



GENESIS OF THE LATEST ASSISTED REPRODUCTIVE TECHNOLOGY: RENTED WOMB

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Abstract

*The overwhelming desire to have a Child is the product of a deep-seated, instinctive and evolutionary urge to perpetuate the species and pass on the genetic material to another. It is this archetypal desire, embedded in our collective unconscious, which often spurs Human Beings to have children at any cost, come what may. "It is this irrepressible drive that propels man to go to any extent to propagate his genes," says **Nirja Chawla, a Gynecologist**, adding, "**Motherhood is important for completion of self.**" To this biological drive add the socially conditioned expectations of the role and function of a woman and you know this is the reason why so many people flock to fertility clinics in the region. And it is a blatant exploitation of this desire to have Children that makes millionaires out of Gynecologists in the business who laughs all the way to the bank. Medicine has made some remarkable advances in the field of Reproductive Technology. The term Reproductive Technology refers to various medical procedures that are designed to alleviate infertility, or the inability of a couple to produce a child of their own. These include Artificial insemination, In-Vitro Fertilization or "Test-tube" Babies, and Surrogate Motherhood. When successful, these technologies are the miracle of life for couples who have often spent years trying to have a child, and who have exhausted all other avenues for conceiving a child of their own. My research Paper throws light on the Genesis of this neo reproductive technology known as Rented womb or Surrogacy.*

KeyWords : Rented Womb, Surrogacy, Assisted Reproductive Technology, Artificial Insemination, In-Vitro Fertilization



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Introduction

Surrogacy or **Surrogate** means **SUBSTITUTE**.¹ The word 'Surrogate' has its origin in Latin 'Surrogatus', past participle of 'Surrogare', meaning a Substitute, that is, a person appointed to act in the place of another.² In medical terminology, Surrogacy indicates an arrangement whereby a woman agrees to undergo the pregnancy, labor, and delivery for another individual

who either cannot or chooses not to. Thus, a Surrogate Mother is a woman who bears a child on behalf of another woman, either from her own egg or from the implantation in her womb of a fertilized egg from other woman.

Surrogacy is a reproductive technique that attempts to obtain pregnancy by means other than by intercourse. Surrogacy is a form of assisted reproduction and a “Surrogate Mother” is a woman who bears a child on behalf of other parents. In other words, Surrogacy refers to an arrangement whereby a woman agrees to become pregnant for the purposes of gestating and giving birth to a child for others to raise. She may be the child’s Genetic Mother or not, depending on the type of arrangement agreed to. In my words, when a woman is unable to carry a child, whether due to medical, genetic or social reasons, the couple or single woman or man may choose to find a Surrogate Mother who can carry the baby. *Thus we can say that Surrogacy is the act of a woman, altruistic by nature, to gestate a child for another individual or couple, with the intent to give said child back to his parents at birth. It’s as simple as that.* A Surrogate Mother volunteers to carry an unborn child that is not her own for another family. This can happen in one of the two ways.

- First, there is **Traditional Surrogacy** under which there are typical Surrogates, a woman that is artificially inseminated with a father’s sperm and reproduces with her own egg.
- Second, there is **Gestational Surrogacy** where the Surrogate Mother carries an embryo comprised of the egg of the biological (intended) mother and the sperm of the biological (intended) father. The Surrogate’s egg is not used.

To prevent any confusion about the terms used the definition of Surrogacy and the related concepts are as following:

A) Surrogacy

According to the **Black’s Law Dictionary**, Surrogacy³ means the process of carrying and delivering a child for another person. **The New Encyclopedia Britannica** defines ‘Surrogate Motherhood’ as the practice in which a woman bears a child for a couple unable to produce children in the usual way. **The Warnock** defines Surrogacy as the practice whereby one woman carries a child for another with the intention that the child should be handed over after birth.⁴

B) Surrogate Mother

The Surrogate Mother is the one who gestates the child. Surrogate Mother, as defined by the **Collins English Dictionary** is, “a Woman who bears a child on behalf of a couple unable to have a child, either by artificial insemination from the man or implantation of an embryo from the woman”⁵ **The Oxford Dictionary** defines Surrogate Mother as, “a Woman who bears a child on behalf of another woman, either from her own egg fertilized by the other woman's partner, or from the implantation in her womb of a fertilized egg from the other woman.”⁶ 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 woman, implanted in her to carry the pregnancy to viability and deliver the child to the couple/individual that had asked for Surrogacy.⁷

C) Genetic Mother

The Genetic Mother is the one who donates her ovum.

