SURROGACY AND IT’S LEGAL IMPLICATIONS:

A COMPARATIVE STUDY

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ABSTRACT

The ever-rising prevalence of infertility worldwide has led to advancement of assisted reproductive techniques (ART). Herein, surrogacy comes as an alternative when the infertile woman or couple is not able to reproduce. Surrogacy is an arrangement where a surrogate mother bears and delivers a child for another couple or person.

The legal aspects surrounding surrogacy are complex, diverse and mostly unsettled. However, in very few countries, the Intended Parents are recognized as the legal parents from birth by the virtue of the fact that the Surrogate has contracted to give the birth of the Child for the commissioned Parents. India is one country amongst the few, which recognize the Intended/Commissioning Parent/s as the legal parents. Many states now issue pre-birth orders through the courts placing the name(s) of the intended parent(s) on the birth certificate from the start.

Commercial surrogacy is legal in India, Ukraine, and California while it is illegal in England, 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.

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 70 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 (OCI). As a result, they resort to the options of IVF or surrogacy. Laws should be framed and implemented to cover the grey areas and to protect the rights.
INTRODUCTION

Society is named for the group of individuals. At one point, this may be geological and at another point it may be zoological or botanical. One salient feature of this society is racial development, i.e., reproduction in terms of genetics.

Having children has always been important since time immemorial and the continuity of the family unit has been of major significance in Indian society. The inability to reproduce is considered as a social stigma and Indian mythology is full of stories about what couples have done in the past to overcome their fertility problems. Besides social factors like ‘someone to take care of me in my old age’, directs our attention to a profound religious demand for a child, especially a male one.

Over the years, renting a womb for carrying a child of another or commonly known ‘surrogacy’ has evolved as a much preferred mode of bringing a child into this world. India, in particular has seen a rise in surrogacy as an ideal technique for childless couples to enjoy the pleasures of parenthood.

HISTORICAL OVERVIEW

The importance of fertility in human beings is relied on men and women, their fertility to produce children to carry on the family line, as life exists because of procreation. To celebrate this power of procreation, many religions practice fertility rituals. During these fertility rituals, the power of procreation is honoured by worshipping fertility Gods such as Lord Shiva and Lord Kartikeya. In Greek Mythology, ‘Eros’ was the primitive God of lust, love and intercourse and was worshipped as a fertility deity. Fertility rituals and fertility symbols such as Shiva Lingam, which is the most powerful fertility symbol in Hinduism consists of the critical union of Shiv-Parvati, dominates the Hindu religious practices.1

During the epic age of Mahabharata, Pandu and Dhritarashtra faced such problems and “niyoga” was the solution which was adopted, which may be equated as “In Vitro²-Fertilization” today. It

1 Available at http://vinayaghimire.hubpages.com/hub/fertility-symbols-and-fertility-rituals-in-hinduism; last visited on 14/07/2018; time 11:00 am (IST).
2 ‘In-vitro’ means outside the living body and in an artificial environment (as opposed to ‘in-utero’ which means taking place in a living organism.)
is also believed that Gandhari, the wife of King Dhritarashtra conceived, but her pregnancy remained prolonged for nearly two years. At the end of this period as described by Bhagwan Vyasa, she delivered a mass of material that contained 101 normal cells which when put in a nutrient medium grew up full term as 100 male children – the Kauravas – and one female child, called Duhsheela.

According to the Bhagwad Gita, even Lord Krishna is understood to have been born without a sexual union. Kans, the wicked king of Mathura, had imprisoned his sister Devaki and her husband Vasudeva because oracles had informed him that her child would be his killer. Every time she delivered a child, he smashed his head on the floor. He killed six children. When the seventh child was conceived, the gods intervened. They summoned the goddess Yogamaya and sent her to transfer the fetus from the womb of Devaki to the womb of Rohini (Vasudeva’s other wife who lived with her sister Yashoda across the river Yamuna, in the village of cowherds at Gokul), when Vishnu heard Vasudeva’s prayers beseeching Kansa not to kill all his sons being born. Thus, the child was conceived by divine ‘mental transmission’ in one womb was incubated in and delivered through another womb. This all may be considered as traditional prevalence of surrogacy in India.

