CHAPTER VIII

CONCLUSION AND RECOMMENDATIONS
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It is expected that 9% of the intended-couples internationally are impotent and cannot give birth to the child. Although it is problematic, complex, so are the women not able to conceive baby through natural process. Several people go for high-tech, low cost help from developing countries like India or relatively poor Eastern and European countries like Russia or Hungary. Long waiting periods has a shortage of donor eggs and donor sperms especially in the UK. There is few more places lack with the same necessity. On the prioritized way it is very costly and has poor experiences of surrogacy treatment. In India that leads the world in fertility and reproductively tourism for intended parents is expecting a very high-quality care. These are very low on the financial levels and are subordinated with great successful rate. It does need to cross the obstacles during the process. For the treatment of surrogacy the most important is the availability of the donor eggs, donor sperm and embryos. There is very easy availability of the same in India. the process of surrogacy can be undertaken by the interested lady through IVF. Here in the arrangement of the surrogacy, the woman carries the baby in her womb and after delivering hands over to the intended parents. This need is growing up with the time and legal as well as moral and ethical issues related to its practice also are growing. As per the medicine graffatized with wild and wild west’ which has been outputted by Arthur Caplan, the reknowned bioethicist, analyzing this people comments that the uncontrolled global nature of commercial surrogacy and traditional surrogacy, in addition the donor egg and the donor sperm is highly susceptible to unethical, abusive practices.

Assisted Reproductive Technologies (Regulation) Bill – 2010 has given importance to different things like surrogacy. This method is on the verge of regulating fertility and reproductive services with the initial attempts. Now with all this background there arises a question is there any practical need to celebrate with the materialistic and emotional gains growing by the fertility tourism? The answer is into more expectation by the surrogates, donors and intended parents. There is one more question referring to the basic needs conditionally about commercial market about ‘womb on rent’ and ‘pregnancy at an outsourced facility’. There are increasing needs for legal regulation, with certain and regular concerns that current engagements
may unfairly exploit surrogate mothers. In the recent past, India is at a statistical growth at the fertility tourism services. It is because of the commitments given by the ART clinics for care and the success. Assisted Reproductive Technologies (ARTs), suggestions are also given to surrogacy healing.

The modern technological group is helping in the fertilization of the embryo to a certain period to have propagated to be uncontrolled, becoming a absolute ‘fertility and reproductive industry’. This commercial industry basically dealing with the surrogacy has an importance at the economical growth because of the expansion in the medical services market and comparatively the medical tourism industry. Particularly in the incident of surrogacy, while gestating a surrogate child for the intended parents or even sometimes for an individual person taking support ARTs techniques. The other part of this surrogacy arrangement is the remuneration. This has attracted more people to the arrangement and is making them to concentrate heavilty through all kinds of issues available. Eventhough there is no any availability of the legalized way to control the surrogacy treatments but is fully monitored through the technical mechanism system for the ART industry in India.

Surrogacy industry and its heavy growth on the needed side and also on the economical side is totally analysed from the ready numbered figures with the estimated level for year crosses USD 450 million. National Commission for Women (NCW), there report mentions about successful workings of 3,000 clinics across India offering surrogacy services (Kannan 2009). Mostly the people from North America, Australia, Europe and some other nation visit India in search of the surrogates. When analysed the number of visitors to India then we find that the India is one of the most popular destination for commercial surrogacy. There are factors like non availability of operative rules and regulations, compartivley cheap at the cost, shorter waiting time (referes mostly to Canada, the United Kingdom and the US), very short waiting time, the close supervision over the surrogates with different methods, etc. have made the favorable and explanative situation for the growth of the surrogate industry. There is availability of towards easy access of confirmed lady willing for surrogate and the respective infrastructure with entire medical needs and are strong enough with the international standards. A surrogacy engagement specially including In-Vitro Fertilization (IVF), costs about $11,000 (approximately Rs 5,00,000) in India, while in the US, surrogacy alone, excluding ART charges nearly costs is
$15,000 (approximately Rs 6,75,000). A similar arrangement in the UK costs about £10,000 (approximately Rs 7,00,000).

When going through the Commercial Surrogacy and its market values, we find that an important effect is given on the number of the websites. The websites or the concern institutes deliver the detailed information designed in such way that it surely attracts the needy. Many of the developed websites on surrogacy creates special section for international couples. They do mention about the touring packages including some discounts and so called market deals for the services being provided as for the medical tour. This package does include with the boarding, lodging, and other facilities on the basis of local tourism. In addition it does have technologies alongside claiming for high success rates with ARTs and surrogacy engagements. ART clinics in India have signed up Memorandum of understanding with the foreign hospitals for seeking clients at the global level. In medical tourism services and technologies, the support and incentives as per international and national contracts like the General Agreement on Trade in Services (GATS) under the World Trade Organization (WTO) are arranged.