D) Commissioning Parents/ Intended Parents

The Commissioning Parents are the ones who receive the child from the Surrogate after the birth of the child.

E) Natural (Traditional/ Straight) Surrogacy

In Traditional Surrogacy the Surrogate is pregnant with her own biological child, but this child was conceived with the intention of relinquishing the child to be raised by others such as the biological father and possibly his spouse or partner and thus the child that results is genetically related to the Surrogate Mother. The child may be conceived via home Artificial Insemination using fresh or frozen sperm or impregnated via IUI (intrauterine insemination), or ICI (intracervical insemination), which is performed at a fertility clinic. Sperm from the male partner of the 'Commissioning Couple' may be used, or alternatively, sperm from a sperm donor can be used. Donor sperm will, for example, be used if the 'Commissioning Couple' are both females or where the child is commissioned by a single woman.

F) Gestational Surrogacy

In Gestational Surrogacy, a Surrogate is only a carrier/female host and is not genetically or biologically related to the child. The Surrogate is implanted with an embryo that is not her own, and becomes pregnant with a child to which she is not the biological mother. After birth, the Surrogate relinquishes the child to the biological mother and/or father to raise, or to the adoptive

parent in which case, the embryo would have been a donated embryo. The Surrogate Mother may be called a Gestational carrier.

G) Egg Donation

A woman agrees to donate her eggs for In-Vitro Fertilization by either the semen of the prospective father or a donor.

H) Altruistic Surrogacy

Altruistic Surrogacy is a situation where the Surrogate receives no financial reward for her pregnancy or the relinquishment of the child although usually all expenses related to the pregnancy and birth are paid by the intended parents such as medical expenses, maternity clothing, accommodation, diet and other related expenses.

I) Commercial Surrogacy

Commercial Surrogacy is a form of Surrogacy in which a gestational carrier is paid to carry a child to maturity in her womb and is usually resorted to by higher income infertile couples who can afford the cost involved or people who save or borrow in order to complete their dream of being parents.

This procedure is legal in several countries including India. *Commercial Surrogacy is also known as 'Wombs for Rent', Outsourced Pregnancies' or 'Baby Farms'.*

J) Embryo Donation

Most commonly, embryos are donated by a couple who had a successful pregnancy by using In-Vitro Fertilization and implantation of the fertilized eggs, (Frozen) embryos who were not implanted. Sometimes, this process is referred to as embryo adoption, although that term is a misnomer because there is no court adoption proceeding, the legalities between the donor parent and the receiving parent are handled by contract.

History Of Surrogacy

In every human beings life marriage is a turning point. In India it is even termed as rebirth of a person. It's the most dominating factor in everybody's life. Once a person attains the age of majority people start discussing about him/her. And finally a day comes when he/she gets married. With the lapse of time, the issue then diverts to a **"CHILD"**.

The desire of a child in particular male is very natural in the all early society and this was very boldly declared in India in *VEDAS*, and also by our ancient writers like *YAJNAVALKYA* and *MANU*, and to beget a son various methods were popular and practiced which our ancient laws permit. *AURASA* was said to be a legitimate child begotten by man with his own lawfully wedded wife. Other sons were, *KSHETRAJA* "Son by another man appointed by Husband." *GUDHAJA* "Son by another unknown man, brought forth by Wife secretly i.e. unknown Adultery." *KANINA* "Son secretly born by unmarried damsel in her Father's house." *PUTRIKA PUTRA* "Son of an appointed daughter who was given in the marriage to Bridegroom." *SAHODHAJA* "Son begotten when a man marries, either knowingly or unknowingly with a Pregnant Maiden." *POUNARBHAVA* "Son begotten by a man on a twice married Woman." *SONS BY ADOPTION* were *DATTAK* "Son of same caste given as a gift to a Man." *KRITA* "Son sold by its parent to a Man." *KRTRIMA* "Orphan Son being adopted." *SVAYAMDATTA* "Abandoned Son being adopted." *APDVIDDHA* "Deserted son being adopted."