In fact, these types of arrangements have been in existence since a very long time. It is as old as human history. Historically the first child born through such arrangement was ‘Ishmael’, as was mentioned in the Old Testament of the Holy Bible. The second and the third known births occurred in Sumer-Mesopotamia in the middle of the 18th century B.C. in the family of Jacob, Abraham’s grandson. This problem was also experienced in 1790 although most of the world probably did not know that this process was in existence. The first case of surrogacy/artificial insemination occurred in United States using a donor’s sperm.

In Islam, surrogacy is neither permitted under the Islamic family laws, nor is it allowed under Islamic laws of contract. The womb is known as ‘Rahim’, a word that is also used to describe one of the attributes of Allah. Perhaps, it is the manifestation of the Allah’s compassion to human kind while the unborn is still in the dark recesses of his mother’s womb. The discussion of the position of surrogacy must begin with a discussion of procreation. It must be mentioned at the outset that procreation is only allowed within a legally binding marriage. The main reason for such a moralistic approach to sexual relations is to ensure the protection of the essential values in a man’s
life, primarily, his faith and progeny. Procreation within a valid marriage results in legitimate children and also includes other legal consequences.\(^3\)

However, in European cultures, while surrogacy has undoubtedly been practiced in the past, it has never been formally recognized by the society or the law. In other societies such as the Kgalatla people of Bechuanaland in South Africa and other traditional Hawaiian groups undertake similar practices and here surrogate motherhood is seen as an act of friendship and generosity. In Australia, the first widely publicized case of surrogacy occurred in 1988. Alice Kirkman was born on 23\(^{rd}\) May, 1988 in Melbourne as Australia’s first IVF surrogate baby. The woman, who gave birth to Alice, was her genetic aunt, named Linda Kirkman. Linda’s sister, Maggie Kirkman was Alice’s genetic and social mother as Alice grew from an embryo created from Maggie’s egg fertilized by a donor sperm.\(^4\)

In most developing countries, women are blamed for infertility, resulting in the social stigma of childlessness, even if they are not the cause for the same. This may be because in many cultures, womanhood is defined through motherhood and women usually carry the blame for the couple’s inability to conceive. Childless women are frequently stigmatized, resulting in isolation, neglect, domestic violence and polygamy. On the other hand, not only female infertility, but also the majority of male infertility in developing countries is caused by infections of the male genitourinary tract. It is believed that more than 80 million couples suffer from infertility worldwide, the majority being the residents of developing countries as compared to the Western societies.\(^5\)

Social transformations as well as medical science advances regarding infertility treatment has resulted in increasing demand of infertility services. Today, advances in Assisted Reproductive Technology\(^6\) can offer hope to many couples with infertility where, a few years ago, none existed. Therefore, until the introduction of modern assisted reproductive techniques, ‘traditional or partial surrogacy’ was the only means of helping women who had no uterus or had major abnormalities


\(^4\) Emmerson, Glenda, Surrogacy: Born For Another, Research Bulletin No. 8/96, Queensland Parliamentary Library, Brisbane, September 1996.


\(^6\) Hereinafter referred to as ART.
of the uterus to have children. In more recent years, artificial insemination has been resorted to and various procedures have been developed including intra-vaginal, intra-cervical and intra-uterine insemination, to inseminate surrogate hosts with the semen of the male partner of the couple wishing to have the child.

As early as in 1950s, Robert Edwards, working at the National Institute for Medical Research in London made a number of fundamental discoveries about how human eggs mature, how different hormones regulated their maturation and at which point of time the eggs were susceptible to fertilization. After several years of work, he succeeded, in 1965, in finding the right conditions that activated the dormant and immature egg cells in vitro and promoted their maturation. He found that human oocytes required 24 hours of incubation before the maturation process began and this prolonged cultivation resulted in egg cells suitable for IVF. In 1969, he identified the buffer conditions to support in vitro activation of hamster oocytes. He used the same buffer conditions and showed that human spermatozoa thus activated could also promote the fertilization of in vitro-matured oocytes. Thus, due to his efforts the first IVF baby ‘Louis Brown’ was born in 1978, the world’s first baby to be born after the use of in-vitro fertilization technique. This discovery marked an important milestone in the development of treatment for infertility in humans. The discovery of this technique by Robert Edwards has fetched him Nobel Prize in 2010 which is major medical advancement and a boon to infertile couples all over the world.