Commercial surrogacy has a portrayal of a win-win situation. This makes us understand the needs of the anxious and infertile parents, of course it is the child they are greedy in having and during commissioning not to have unhealthy and worthless surrogate arrangement. The growth in the commercial surrogacy trend at the global level is making available the local opportunities for employments. The lady ready to be surrogate is compensated with the handsome fund, the agents between the surrogate, intended parents and the clinics are given with the commission, etc. Sometimes the surrogate woman is ready for the terms that she might be poor, sufferings from more bankruptcy, powerless and vulnerable. This conditioned woman gets accessible opportunities for occupations. There is foundation of new market for the sexual and reproductive labour. Commercial surrogacy stands as a great opportunity for the domestic and international markets because of its gaining roots in many urban and semi-urban areas. Delhi-based resource group focused on women’s health conditions, has been engaging with ARTs for more than 8 years, elevating and focusing issues around gender and health rights, arising due to unchecked and real propagation of ARTs.

The different reports and the analysis through the different areas needs to organize the discussions and debates on ARTs within the matters of women’s health & rights, social justice
and also have lighted on the manner of proliferation of existing knowledge and analysis of ARTs and the reproductive tourism industry. Commercial surrogacy has initiaets with the assumption of the absolute increasing ratio towards proportional commercial surrogacy. This commercial part of the surrogacy is involved with many complexes with an inclusion of the ethical practice.

Research studies in support of the ARTs and the relative medical tourism for surrogacy state about unavailability of the facilities like scholarships and increments that examines the life of a surrogate. Also it helps in understanding and developing whether who is the surrogate? Where the surrogate does comes? What are her motivations and choices stated? Sometimes it is examined under the process of surrogacy whether she is an experienced person or not?

Drafted Bill – 2010 based on the ART had been prepared by the Indian Council of Medical Research (ICMR). This concentrate mainly on the requirements of parallel process of mobilizing a wider response to the commercial surrogacy and the other different types of surrogacy. This bill, if passes in the house of parliament, in India, probably would the first in South Asia. It is said that the drafted bill has not focused on the disadvantageous position to be faced by the surrogate mother.

At present the research study made for getting the sufficient information into those surrogate clinics. This is in order to make clear visibility and also to understand in better viewpoints, subjective experiences and finally the lives of the surrogate parties. The made study scrutinizes thoroughly the ongoing surrogacy practices. It also examines different complexities took place at the terms of the contract. There are number of clinics, celebrities commenting on their own expectations towards the situations regarding the surrogate pregnancy and the involved medical practices with innovative technological growth. Innovations in the medical terminology researches and the comparative modern technology in relation with the same make it possible to destabilize and provide the linear categories of biology and kinship. Going through all this we can have many definitions that depends on who specifically has the power to establish the legitimacy to the defined terms.

Commercial surrogacy and its relative practice, for its successful workings have to face various challenges against patriarchal institutions and their practices. With the similar timings there are few questions frequently aske and remains unanswered like what are the proper limits follow through the practice of surrogacy? How much is the limit mend for surrogate
arrangement? How are these limits conceptualized for the surrogacy? Who can be a surrogate mother? How she behave to be like? How the norms of being a surrogate mother are being followed? Is her identity markers in sync with the ties of kinship that the willing or intentional or biological parents want to visualize?

In recent years India has acquired the unique status of ‘surrogacy capital’, with media headlines using phrases such as ‘baby factory’, baby selling business, ‘outsourcing of the wombs’ and ‘womb is giving for rent’. With tremendous growing incidents of infertility in the West and the advances made in fertility treatments such as In-Vitro Fertilization (IVF), India is a popular destination for those turning to surrogacy to fulfill their dream of having their own child. One report claims perfectly that a leading Mumbai obstetrician delivers a surrogate baby every 48 hours. Surrogacy in India is estimated nearly to be a $445 million-a-year industry and looks set to grow even more.

There are many nations on the earth with versatility in its culture, operative sector and many other issues so they do have difference in the ideological views towards the surrogacy arrangements. Few nations have fully banned the commercial surrogacy and it is strictly under the control of some states in the developed nation like the US. Other developed nation the UK, where the surrogacy at the commercial level is totally illegal and against the legislation. Sometimes the concerns are taken at the crime legislation when involved in the commercial surrogacy. there is no any involvement of the compensation but the surrogate can claim for ‘reasonable expenses’ from the intended parents.

In India, the commercial surrogacy is legal with respect to the ICMR guidelines and so is no necessity of crossing the obstacles with hardness. The surrogates that are compensated with the finance for their surrogacy services in India when compared with the USA based structure then we find it at a very low price. This is in simple way help the poor woman with some funds to live their life happily and on the contrary it helps the infertile couple to enjoy the pleasures of parenthood. Many of the greedy and infertile couples from the western countries can afford the financial status involved with the proceedings of the surrogacy although they are very well aware of the involved compensation to be paid. Mainly the people from the professionals like doctors and lawyers approach towards the method of surrogacy. Commercial surrogacy, this type has an extra benefit for both of the parties involved at the end. The poor lady ready to carry the
surrogate child finds it as an opportunity in the financial terms because this helps them in many ways for their happy living life. Others point to an altruistic including dimension: in a country where childbirth is almost sacred, Indian surrogates may feel happy and relax to help infertile couples.

When there is any treatment related with the body physique then there is always a health risk. It is more while in the treatment of the fertility, pregnancy and childbirth. India on the recent times has a sound potential towards this health risk. There is availability of highly trained, qualified, experienced and well equipped doctors. Even we. The India do not unsatisfy anyone in terms of the medical facilities that provide good healthcare and processes for both the surrogate and the babychild born through surrogacy. Commercial surrogacy generates several different ethical matters in relation with the parentage, their nationality and situation terms like miscarriage or multiple births, etc.