Today this classification has become a history because of the augmenting rate of infertility. Now the first priority of any couple is to have their own child whether a girl or a boy. It is estimated that 15 percent of couples around the world are infertile. This implies that infertility is one of the most highly prevalent medical problems. The magnitude of the infertility problem also has enormous social implications. Besides the fact that every couple has the right to have a child, in India infertility widely carries with it a social stigma. In the Indian social context specially, children are also a kind of old age insurance.⁸ Therefore, every childless couple looks for Assisted Reproductive Technologies (ARTs), a group of technologies that assist in conception or in the carrying of pregnancy to term. Within this, Surrogacy, particularly Commercial Surrogacy, the practice of gestating a child for another couple or for an individual through the use of ARTs and in return for remuneration, has drawn much attention; as it gives the infertile couples hope to have their own biological child.

Surrogacy is quite well accepted in developed nations like U.S.A., U.K. etc. And it is estimated that in the United States the payment for a Surrogate Mother ranges between US \$ 60,000 & \$ 80,000. But in third world nations and developing nations though it's being adopted by many couples but still a social stigma is attached to it, so an open acceptance of it is heard once in a blue moon. But now, the Surrogacy scenario is changing at an alarming rate.

The world of Surrogate Pregnancy has gotten quite a bit of media attention recently. As Surrogate Motherhood becomes more and more popular, accepted, and common, we are seeing more and more stories about it. From Celebrity Surrogacy to Oprah, we find many stories about Surrogacy in the news. Celebrity Surrogacy is on the rise. Sarah Jessica Parker and Matthew Broderick, Kelsey Grammar, Dennis Quaid, and Ricky Martin have all become parents with the help of a Gestational Surrogate Mother.⁹ The trend in Hollywood right now seems to be babies. Hollywood actors and actresses-no matter their age, are becoming parents; many, parents of twins. A few Hollywood Celebrities are becoming parents through Surrogacy, and bringing recognition and acceptance to the infertility and Surrogacy communities. And this list is further ornated by the addition of two famous Bollywood Stars, **Sharukh Khan and Aamir Khan.**

In Addition to it two very popular Hindi Movies, *Chori Chori Chupke Chupke* and *Filhaal*,¹⁰ featured prominently about Surrogacy, were also released in the year 2001 & 2002 respectively.

In addition, the plot of the Marathi-language film “**Mala Aai Vhhaychy**” (“**I Want to Be a**



Mother”) especially revolves around Indian Surrogacy industry. Despite common misconception, Surrogacy is not a new or recent development. **Debora Spar** explains, “As a substitute means for producing children, Surrogacy is an ancient practice. Women across the globe have long used others to bear the children they could not conceive, relying on a combination of tradition, coercion, and

affection to create the desired result.”¹¹ **Jackson** makes the argument that Surrogacy has existed for hundreds, if not thousands of years, as evidenced by obvious Biblical references to the practice of Surrogacy. In her work, Jackson recounts a story from **THE BOOK OF GENESIS** in which Abraham’s wife Sara conscripts her maid, Hagar, to have a child with her husband. Jackson points to this as positive proof that Surrogacy does in fact have ancient roots.¹² These Surrogacy stories will fill us in on the most noteworthy accomplishments in Surrogate Motherhood. These “**Old-Fashioned**” Surrogate Motherhood instances were most likely rarely

if ever spoken about, and not documented. There have been unofficial Surrogacy's since the beginning of time.

The first documented case of Surrogate Pregnancy comes from the Bible. The story of Abraham and Sarah mentions that Sarah had experienced infertility, and asked her handmaiden, Hagar, to carry a child for her and Abraham. Of course, Hagar was their slave, so I'm not really certain how much actual "asking" there was.¹³ Jackson also references the story of Rachel, and Rachel's use of Bilbah to produce an heir for her husband Issac, as evidence both that Surrogacy existed and was practiced thousands of years before the advent of Assisted Reproductive Technologies. He does note, however, that the fact that these Biblical stories clearly involve the use of enslaved women in the childbearing process does somewhat complicate the argument that Surrogacy is a well-established practice and clearly limits the parallels that can be drawn from these Biblical references to Surrogacy.