The world’s second and the India’s first IVF baby, ‘Kanupriya alias Durga’ was born in Kolkata on 3rd October, 1978 about three months after the world’s first IVF child was born in Great Britain on 25th June, 1978. America also celebrated the birth of its first IVF-conceived baby Miss Elizabeth Carr born in Norfolk, Virginia on December 28, 1981. India’s first scientifically documented IVF baby named ‘Harsha’, was born on 6th August, 1986 in Mumbai through the

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7 Available at http://www.britannica.com/EBchecked/topic/179875/Robert-Edwards; last visited on 21/06/2018, time: 02:30 pm (IST).
8 Available at http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3799275/; last visited on 10/06/2018, time: 06:30 pm (IST).
10 Available at http://surrogacylawsindia.com/index_inner.php; last visited on 10/06/2018, time: 07:30 pm (IST).
collaborated efforts of the ICMR’s Institute of Research in Reproduction and the King Edward’s Memorial Hospital.\textsuperscript{12}

In the practice of surrogacy, one new system has been evolved where financial attraction or gain is shown to the surrogate and in spite of her unselfish concerns she becomes interested in monetary gains, even sometimes at the cost of her life and health. The surrogate mother receives financial reward for her pregnancy on the relinquishment of the child which means business of body or body related parts or products. Surrogacy arrangement has attracted the poverty stricken population of India because of economic necessity. The absence of specific laws prohibiting commercial surrogacy is also posing a great difficulty. The desire to earn a livelihood through surrogacy arrangements have led to the deterioration of the health of the surrogate mother, which is of utmost importance and one cannot visualize its long term consequences. The repeated pregnancies can even affect the cardio-vascular health of the poor illiterate woman, which she may not know. Her health may be satisfactory during the pregnancy because of the money and care provided by the commissioning parents, but her health may not be that good in future. Thus, the human right to health in a surrogacy arrangement involves the question of health of the surrogate mother, the surrogate child, the genetic parents and the commissioning parents.

**MEANING OF SURROGACY**

According to *Black’s Law Dictionary*, the word ‘surrogate’ has its origin in the Latin word ‘surrogatus’, meaning a substitution or replacement, i.e., a person appointed to act in the place of another.\textsuperscript{13} The term ‘surrogate mother’ or ‘surrogate’ is usually applied to the woman who carries and delivers a child on behalf of another couple. It is considered as a ‘blessing’ and ‘miracle of science’.

Surrogacy is an ‘arrangement’ in which a woman agrees to a pregnancy, achieved through assisted reproductive technology, in which neither of the gametes belong to her or her husband, with the intention of carrying it to term and handing over the child to the person(s) for whom she is acting

\textsuperscript{12} Available at http://www.futuremedicineonline.com/detail_news.php?id=447; last visited on 22/01/2018, time: 10:40 pm (IST).

as surrogate. The surrogate is a woman who agrees to have an embryo generated from the sperm of a man who is not her husband, and the oocyte for another woman implanted in her womb to carry the pregnancy to full term and deliver the child to its biological parent(s). In medical parlance, the term ‘surrogacy’ means using of a substitute mother in the place of the natural mother. The surrogate mother bears a child on behalf of another woman, either from her own egg, wherein the procedure is called ‘straight or partial surrogacy’ or from the implantation in her womb of a fertilized embryo from another woman, wherein the procedure is called ‘gestational/full/host/IVF surrogacy’. 14

In partial or natural surrogacy, also known as traditional surrogacy, the commissioning mother has no role to play. The surrogate mother provides her own egg, which is fertilized by artificial insemination, carries the foetus and gives birth, to a child for another person. She gestates the child which makes her the biological or genetic mother of the child.

The gestational surrogacy involves the following categories of women: -

a) Women with congenital absence of the uterus,

b) Women who have had a hysterectomy for hemorrhage, but they still have functional ovaries,

c) Women who have suffered repeated miscarriages and for whom the chance of ever carrying a baby to term is too remote, and

d) Women who repeatedly fail to implant normal healthy embryos in treatment by IVF.

