate's perspective on her pregnancy. The payment for bodily services dehumanizes the surrogate mother and exploits her reproductive organs and capability for personal gains of the wealthy. According to legal experts, if surrogacy becomes an avenue by which women in richer countries choose poorer women in our country to bear their babies, then it is economic exploitation, a kind of biological colonization.

**Impact of Surrogacy on Family and Society:** surrogacy affects family of the surrogate mother and family of the intended couples both. The poor, uneducated and unemployed women choose surrogacy as a way to earn money to meet

financial need of her family. But during the process their families also suffer. Surrogate mothers stay away from their families and live in hostels. This isolation leads to strain in their relationship with their husbands and children and entire family. Surrogate mothers hide about their pregnancy due to fear of loss of dignity in their community and this leads to various psychological problems like stress and low self-esteem. Surrogate motherhood can cause conflicts in the family, as well as strained relationships between the surrogate mother and her spouse.

Though procreating a child in surrogate womb is a grateful gift to those mothers who cannot conceive child due to physical and medical reasons, still intended parents and their families also face several socio-psychological problems, due to adopting surrogacy for genetically related child. The intended mothers feel less feminine and sometimes pretend to be pregnant in front of their extended families. Similar to the phenomenon we see in a Bollywood movie. Fathers also feel uncomfortable that a woman other than his wife would be mother of their child. We have also seen incidences where maternal grandmother had served as surrogate to the child. In such type of arrangement question of upholding dignity of traditional kinship ties and moral values arise. We come across incidences where surrogacy contracts are not clear and hold no legal value. This creates confusion and conflicts between the parties involved in surrogacy. Due to lack of awareness and 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. In case of cross border surrogacy we see many problems like determination of citizenship, nationality, motherhood, parentage, and rights of the child born through surrogacy. There are occasions where children are denied nationality of the country of intended parents and these results in a long legal battle.

### **Conclusion**

The above analysis shows that surrogacy is a multidimensional phenomenon related to very sensitive issue of human life. Need for biological child is so strong that we have come across crime such as abduction and sacrifice, of child of one's neighbor or relative, to please the God to have offspring of one's own. In some communities marrying more than one woman was allowed in case of failure to have child from the first wife. But advancement in infertility treatment can save people to turn to such heinous crimes. With the help of surrogacy couples / individuals can enjoy parenthood. Infertility is generally known as a social stigma in India. It is hypothesized that the agony and trauma of infertility is best felt and described by the infertile couples themselves. Surrogacy is bliss of medical advancement if practiced with sensitivity and transparency as it fulfills very basic socio-psychological needs of human beings.

To regulate heavily market- driven fertility industry and ensure human rights of engaging parties to surrogacy, the Government of India has drafted a bill called The Surrogacy (Regulation) Bill, 2016. The main provisions of “The Surrogacy (Regulation) Bill, 2016” are: The Surrogacy (Regulation) Bill, 2016 proposes to regulate surrogacy in India by establishing National Surrogacy Board at Central level, State Surrogacy Boards and Appropriate Authorities in States and Union Territories. The proposed legislation ensures effective regulation of surrogacy, prohibit commercial surrogacy and allow ethical surrogacy to the needy infertile Indian couples. The major objectives of the Bill are to regulate surrogacy services in the country, to provide altruistic ethical surrogacy to the needy infertile Indian couples, to prohibit commercial surrogacy including sale and purchase of human embryo and gametes, to prevent commercialization of surrogacy, to prohibit potential exploitation of surrogate mothers and protect the rights of children born through surrogacy.

The bill allows altruistic surrogacy to legally married intending infertile Indian couples of a certain age group. The bill also advocates reasonable and adequate amount of insurance coverage to the surrogate mother. No person, organisation, surrogacy clinic, laboratory or clinical establishment of any kind shall undertake commercial surrogacy, abandon the child, exploit the surrogate mother, sell human embryo or import embryo for the purpose of surrogacy. Violation to the said provision shall be an offence punishable with imprisonment for a term which shall not be less than ten years and with fine which may extend to ten lakh rupees. The bill also speaks about regulation of infertility clinics, fixation of amount of money paid to the surrogate, financial support in case of abnormal child and abortion, screening health status of surrogate mother for STDs and other health issues, fixation of number of deliveries a surrogate can deliver, maintenance of confidentiality, and prohibition on sex selective surrogacy etc.

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