However, Official Surrogacy's are only a few decades old. Modern Surrogate Pregnancy got its big start in the late 1970's. *The world's second and India's first IVF (in vitro fertilization) baby, Kanupriya alias Durga was born in Kolkata on October 3, 1978 about two months after the world's first IVF boy, Louise Joy Brown born in Great Britain on July 25, 1978. Since then the field of Assisted Reproductive Technology (ART) has developed rapidly.*

Now let's study the history of Surrogacy in chronological order:

1976 : KEANE BROKERS FIRST SURROGACY AGREEMENT

In 1976, lawyer Noel Keane of **Baby M** fame brokered the first legal agreement between a set of Intended Parents and a Traditional Surrogate Mother. The Surrogate Mother did not receive compensation for this. The idea of Surrogacy is still frowned upon by many, so at the time there was immense backlash towards Keane. Keane went on to create the Infertility Center, arranging hundreds of Surrogate Pregnancies per year. He was also involved in several high-profile cases and lawsuits over some of the arrangements made.

1978 : FIRST TEST TUBE BABY BORN

On July 25, 1978, Louise Joy Brown was the first test-tube baby born. While this was not a Surrogate Motherhood Arrangement, this historic event paved the way towards Gestational Surrogacy in the future. The procedure was carried out by Doctors Steptoe of Oldham General Hospital and Edwards of Cambridge University who had been actively working on this project

since 1966. **Lesley Brown**, Louise's Mother, became the first woman after more than 80 attempts that successfully passed the first few weeks of pregnancy.

Leslie Brown had blocked fallopian tubes, and after 9 years of trying, she and husband John Brown decided to try this highly experimental procedure. Dr's Steptoe and Edwards did something different with Lesley; instead of waiting 4-5 days to transfer the embryo, as they had done with previous attempts, they transferred it at just 2.5 days. It worked.

1980 : FIRST PAID TRADITIONAL SURROGACY ARRANGEMENT

In 1980, 37-year old Elizabeth Kane, a pseudonym, made the history of Surrogacy by giving birth as a Traditional Surrogate Mother to a son. She made history as the first documented Surrogacy Arrangement that was compensated. Ms. Kane received \$10,000 for the successful delivery of her baby. Kane was a good candidate for Traditional Surrogacy because in addition to her having children of her own, she had also, prior to her marriage, given a child up for adoption. None-the-less, Kane was completely unprepared for her feelings surrounding the birth of the Surrogate baby, and though she experienced no trouble dissolving her parental rights at birth, she came to regret her decision to become a Surrogate Mother. **Elizabeth Kane** became an advocate against Surrogacy, speaking out in the famous **Baby M** case. She chronicled her experiences in a book titled *Birth Mother*. In addition to the emotional difficulties she experienced, Kane's children experienced teasing and emotional distress, the family's social positions suffered, and her husband experienced difficulties in his career.

1983 : FIRST SUCCESSFUL PREGNANCY VIA EGG DONATION

In 1983, a menopausal woman at Monash University in Melbourne, Australia became the first mother to give birth to a baby using donated eggs. Though again, not a Surrogate Pregnancy, this remarkable event made Gestational Surrogacy possible.

1984 : FIRST GESTATIONAL SURROGACY

The first Gestational Surrogate Pregnancy took place in 1984, a monumental moment in the history of Surrogacy. The Surrogate carried the biological child of a woman who had had a hysterectomy, but had retained her ovaries.

1986 : BABY M CASE

In 1996, Mary Beth Whitehead gave birth to Melissa Stern as a Traditional Surrogate Mother. Upon the birth of her child, Mary Beth decided she wanted to keep the baby. What followed was a two year legal battle with Melissa's biological father, Bill Stern, and intended mother, Betsy Stern, over custody, which finally ended in the Sterns getting custody, and Mary Beth getting visitation. This highly publicized case prompted legislation concerning Surrogacy in New Jersey.