There is another classification of surrogacy arrangements which can either be ‘Commercial’ or ‘Altruistic’. In ‘Commercial Surrogacy’, the gestational carrier/surrogate mother is paid apart from medical and other reasonable expenses, to carry a child to maturity in her womb. This is usually resorted to by the higher income infertile couples who can afford the cost involved in the surrogacy arrangement and can complete their dreams of becoming parents. The surrogate is not only reimbursed but also paid a sum above her surrogacy related expenses as compensation for surrogacy services provided by her. Commercial surrogacy is indeed a modern practice as opposed

to traditional surrogacy. Infertility of either of the partners and the desire for a child has led them to fetch for alternate ways of child bearing.

In ‘Altruistic Surrogacy’ arrangement, unselfish concerns are shown for the welfare of others by the surrogate mother and she receives no financial reward for her pregnancy or for the relinquishment of the child, although usually all expenses related to pregnancy and birth are paid by the intended commissioning parents. The carrier receives no compensation besides medical and other reasonable expenses for carrying and delivering the child. This is generally done by a friend or a close relative\textsuperscript{15} who is paid only the necessary related expenses and there is no reward to the surrogate.

Today, India’s rapidly expanding commercial surrogacy industry is dependent on “gestational carrying” arrangements, in which the surrogate mother is not genetically related to the child she carries. Rather, the sperm of the intended father fertilizes either the ovum of a donor or the ovum of the intended mother and the resulting embryo is implanted in the gestational carrier’s womb. This type of surrogacy is made possible through In-Vitro Fertilization technology (IVF), where an embryo is created outside of the womb in a test tube in a laboratory. Before the introduction of IVF procedures in 1987, however, surrogates were impregnated with the sperm of the intended father through artificial insemination. In this arrangement, called “traditional surrogacy,” surrogate mothers contributed their own ovum and did bear a genetic connection to the child they bore. In this particular socio-cultural context, any third-party form of reproduction requires individuals to re-conceptualize procreation, reproduction, kinship and family.

Commercial surrogacy, which has been dubbed “reproductive outsourcing” and “rent-a-womb” by popular consensus, provides a rich terrain for debate because it provokes yet another disturbance of the imagined public/private sphere divide. Commercial surrogacy, like commercial adoption, abortion, or sex work, places things that are normally relegated to the private sphere (procreation, the maternal body, the feminine body) into the public sphere (the capitalist market). When an element of reproduction becomes a commercial service, issues of bodily exploitation and economic

\textsuperscript{15} In September 2012, Casey gave birth to her grandson when her daughter struggled with infertility. Her daughter’s egg and her son-in-law’s sperm were used in in vitro fertilization procedure, making the couple biological parents of the surrogate child born through his grandmother; accessed from http://abcnews.go.com/blogs/health/2012/09/04/surrogate-mother-61-gives-birth-to-her-grandson/; last visited on 25/01/2018; time 11:00 am (IST).
opportunity are immediately called into question and when the service crosses national borders, as gestational surrogacy has in the last decade, with transactions between women and families of different cultures and vastly unequal social and economic statuses, questions of consent and opportunity are even further complicated.

**SURROGACY LAWS BY COUNTRY**

The legal aspects of surrogacy are quite complex and need to be taken care of. Surrogacy laws widely vary from one country to another.

*Understanding of Surrogacy with Indian Reference*

Surrogacy is flourishing in India because commercial surrogacy has been legalized by the Supreme Court since 2008 through the ratio of the decision of *Baby Manji Yamada v. Union of India*,\(^{16}\) wherein the Supreme Court has held that commercial surrogacy is permitted in India with a direction to the legislature to pass an appropriate law governing surrogacy arrangements in India. The ratio of this case has increased the international confidence for resorting to surrogacy in India and making India a very lucrative destination for surrogacy. It is consequently causing a serious concern for the health of the poor illiterate Indian women.

Surrogacy is a very knotty issue in India due to non-enactment of laws on the subject. Anand town in State of Gujarat is a hub of surrogate mothers. Not only this, Indore city in Madhya Pradesh, Pune, Mumbai, Delhi, Kolkata and Thiruvananthapuram are also emerging as surrogate centres because many childless foreigners from all over the world are flocking here due to low cost, less restrictive laws, lack of regulation of ART clinics and easy availability of poor Indian surrogate mothers. Generally, surrogacy arrangements are drawn up in a random fashion and can be exploitative especially since surrogates are mostly from weaker socio-economic sections of the society. It is essential that the practice of surrogacy should be legally regulated to prevent victimization of both the surrogate and intended commissioning parents.