We have already mentioned an important incident and is very famous even about the Baby Manji for the Japanese couple. In this case the intended parents got separated through the divorce and the mother was not ready to take the baby because of her no biological involvement but father was ready. The baby was given to the father after two years by the Supreme Court of India but by then the child born was given the Indian citizenship. The baby is also famous as the first surrogate orphan in India.

Commercial surrogacy has many ethical questions raised during the total process of pregnancy some of these find a successful answer but for some it remains totally unanswered. The dangerous condition while finding the solution prioritized mostly to the surrogate child. Because the basis question is What after his/her birth? Irrespective of the contract signed there are many obstacle routed in the procedural facts of the surrogacy treatment. If in case all the matters are brought on to the positive side of the surrogacy then the process will have a great operations towards the commercial views helpin all the there angles.

There is one more term that can be discussed with the surrogacy as the source i.e. reproductive labour. The market is today in heavy search of the same. We can compare it with the women’s monopoly into the business of the surrogacy industry. The situation of the market fully depends on the social and the economic aspect related with an individual surrogate, the commissioning parents and the ART clinics. We have a very critical view towards all situational
considerations towards the process of surrogacy and the related concerns. The process mostly focuses on the requirements starting with the commissioning parents and ending with the surrogate mothers. There is strong inclination made towards the ART clinics with the same needs and requirement demanded by both the parties. Sometimes the clinics do think over the method and the proceedings that can really be borne by both the parties especially by the surrogate because she has to bear the pain of carrying the child for the natural period of nine months. They do ask the surrogate whether to follow through the current form of surrogacy treatment or the one compatible with these surrogacy institutions and structures of power and position and the ways in which they challenge, or can help women challenge, these institutions and surrogacy structures.

The finance does have the major role to be played in the process of the surrogacy because mainly it is in support of the surrogate mother who is ready to be so only with the thought of being paid the handsome amount for the same. There few of the situation where, if before delivery it is the surrogate mother who has to find the solution or after delivery both-surgeon mother and the surrogate child has to find the solution. In such situation the fundings involved already into it might stand as one strong point as the solution (only after the contract signed by both parties. A surrogate mother should not enjoy any parental rights over the child, and the birth certificate of the surrogate baby should bear the names of intended parents as parents in order to avoid any legal complications.

The ART clinics are legally not allowed to market their concept through the advertisement. The clients should come in search of it especially via the facilities of ART Bank. The intended parents have legitimacy in binding themselves with acceptance of the custody of the baby child or children. This is mandatory irrespective of any of the physical or mental problems suffered by the child born through surrogacy. Confidential hidings of the concern surrogates on to one side and the intended parents on to the other mediated by either agents or the concern ART clinics must be compulsorily maintained. It is must for the foreigner or NRI who is directly looking for surrogacy treatments that they should sign a contract or an agreement with two point specifically mentioned like for the citizenship of the surrogated baby child, a written guarantee from the native nation’s government, and an appointed guardian from India, that will handle the responsibility of the care to be taken of surrogate mother write from the day one till she gets physically well after delivery, that too on the legal terms. Sex-selective
surrogacy should be strictly prohibited, and abortions should be governed only by the Medical Termination of Pregnancy Act 1971 under the supervision of expert doctors.

Conducting thorough testings on the basis of emotionality and psychological with background and credit checks on both side of the surrogate and the intended parents are few of the important factors in the treatment of surrogacy. There must be an involvement of the comprehensive health history check and total physical exam when approaching for the direct surrogates. Intended parents showing interest into the surrogacy must be cautious and careful enough when not in connection with any services of an agency because in such case even the surrogate mother will definitely demand for the reimbursement fee. It is at a very initial stage should be mentioned about no interest in the surrogacy treatment especially with the lady they are about to deal with or the surrogate should also say no to the intended parents she is about to deal with. The concern ART clinics should register all this values well before the treatment starts. Code of Practice available deals with all aspects of the surrogacy treatment provided and the research done at registered clinics. Concern staff with the procedural facts of the surrogacy must be sufficiently qualified. They should be well qualified with the knowledge of proper and the systematic use of the related equipments, then should know about how to keep & dispose off the genetic and biological wastes and other relative things. The registered clinics can be removed or suspended against if they do not succeed in implying and operating through the compulsory practice code meant for them. All the required facilities should be provided with the systems for controlling, monitoring and assessing practices and procedures also are required to be in place in order to optimize the outcome of ART.