1988 : PATTY NOWAKOWSKI GETS CUSTODY OF SURROGATE TWINS

In 1988, Patty Nowakowski gave birth to boy/girl twins as a Traditional Surrogate Mother. Upon their birth, the Intended Parents told Patty that they did not want a boy, only a girl, so they left their newborn son with her in the hospital. Patty, who had entered into Surrogate Motherhood with no intention of ever having another child herself, was suddenly left with the prospect of raising an unexpected child. Patty and her husband eventually decided not only to raise her biological son, but also to seek custody of the twin daughter the intended parents chose as though they were picking a puppy from a litter. After a custody battle, they kept both children.

RECENTLY IN THE HISTORY OF SURROGACY

2001: OLDEST SURROGATE MOTHER

In 2001, a grandmother, became the world's oldest Surrogate Mother, giving birth to her own grandchild. That record has since been broken.

2005: SURROGATE MOM GIVES BIRTH TO QUINTUPLETS

On April 26, 2005, 54 years old Teresa Anderson delivered five boys as a Gestational Surrogate Mother to a couple she met online. The intended mother, Luisa Gonzalez, and her husband had battled infertility for over 10 years. When she found out she was carrying quintuplets, Teresa waived her \$15,000 compensation, feeling that the intended parents would need it more than she to raise their boys.

2007: OLDEST SURROGATE MOTHER TO TWINS

In August 2007, 58 year old Ann Stopler gave birth to her twin granddaughters. Her daughter, Caryn Chomsky, was unable to conceive due to cervical cancer.

2008: OLDEST SURROGATE MOTHER TO TRIPLETS

In 2008, 56 year old Jaci Dalenberg became the oldest woman ever to give birth to triplets. She acted as a Gestational Surrogate Mother for her daughter Kim, and delivered her own

grandchildren.

2008: OLDEST SURROGATE MOTHER IN JAPAN

The oldest Surrogate Mother in Japan gave birth to her own grandchild in 2008 at 61 years old. Her daughter had no uterus, but doctors were still able to use her eggs. Surrogacy is generally frowned upon in Japan, but this unusual case made headlines.

CONCLUSION

Surrogacy or Rented Womb is not a new concept: indeed, traditional Surrogacy Arrangements¹⁴ can be traced back to Biblical times.¹⁵ However, the booming global surrogacy “business” we see today appears to have evolved rapidly within the last decade or so.¹⁶ This can be attributed to a convergence of scientific, demographic, legal and social developments.

- First, scientific developments such as Artificial Insemination and In-Vitro Fertilization (“IVF”) have made Surrogacy a far more attractive possibility today.¹⁷ IVF, in particular, has enabled the genetic link between the Surrogate mother and the child to be severed, in some cases allowing the creation of a genetic tie between the Intending mother and child.¹⁸
- Secondly, with infertility¹⁹ affecting a growing number of people has resulted in the increased demand of Surrogacy.

Surrogacy has become a booming business now. Undoubtedly, Surrogacy is a ray of hope to millions of infertile Couples but at the same time it has a darker side. The abuse of Surrogacy can be disastrous and can ruin the Societal Structure of any country. It shall be checked that Surrogacy is only allowed under the strict umbrella of Legislation.

ENDNOTES

1 Surrogacy from a feminist perspective’ by Malini Karkal, published in Indian Journal of Medical Science (IJME), Oct.- Dec. 1997– 5(4), link; <http://www.Issuesinmedicalethics.org/054mi15.html>. Also in Nelson Hilde Lindemann, Nelson James Lindemann: Cutting motherhood in two : some suspicions concerning surrogacy. In: Holmes Helen Bequaert, Purdy Laura (Eds.): Feminist perspectives in medical ethics. New York: Hypatia Inc., 1992.

2 228 the Report of the 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

3 According to the Draft ART (Regulation) Bill and Rules - 2010,: “ ‘Surrogacy’ means 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 to carry it and hand over the child to the person or persons for whom she is acting as a surrogate.”