The proposed research work tends to highlight that India is in an urgent need of comprehensive legislations on the subject which can regulate and can have a check on the use and misuse of

\(^{16}\) AIR 2009 SC 84.
surrogacy arrangements. It is apparent that surrogacy is increasing as an industry in India and many clinics are providing these services to foreign couples and also to Bollywood heroes and heroines who do not want to compromise their career which is likely to be jeopardized due to maturity and de-shaping of the body of the female and they find it easier to give their eggs and sperms and hire a womb on rent. These clinics work as commission agents between the purchaser and donor/seller of the sperms or eggs.

It is high time for the Indian Parliament to study in details the national and international perspectives on surrogacy and to understand the root of the problem and provide a comprehensive legislation including the rules and regulations for combating and controlling the use and misuse of surrogacy practices in India. The focus needs to be given on legalizing altruistic surrogacy and at the same time prohibiting commercial one. It is submitted that it is advisable to protect the society from onslaught of capitalism over Asian poverty and stop the exploitation of poor women being used as machines.

The present research has also analyzed the issue of surrogacy in and around India. For better analysis, examples from United States, United Kingdom and Australia etc. have been taken care of with reference to social and economic conditions in India.

The research has also included thorough analysis of the guidelines provided by the Indian Council of Medical Research (ICMR), the draft Assisted Reproductive Technology (Regulation) Bill and Rules 2008, redrafted in 2010, by the Government of India (which is yet to be passed by the Indian Parliament), the recommendations of the Law Commission of India in its 228th Report on “Need for Legislation to Regulate Assisted Reproductive Technology Clinics as well as Rights and Obligations of Parties to a Surrogacy”.\(^{17}\)

In the present research, the researcher has proposed a draft of ‘Surrogacy Arrangement (Regulation and Control) Bill, 2015’ after critically analyzing the weaknesses and shortcomings of ‘Assisted Reproductive Technology (Regulation) Bill, 2008 and 2010’ so as to evolve a comprehensive legislation on the subject.

\(^{17}\) See 228th Report of Law Commission of India, Need for Legislation to Regulate Assisted Reproductive Technology Clinics as well as Rights and Obligations of Parties to a Surrogacy, August 2009.
Surrogacy in Australia

Commercial surrogacy is not permitted in Australia and intended parents cannot pay a surrogate. But in the Northern Territory it is legal technically, since commercial surrogacy by the means of traditional surrogacy is permitted and not via gestational surrogacy. Australia permits altruistic arrangement of surrogacy that does not only any financial assistance to the surrogate. In Southern and Western Australia, only straight couples can opt for altruistic surrogacy and it is illegal for same-sex couples and single parents. In Tasmania, according to the law a surrogate should not be less than 25 years of age and it should not be her first pregnancy. Although paying money is illegal but the intended parents are expected to meet medical bills and other expenses without getting into any kind of financial agreement.

Surrogacy in Canada

Under Assisted Human Reproduction Act (AHRC), only altruistic surrogacy is permitted. In Canada, a surrogate mother is offered reimbursement only for approved expenditures and on the other hand, paying-up for any other expenses is not allowed. Nevertheless, under Quebec law both altruistic and commercial surrogacies are not permitted.

Surrogacy in Quebec

Under Quebec Civil Code, commercial as well as altruistic arrangements are null. The law states that the genetic mother of the child who is born to a gestational surrogate mother will not be considered as his legal mother, not even by the means of adoption. The case remains the same even if the child does not have a legal mother in any condition.

Surrogacy in Finland

In the year 2007, all kinds of surrogacy arrangements were declared illegal. Commercial surrogacy was illegal even before that.

Surrogacy in France

From the year 1994, altruistic and commercial surrogacy, both the arrangements are not permitted by law. Even in 1991, The French Courts the Cassation stated the same views. They stated if an intended couple enters into any arrangement with a surrogate mother who is not willing to keep
the resulting child after birth, the intended couples is not allowed to keep the child even after adopting it. Under articles 6 and 1128 along with article 353 of the Code Civil, any sort of such an agreement is unlawful.