Confidential level for hiding the information about clients and donors must strictly be followed. Well before the treatment of surrogacy starts the necessary information is to be given to both parties about each other. There should be proper permission taken from the concern authority needed for the same. No more than three embryos may be placed in a woman in any one cycle, regardless of the procedures used, excepting under exceptional circumstances, such as elderly women, poor implantation, or poor embryo quality which should be properly recorded. The highest possible standards in respect of their security, and their recording & identification, should be properly followed. There should be separate register maintained for every different surrogacy case by the clinics. In addition no any human embryo shall be transferred to the non-
human animal at the primary level. There should be proper appropement for the reports submitted are given by the Institutional Ethics Committee. All the made complaints must be properly taken under investigation. There must be proper channel for the complaints and its investigating process. All the ART clinics, under proper registration, must have the disciplined proceedings for proper acknowledgment and for investigation of the objections and finally, a nominative person who is dealing positively with this objection. Clinics should take the DNA fingerprints of the donor or child, couple or surrogate mother, if couple properly agrees. Clinics should keep all information about donors, recipients and couples confidential and secure all details about it. Clinics should also display the charges suitably or made known to the patient at the beginning of the treatment. Clinics should be ensuring that no technique is used on a patient for which demonstrated expertise does not exist with the clinic staff of the clinic.

Educating through knowledge sharing and Counseling to should be done Patients about the total treatment of the surrogacy. They should be informed about the all the information of basis, limitations and possible outcome of the treatment proposed for variations in its effectiveness over the time, including the success rates of surrogacy. Need to reduce the number of viable fetuses in order to ensure the survival of at least two and possible disruption of the patient's domestic life during the treatment. All the techniques involved, possible deterioration of gametes as well as embryos associated with storage capacity and possible pain and discomfort and total cost with the suitable break-up to the patient of the treatment proposed for the surrogacy, and of an alternative treatment as well as importance of informing the clinic with the result of the pregnancy in a pre-paid envelope. The Right of the child born through ART, to get or to seek information about his genetic parents or the surrogate mother that also including a copy of the DNA fingerprint, on reaching 18 years of the age.

There should be any ban on surrogacy and the use of ART by a single woman also who wishes to have a child, and no ART clinic may refuse to offer its surrogacy services. The ART clinic must not be a party to any paying surrogacy i.e. commercial element. A surrogate mother carrying a child emotionally, biologically unrelated to her must also register as a patient in her own private name. A third-party donor and a surrogate mother also must relinquish in writing all parental rights over child concerning the offspring and vice versa also. No ART surrogacy procedure shall be done without the spouse's consent. The provision or otherwise of AIH or ART
to an HIV-positive surrogate woman would be governed by the implications of the decision of the Supreme court special incident in the incident of X – vs. – Hospital 2 (1998) 8 Sec. 269 or any other relevant judgment of the Supreme Court, or law of the country, whichever is the latest. The accepted age for a definite sperm donor shall be stated between 21- 45 yrs and for the donor woman between the age 18-35 yrs. Sex selection at any stage after fertilization, or abortion of fetus of any particular sex should also not be absolutely permitted, except to avoid the risk. Collection of gametes from a proper dying person will only be permitted if widow wishes to have a child. Not more than 3 eggs or embryos should be placed in a womb of a woman during any one treatment cycle, regardless of the procedure used, excepting under exceptional circumstances such as elderly women above 37 years, poor implantation, more than three previous failures, advanced endometriosis, or poor given embryo quality which should be recorded.

Sperm donated by any relative or a known friend of the wife or the husband should not be permitted at all. It will be the responsibility of the ART clinic absolutely to obtain sperm from only appropriate banks neither the clinic nor the couple shall have the total right to know the donor identity and address also but both the clinic and the couple, however, shall have the right to have the fullest possible and information from the semen bank on the donor such as height, weight, skin colour, educational qualification, profession, family background, freedom from any known and Sevier diseases or carrier status, such as hepatitis B or AIDS has been given ethnic origin, and the DNA fingerprint (if possible) also, before accepting the donor semen. It will be the responsibility of the semen bank and the clinic to ensure that the couple does not come to know the identity of the sperm donor. The ART clinic will be authorized to appropriately charge the couple for the semen provided and the tests done on the donor semen. Same will be applicable for egg donation also. Trans-species fertilization involving gametes of two species is prohibited. Ova derived from fetuses cannot be used for IVF but may be used for research. Semen from two individuals must never be mixed before use, under any circumstance. The data of every accredited ART clinic must be accessible to an appropriate authority of the ICMR at the national level. The true informed consent should be made on the consent form, witnessed by a person who is in no way associated with the clinic.

The hospital should taken steps to ensure that the donor should be free of HIV and hepatitis B and C infections, hypertension, diabetes, sexually transmitted diseases, and
identifiable and common genetic disorders such as thalassemia. Semen or oocyte must be found to be normal according to WHO method manual for semen analysis. The blood group and the Rha status of the individual must be determined and placed on record. Sourcing of Sperm as well as egg Donors and Surrogate Mothers, Semen banks: Either an ART clinic or a law firm or any other suitable independent clinic. Institutions may set up a semen bank. The bank will ensure that all criteria mentioned above are met and a suitable record of all donors is kept for 10 years after which, or if the bank is wound up during this period, the records shall be transferred to an ICMR. On request for semen by an ART clinic, the bank will provide the clinic with a list of donors (without the name or the address but with a code number) giving all relevant details. The bank shall keep a record of all semen received, stored and supplied, and details of the use of the semen of each donor. This record will be liable to be reviewed by the accreditation authority. The bank must be run professionally and must have facilities for cryopreservation of semen, following internationally accepted protocols. Semen samples cry preserved for at least six months before first use must be tested for HIV and hepatitis B and C. The bank must ensure confidentiality in the identity of the semen donor. An appropriate charge may be levied by the bank for the storage. All semen banks will require accreditation.