4 The Report of the Committee of Inquiry into Human Fertilization and Embryology or the Warnock Report (1984)

5 Collins English Dictionary – Complete and Unabridged © HarperCollins Publishers 1991, 1994, 1998, 2000, 2003, <http://www.thefreedictionary.com/surrogate+mother>

6 http://www.oxforddictionaries.com/view/entry/m_en_gb0832950#m_en_gb0832950

7 [http:// www.icmr.nic.in/guide/ART-Regulation-draft-bill1.pdf](http://www.icmr.nic.in/guide/ART-Regulation-draft-bill1.pdf)

8 See The Draft **THE ASSISTED REPRODUCTIVE TECHNOLOGIES (REGULATION) BILL - 2010**

9 See <http://store.yahoo.com>

10 *Chori Chori Chupke Chupke* is a story of a couple who hires a sex worker to undertake a surrogacy for them. The husband (Salman

Khan) impregnates the surrogate (Preity Zinta) who then refuses to give up the baby, but relinquishes the child towards the end.

Filhaal is a story of two friends, one of whom decides to become a surrogate (Sushmita Sen) for the other (Tabu). The pregnancy

leads to complications in their relationship and also in the relationship of their respective partners.

11 Spar, Debora L. 2005. “For Love and Money: The Political Economy of Commercial Surrogacy.” *Review of International Political*

Economy 12 (2): 287-309.

12 Jackson, Emily, “Surrogacy.” In *Regulating Reproduction: Law, Technology, and Autonomy*, pg 260-61, Portland, Oregon:

Hartland Publishing, 2001

13 THE BOOK OF GENESIS, CHAPTER 16

14 Hague conference on Private international law , “A preliminary report on the issue arising from international surrogacy arrangement”, Preliminary Doc. No.10 , march 2012 defines “ A surrogacy arrangement where the surrogate provides her own genetic material (egg) and thus the child born is genetically related to the surrogate. Such an arrangement may involve natural conception or artificial insemination procedures. This may be an altruistic or commercial arrangement.

15 E.g., Genesis (Chapter 30), in which Rachel, who is infertile, gives her servant to Jacob as a concubine to serve as a surrogate in order to procreate a child who will be socially viewed as the offspring of Rachel and Jacob.

16 See, e.g., the figures regarding the reproductive segment of India’s medical tourism industry : Hague conference on private international law, Prel. Doc. No 11 of March 2011

17 The first birth of a child conceived by IVF and embryo transfer occurred on 25 July 1978 in the United Kingdom. The first gestational surrogacy in the world occurred in 1984. Hague conference on Private international law , “A preliminary report on the issue arising from international surrogacy arrangement” , Preliminary Doc. No.10 , march 2012 defines “**A Gestational surrogacy arrangement** in which the surrogate does not provide her own genetic material and thus the child born is not genetically related to the surrogate. Such an arrangement will usually occur following IVF treatment. The gametes may come from both intending parents, one, or neither. This may be an altruistic or commercial arrangement .

18 This has made surrogacy a solution to infertility which may result in a child that is genetically related to *both* intending parents. Anecdotally, the majority of international surrogacy arrangements use IVF procedures and are therefore “gestational surrogacy arrangements”. However, IVF procedures may also (often) involve gamete donors.

19 See the definition of “infertility” given by the World Health Organisation (WHO): <http://www.who.int/topics/infertility/en/> (last consulted 16 March 2012). There appear to be no comprehensive global statistics but see, e.g., < <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2127rank.html> > (last consulted 16 March 2012) which reports that: “Global fertility rates are in general decline and this trend is most pronounced in industrialised countries, especially Western Europe [...]”. In some of these States, this is due to the fact that

women postpone childbearing due to career prospects and contraception. However, compare “Infecundity, infertility, and childlessness in developing countries. Demographic and Health Surveys (DHS). Comparative reports No. 9” by ORC Macro and WHO (2004), which used data from 47 surveys in developing countries to examine women’s inability to bear children and concluded that “infertility, whether primary or secondary, has declined in most [of these] countries” (available at <
http://www.who.int/reproductivehealth/publications/infertility/DHS_9/en/index.html >, last consulted 16 March 2012).