**Surrogacy in Georgia**

Since the year 1992, sperm and ovum donation along with surrogacy are permitted by law. According to law in Georgia, a surrogate mother or a donor does not have any legal parental rights over the resulting child.

**Surrogacy in Hong Kong**

In Hong Kong, under the Human Reproductive Technology Ordinance 2000, commercial surrogacy is unlawful. According to it, paying a surrogate is not allowed, no surrogate mother can gain financial benefits and no arrangements for commercial surrogacy can be entered into, within or outside Hong Kong.

**Surrogacy in Hungary**

Hungarian law does not permits commercial surrogacy.

**Surrogacy in Iceland**

In Iceland, both commercial and altruistic arrangements of surrogacy are unlawful.

**Surrogacy in Ireland**

In Ireland, there are no surrogacy laws. In the year 2005, a Commission appointed by the Government published a wide-ranging report on Assisted Human Reproduction. The recommendations in the report were on a wide scale on the same issue. As far as surrogacy is concerned, the report stated that the couple opting for this procedure would be the parents of the resulting child according to Irish law. However, this procedure is still largely unregulated. Finally, after a lot of pressure from Irish citizens who had to visit other countries for a child via surrogacy, the Minister for Justice, Equality and Defence in February 2012, was forced to publish guidelines.
**Surrogacy in Israel**

Under Embryo Carrying Agreements Law, the government of Israel in March 1996 legalized gestational surrogacy. This made Israel the world’s very first country where surrogacy was under the control of the state and all the agreements for the same had to be approved by the law. A committee set-up by the state allows that Israeli citizens of the same religion to file for surrogacy arrangements. As per Israeli law, a surrogate mother should be divorced, widowed or single. Only for infertile heterosexual couples, surrogacy is legal.

**Surrogacy in Italy**

Altruistic and commercial surrogacy arrangements are unlawful in Italy.

**Surrogacy in Japan**

The Science Council of Japan banned surrogacy in March 2008. The council stated anyone- an agent, a doctor or a client, all would be punished on entering into a commercial surrogacy arrangements.

**Surrogacy in Netherlands and Belgium**

Netherlands and Belgium allow Altruistic surrogacy and consider commercial surrogacy as unlawful. However, there is only once hospital for the same and that too with very strict rules.

**Surrogacy in New Zealand**

New Zealand permits altruistic arrangement of surrogacy.

**Surrogacy in Pakistan**

Pakistan does not permit surrogacy.

**Surrogacy in Russian Federation**

Gestational and commercial surrogacy is legal in Russia but the cause for opting for surrogacy should be medical such as repeated IVF attempts, uterine cavity synechia, absence of uterus, failed pregnancy attempts in spite of high-quality embryos, cervix deformity. Children who are born
through surrogacy are registered by the Law on Acts on Civil Status and the Family Code of Russia. The surrogate must give her consent for the same. No adoption process is necessary for the same. The birth certificate of the child does not have the name of the surrogate. The child need not be genetically related to one of the intended parents.

If unmarried heterosexual couples or single parents opt for gestational surrogacy for a child, the court has the right to take the decision regarding the resulting child. A Moscow court in August 2010 stated that if a single man opted for gestational surrogacy but with the use of donor eggs, he could be the only parent of the resulting child. The birth certificate would not contain the surrogate’s name. Regardless of their sexual orientation, single men in Russia are considered the only parent of the surrogate child and can exercise their parenthood child.

**Surrogacy in Saudi Arabia**

In Saudi Arabia, the religious authorities do not permit surrogacy as an option. They prefer opting for different kinds of medical practices for restoration of fertility in females and their ability to deliver a child. Recently, the first uterus transplant in the world was permitted by the Saudi authorities.

**Surrogacy in South Africa**

Surrogacy agreement between a surrogate and ‘commissioning parents’ needs to be validated before fertilization by the High Court, under South Africa Children’s Act of 2005. This makes the intended parents, legal parents but a span of 60 days after delivery is given to the genetic surrogate if she wants to change her mind. Gay couples as well as single parents can also be intended parents. Single parents and a couple can opt for this option only if they have any physical inability. Only that woman can become a surrogate who has at least one living child. She has the right to terminate the pregnancy but only after consulting the intended parents. If she is doing so due to non-medical reasons, she must be ready to make medical reimbursements.