Sourcing of eggs and surrogate mothers, law firms and semen banks will be encouraged to obtain through appropriate advertisement and maintain information on possible egg donors and surrogate mothers. The above institutions may appropriately be able to charge the couple for providing an egg or a surrogate mother. The oocyte donor may be fully compensated suitably (e.g. financially) by the law firm or semen bank when the oocyte is donated. Preservation, Utilization and also destruction of embryos, the Couples must give specific consent for storage and use of their embryos by other couples for research. The Human Fertilization & Embryology Act, UK (1990), allows a maximum 5-year storage period also which India would also follow for the same. Research on embryos shall be totally restricted to the first fourteen days. No commercial transaction will be allowed at all for the use of embryos for research. A child born through surrogacy must be adopted by the genetic i.e. biological parents unless they can establish through the DNA fingerprinting two of which the records will be maintained in the clinic that the child is theirs. Surrogacy by the assisted conception should be normally considered only for patients whom it would be physically emotionally or medically impossible to carry a baby to term.
Payments to surrogate mothers should also cover all genuine expenses associated with the concept pregnancy. Documentary evidence of the financial and monitory arrangement for surrogacy must be available. The ART centre should not be involved in this monetary aspect. Advertisements regarding all surrogacy engagements should not be made by the ART clinic. A surrogate mother should not be over than the 45 years of age. A relative, a known person, as well as a person unknown to the couple also may act as a surrogate mother for the couple. A prospective surrogate mother must be tested for HIV and shown to be negative for this virus just before the period of the embryo transfer. She must also provide a written certificate that she has not had a drug inject intravenously administered into her through a shared and total syringe, she has not undergone blood transfusion and finally she and her husband purchases to the best of her or his knowledge has had no extramarital relationship in the given last six months. The prospective and selected surrogate mother must also declare that she will not use drugs intravenously, and not undergo blood transfusion of blood, not obtained from a certified blood bank. A surrogate woman may act as a surrogate more than 3 times in her lifetime. It is injurious to her health. Minimum age for ART in a woman shall be the age of 20 years. Between 20 and 30 years, two years of cohabitation of marriage without the use of any contraceptive, excepting in incidents where the man is totally infertile or the woman cannot physiologically conceive. Advertisements through the hoardings and the paper advertisements shall be banned for surrogacy engagement. An honest display at the appropriate places or publicity of statistics, fee structure, quality of services for surrogacy provided, should be encouraged.

ART clinic may not be allowed to start operating unless it has totally obtained a registration for doing so. This registration would be duly confirmed only if the clinic obtains the accreditation of permanent registration from the Center or State's appropriate accreditation authority within two years of obtaining the temporary registration for the surrogacy. The registration must be renewed for every seven years. Existing ART clinics must obtain a temporary registration within six months of the prior notification of the accreditation authority, and permanent registration within the two years of the notification. Technique of ICSI has never undergone critical testing in animal models, but was introduced into the human situation directly. Defects in spermatogenesis and sperm production can be often traced to the genetic defects. Such individuals are normally and duly prevented from transmitting these surrogacy defects to their offspring because of their natural infertility. Human cloning for delivering replicas must be
banned on surrogacy. Stem cell cloning and research on embryos (less than 15 days old) needs to be encouraged. All the equipments/machines should be calibrated regularly.

A State Accreditation Authority will be set up by the State Governments through its Department of Health or Family Welfare to oversee all the policy matters relating to Accreditation, Supervision and Regulation of ART clinics in the States in accordance with the given National Guidelines. The State Government may also set up for Appropriate Authorities for implementation of the Guidelines for the whole or a part of the State having regard to the number of the ART Clinics and delegate powers to impose a prescribed fine or a penalty on the center or a clinic. In addition to the above, the Ministry of Health and Family Welfare, Government of India, will set up a National as well as International Advisory Committee which will advise the Central Government on policy matters relating to regulation of ART Clinics. Each ART clinic of Levels 1B, 2 and Level 3 must have its own Ethics Committee constituted according to ICMR Guidelines also comprising reputed ART Practitioners, scientists who are knowledgeable in the developmental biology or in Clinical embryology, a social scientist, a member of the judiciary and legislation a person who are well-versed in comparative theology. Drug companies must not also make exaggerated and definite claims for infertility drugs and market them only to qualified and special criteria to specialists. Infertility drugs must be sold only on prescription given by a qualified doctor or an ART specialist. Companies dealing with culture media do not give full and absolute details of the composition and they keep it as a just like trade secret. Such companies should be discouraged by ART centers. In a special incident of a divorce during the gestation period, if the offspring is of a donor program, be it sperm or ova, the law of the land as about a normal conception would apply, that the sperm of which land nationality should be given on that basis.

Some of the important Recommendations

There are a few ethical issues arising from the surrogacy engagements. It seems not to be ethical for someone to create a human life with the intention of improving it or relinquishing it. This appears to be the primary and prima facie concern for surrogate arrangements since the surrogate mother is providing important and germinal material only upon the assurance that someone else will take total responsibility for the child she do helps to create. The surrogate
mother provides her ovum with the deep and clear understanding that she has to avoid responsibility for the lifetime she creates and she has to dissociate herself from the child in exchange of some other benefit for such as money. In such a way, at the deepest level surrogate arrangements and adjustment cannot be viewed as ethical, because they involve a change in motive for giving birth for the sake of some other benefits like money. On the other hand, using a surrogacy service also, when the biological or intended mother cannot bear the child is no more morally objectionable than employing the others to help educate them train them or otherwise care for a child. The child can be harmed if the willing couple-parent couple is not fit parents. After all, a desire to substantial money to fulfill a dream to bear children cannot be a guarantee of good parenting. In addition, the intended parent may reject the surrogate child, but the same possibility exists with adoption or ordinary reproduction.

While opponents of surrogacy treatment would like to ban surrogacy treatment completely, some supporters would like in countries to declare surrogacy fully legal. Neutrals, which seem to have the upper and big hand, feel surrogacy is a controversial subject and also acknowledge that the present situation, in which laws are properly non-existent or poorly enforced, is unfavorable. Field in the year (1990) agrees with Posner and she is very articulate about it. She is also worried that if surrogacy was made illegal, surrogacy altogether would not disappear also, but instead surrogacy would be driven kept underground, which would cause more harm than good. Like Behm in the year (1999), Field in the year (1990) believes that surrogate mothers should always have the proper option to withdraw from the contract, up until they voluntarily give the baby to the intended or biological parents. During these years, fertility tourism has also increased in popularity. The reproductive segment of the Indian medical tourism market is valued at more than $450 million a year (Ramesh, 2006). These fertility tourists do not all come from the Western countries; India is also a popular and most wanted destination for medical tourists from Sri Lanka, Pakistan, Bangladesh, Thailand and Singapore etc. At the moment there are over 600 fertility clinics established in both rural and urban areas in almost all states of India especially in Gujarat. However, it appears that the state of Gujarat is particularly popular, especially among westerners. It is not only the efforts of India causing the increase in number of surrogacy births on the South Asian people. As previously stated, many countries around the world totally prohibit commercial surrogacy contracts and in other countries the enforcement of surrogacy contracts is importantly limited. Due to the restrictiveness of their own
countries, desperate couples cross borders into surrogacy friendly countries, like India, to engage in a surrogacy contract arrangement here so; to control over the commercial surrogacy engagement the cross-border surrogacy should be prohibited.

While commercial surrogacy is also developing in the other countries, another contributing factor to the rise in popularity of commercial surrogacy in India is that the patients find it easy to communicate with the English-speaking doctors. This also enables these doctors to promote surrogacy treatment in the press (Ramachandran, 2006). As a result, the press only runs glorifying and increasing success stories and fails to pay attention to all the given failed attempts. Clinics also sometimes use the media, particularly the Internet websites to deceive potential clients. Their websites often contain facts and fiction also, as part of the marketing strategy (Malay & Gibson, 2006) and it is not really uncommon for them to encourage biological couple to ignore the implemented and applied laws regarding surrogacy in their home country. The strongest incentive for foreigners to travel to India is most likely to be the relatively low costs involved in the process. The fees for surrogates are reported to range from nearly $2,500 to $7,000. The total costs can be anything the $10,000 and $35,000. This is a lot less than what intended parents or biological parents pay in the United States, where rates fluctuate between $59,000 and $80,000 dollars Sharma, 2008. On average, most Indian surrogate mothers are paid charges in basis of installments over a period of 9 months. If they are not able to conceive naturally they are often not paid at all and sometimes they must forfeit a portion of their fee if they miscarry. Surrogate Motherhood- Ethical or Commercial 24 Centre for Social Research (CSR) as an increasing number of childless couples from overseas come to India, legal experts express their notifications of reservations. Many foresee hurdles after the surrogate child is born because there is no proper law to control or regulate it. The real problem arises after the birth of the surrogate baby since foreigners are not able to get legal and judicial assistance when it comes to taking their child back to their own home country, which has caused problems in the past. There have also been problems with claiming to parenthood. In rare incidents the surrogate mother has totally refused to relinquish the child. In order to deal with these problems the ICMR guidelines have been duly designed the extracts of which have been cited below. However, these guidelines do not enjoy any legal validity.

The Indian scenario in this field is quite bleak. Delhi artificial insemination (Human) Act 1995 is the only and one statutory act prevailing in India. There is no internal law, regulations
and regulatory body like VLA in U.K; moreover Indian Infertility specialist has further opposed the steps towards regulation of practice in this field. Doctors should take care of the following things to avoid any litigation. Taking proper informed consent- After duly counseling the couple or oocytes or semen donor and informed and written as well as free consent should be taken from both the spouses as well as donor. They should be explained various kinds of risk factors including risks involve in ovarian hyper stimulation, anesthetic procedures in medically language, invasive procedures like laparoscopy, aspiration of ovum etc. in simple language using the words that they can understand well. They should be explained the possibility of multiple pregnancies at one time, ectopic gestation, increased rate of spontaneous abortion, premature birth of baby higher prenatal and infant mortality as well as growth related problems. Aborting the birth of a defective child- The donor's chromosomes must be thoroughly screened for possible genetic defect, and should also inform all the likely possibilities to intended couple and surrogate mother also, at the time of taking informed consent.