**Surrogacy in Sweden**

There are no clear laws regarding surrogacy in Sweden. The intended parents need to adopt the child from the surrogate; nevertheless, she has the right to change her mind, before the adoption
process. However, biological father have complete right over the child. Fertility clinics in Sweden cannot make any surrogacy arrangements.

**Surrogacy in Switzerland**

Surrogacy is illegal in Switzerland. People who make any such arrangements or clinics that perform in vitro fertilization for surrogacy can get punished. However, a surrogate mother would be the child’s legal mother and cannot be punished.

**Surrogacy in Ukraine**

From the year 2002, surrogacy or surrogacy along with egg/sperm donation has been declared legal. The law clearly states that neither the surrogate nor the donor but only the prospective parents have legal rights over the resulting child. A written consent of all the parties is necessary. The birth certificate will carry the names of the intended parents and the child legally belongs to them. Single women as well as married couples can opt for gestational surrogacy. Although there is no concept of lesbian or gay marriages here but if such a couple picks up surrogacy, they are treated as a single parent.

**Surrogacy in United Kingdom**

The Surrogacy Arrangements Act 1985 makes commercial surrogacy arrangements, unlawful. Though paying for more than medical surrogacy expenses is not allowed but relationship status has recognition under Section 30 of the Human Fertilization and Embryology Act 1990. Despite of financial considerations, there is no legal force behind surrogacy arrangements. Even if the surrogate is not genetically related to the child, she has the legal right over the child. Till the time an adoption order comes, she can legally practice her parenthood.

**Surrogacy in United States**

Surrogacy and its related issues come under the state jurisdiction and laws regarding surrogacy differ largely in different states. While there is proper written legislation in some states, there are common simple laws in the others. There is facility of surrogacy contracts in some of the states while there are such states too that completely rule out any such enforcements. Commercial surrogacy is illegal in some states of US. There are some surrogacy-friendly states accept both
altruistic and commercial surrogacy and easily make it possible that the intended parents have legal rights over the child. However, there are some states that only permit this arrangement for married heterosexual couples. If seen in a broad sense, gestational surrogacy has more support in comparison to little no legal support for traditional surrogacy. Embryo research is not only included in one’s insurance cover in the US and is seen as a major drawback. It takes the cost of surrogacy package quite high and US citizens opt for India as their surrogacy destination. As far as legal matters are concerned, where the surrogate stays, where the contract has taken place and where the delivery of the child takes place, play an important part. This means that if intended parents live in a non-friendly state, they can pick a surrogate who lives in a surrogacy friendly state. Arkansas, California and Illinois come in the category of friendly states.

**Surrogacy in California**
California allows commercial surrogacy and implements gestational surrogacy contracts. The state helps the intended parents, not taking into account their sexual orientation or marital status, to gain legal child over the resulting, even before the delivery.

**Surrogacy in New York**
New York law does not permits commercial surrogacy because of public policies. There are penalties for the parties who enter into any such agreement. There are no legal enforcements or penalization behind altruistic arrangements. There are no pre-birth orders in New York, however, there is post-birth adoption substitute in the case of altruistic surrogacy through paternal or maternal filiation.

**CONCLUSION**
In keeping with the tradition of justice for all, the civil society and the legislators should form a legislation that is enacted with a focus on preventing the exploitation and ambiguity in the practice of surrogacy. The emergence of India as a hub for assisted reproductive technologies has proven beneficial for many childless couples; however we must ensure that the medical fraternity along with the surrogates and intended parents must be carefully looked after so as to avoid any problems to the family unit and especially to the children born out of surrogacy. The laws enacted must be
made in such a manner that the ultimate beneficiaries of the procedure must be the child, surrogate and intended parents and not the middlemen.

Foreign individuals desirous of having surrogate children in India should be allowed only after proper credentials and verifications are done through the specific agencies and embassies. A favorable and strict law must be enacted which should involve all parties or organizations involved such as doctors, social activists and surrogacy clinics.

Surrogate motherhood has come a long way in the history of Surrogacy. From rarely spoken of Traditional Surrogacy’s of centuries past, to family members acting as Surrogate carriers and Commercial Surrogacy of today, the road has been long, and many miracles and hardships have been faced along the way.