The child born by ART is considered to be legitimate with all the rights of parentage, support and inheritance which are the right of the surrogate child. Provided he is born during lawful wedlock and also with the consent of both the spouses. Sperm or oocyte donors shall have not at all parental rights or duties in relation to the child. A child can be given status of legitimacy i.e. legal child, also by adoption. With reference to the incident-Incident, on the wife's petition for demanding divorce and custody of the child, a question was duly raised before the court that whether the child, who is born to her consequent to AID, consented to by her husband, is legitimate and belongs to father also or mother only? Court held that a child so much conceived was not a child born in wedlock and therefore not the illegitimate. As such it was the child of biological mother alone and the husband had no rights or interest in the surrogate child, not even that of visitation. The husband is not the actual father of the surrogate child and, therefore the child is illegitimate. Properly registration of the name of the father – Since the child is illegitimate if born out of AID; it cannot inherit the property of his father. Any attempt to conceal this fact by registering the husband, as the father amounts to perjury. Take proper permission of the husband of the surrogate mother - If the permission of the husband of the surrogate mother is not taken then it could be ground for divorce and judicial separation also. Mere AI is not a ground for nullity of marriage and divorce since sterility is not a ground, however if AI is due to impotence of husband, it becomes the ground. AID without husbands
consent can be a ground for divorce and judicial separation. Maintenance and custody of child – Under Hindu Adoption and Maintenance Act 1956 the maintenance of the dependents and children is the responsibility of the parents, whether legitimate or illegitimate, till the son or daughter remains minor and daughter is unmarried. Insemination after the death of the husband – This is done when semen of the husband mostly is cryo-preserved by various methods and the women are inseminated after death of the husband. Such Posthumous child is said to be legitimate because the semen is of husband, although the complexity could arises since conception is not during the continuance of marriage.

Irresponsibility of the doctor could charge of Adultery: Surrogacy does not amount to adultery, even if it was done without the consent of husband. For adultery to be committed both parties should be physically present and engage in sexual act and sexual union involving some degree of penetration of the female organ by the male organ should take place. AI is not equivalent to sexual intercourse. Under section 497 of IPC 1860, sexual intercourse with a person who is or whom he knows or has reason to believe to be wife of the person without the consent or connivance of that man. For the charge of adultery two things mainly must be proved, sexual intercourse took place with the person's wife and no consent or connivance from another man was granted. Researches also permitted are those which are in public interest, but it fails to define the concept of “public interest”. It has redefined legitimacy of Indian Evidence Act 1872 that limits legitimacy of a child born to only within 280 days after dissolution of marriage in whatever way, by death or divorce also. The guidelines should ideally encourage the adoption and foster parenthood also and avoid statements such as, “Infertility, though not life bearing or threatening, causes intense mental agony and trauma that can only be best described by infertile couples themselves”. It should not accept the social stigma attached to infertility as a norm.

Guidelines should be given to broad and flexible in the commercial transfer of embryonic material and stem cells, etc. Agreement should be in written consent, but fails to make informed consent mandatory. There are no clear guidelines for the groups other than married couples, who want to bear surrogate child like, homosexuals, divorced or single. Recently CARA (Central adoption resource agency) has sought to ban on gay and lesbian couples from adopting the children’s, in its newly framed guidelines. As now section 377 have been made more liberal and decriminalized, this issue should now be raised over and hence accordingly the words “husband” and “wife” must be substituted by “male partner” and “female partner” in total process of
surrogacy. Offspring should not be allowed to know the donor even after 18 years also just like
the procedure in adopted children. Use of sperm or oocyte donated by a relative or a known
friend of couple should be also permitted, as these are the commonest and usual sources of donor
in IVF clinics all over the world today, and this will decrease the cost of surrogacy treatment.
Relative or a known person may act as a surrogate to discourage the procedure of commercial
surrogacy. The Doctors should discuss their charges with the patient and not display it
commonly to all people. Small space can be used for good results. The guidelines are more or
less like the one who followed in the UK, which should not be the incident considering
the Indian mindset and scenario. India is not at all matched with the mentality of the people like
in foreign countries. We should not follow laws like these countries because it does not match
with the mentality.

The moral, legal and ethical guidelines should be beyond technicalities and build
effective safeguards so that the unequal and unusual power relationship between the providers
and users of new technology is minimized. It is critical to envision and make future trends and
lay down an ethical framework for biomedical research, especially in the new frontier of human
reproduction and fertility that could change the very face of humanity. Whatever shape this
guideline takes when it comes out of the parliament in the form of an act the doctors should
make it a practice to absorb certain precautions, so as to prevent various ethical social and legal
issues which may arise pre and post delivery such like- Should obtain signed request from the
wife & husband; Written informed consent from both and also from donor and his wife also.
Detail clinical records to be well preserved and matched. Details of donor should be kept secret
in AID. The Female attendant nurse should be also present at the time of total insemination
process. The agreement made with the egg donor is that if the child birth resulted; donor would
totally have the parental rights and obligation associated with child. It is advantageous to be well
informed of your human rights before deciding to become a surrogate. Therefore, seeking legal
counsel is a necessity. The lawyer will assist the surrogate in defining her right, prior to signing
any document showed by the intended couple. It is important for the surrogate to be
knowledgeable of her rights as well as the rights of the infertile couple also. Once the contract is
agreed upon and signed on a lot of the surrogate privacy is done away with. The infertile mother
is privileged to specific accompany the surrogate to her medical appointments and be present
when certain examinations are to be conducted.
In a situation or incident of a married surrogate the spouse is a necessary party and many states presume him to be the genetic father. If the spouse is not in full agreement a contested legal proceeding may ensue. Only the intended father should be known as the biological father of the child. Both the surrogate mother and the infertile couple should obtain legal council and legal aid before agreeing to and signing a surrogacy contract. It is in their best interest to know better how the law addresses certain aspects of surrogacy as it pertains to their particular interest. Disclosure of the surrogate relationship should be limited to open the identification of the child, so as to avoid unwarranted scrutiny. Many ethical issues have risen out of this unit. The students are highly opinionated. You can be the judge after analyzing some of the facts in it. I strongly recommend the resource intervention should be called as body shop, lawyer, psychologist, social work, etc. However, with the entry of the monitory financial arrangements in exchange of the surrogate child, surrogate motherhood has raised certain difficult ethical, philosophical, and social questions. Surrogacy engagements totally have made child a totally ‘saleable commodity’ and complications have arisen regarding the human rights of the surrogate mother, the child, and the commissioning and biological parents. As there is no legal and judicial provision to safeguard the interests of the related surrogate mother, the child, or the commissioning or intended parents in India, looking at such an issue from the commercial or business point of view has complicated the surrogacy matter further. Though the Assisted Reproductive Technology (ART) Regulation Bill, 2010 did bring the forth certain important related points for the legal framework to be based on, it has left out on many crucial and complicated issues relating to surrogacy engagements. The lack of research on surrogacy agreement also poses a problem for Government agencies when it comes to initiating the legal provisions and taking substantive action against those found guilty. A number of surrogacy related to questions remains unanswered, including is it legal to become surrogate mother in India or not? Will the child born to an Indian surrogate mother be a citizen of this country? Who arranges the birth certificate and passport required by the foreign couple at the time of immigration with their child? Whose name will appear on the birth certificate of the surrogate child? How will the willing couple-parents claim for parenthood? What happens if the surrogate mother changes her mind instantly and refuses to hand over the baby or blackmails for custody of the surrogate child? Who will take the all responsibility of the child if the willing couple-parents refuse to take the child? What would
happen if the child is born disabled and physically unavailable? What would happen if the sex of the child is not to the liking of the biological and willing couple-parents?

Many questions are to be analyzed thoroughly and in detail, before any policy related to surrogacy is designed and legal provisions are to be made. To address these issues relating to surrogacy, Centre for Social Research (CSR) conducted an exploratory and detail study on surrogacy in two metros with high prevalence especially in Delhi & Mumbai. The sample size for the study consisted of hundred of surrogate mothers and fifty willing couple-parent parents. The research team also interviewed to stakeholders of the relevant study such as shelter home supervisors, husbands of surrogate mothers, embryologists, cab drivers, hotel employees, agents, slum dwellers, builders and many other people. The recommendations drawn out from the present as well as present study on surrogacy are meant for the Central government, state government, National Commission for Women (NCW) and Indian Council of Medical Research (ICMR) and given also given certain guidelines.

**Government’s responsibility:**

Government should not be in favor of money-making of surrogacy, but, at the same time, there is a need for a concrete legal framework and legislation to monitor and regulate the existing surrogacy system. There should be legislation directly dealing with the subject of commercial surrogacy, involving all the three parties i.e. the surrogate mother, the willing couple-parents and the child. A clearly defined law needs to be drafted immediately and instant which will pronounce in detail the Indian government’s stand on surrogacy; so that discrete activity leading to exploitation of the surrogate mother can be stopped. Although bearing a child for the another couple may be a noble idea, but, then relinquishing it for procedure of adoption, adoption, not controlled by law may raise a number of confusions.

It has to be controlled in all ways whether paying the mother a fee for adoption beyond medical expenses is a crime, as explained in like in some countries or not. In incident it is recognized as a crime and one pays extra charges could be levied then it should prevent the adoption from being approved to ones. There should be substantial and legal regulation designed to protect the interests of the child. There should be an interpreter (other than doctor) for the communication between the surrogate mother and intended parents in order to convey the all
message from surrogate mother from time to time. When doctors speak on behalf of surrogate mothers there is no guarantee that their interests will be conveyed for without any misinterpretation and the bias. Typically, after the birth of the child the surrogate mother is left without any medical support. It is recommended that there should be a legal provision of intensive care and medical check-up of their reproductive organs during the 3 months of period after pregnancy. In incident of surrogate mother gives birth to twins she should be paid for double amount or at least 75% of the fixed price for the second child. The commissioning couple should try to establish a strong relationship of trust with the surrogate woman yet such a relationship create reciprocal rights and duties also and might create demands for an undesired and undeveloped relationship after the birth. The citizenship right of the surrogate baby is also one of the crucial importances. The Indian government needs to take a perfect stand in terms of conferring the surrogate baby for Indian citizenship as she or he is born in the womb of an especially Indian i.e. (the surrogate mother) and in India. The rights of the surrogate child should be protected and in incident of she or he is not taken by the willing couple-parent parents, then the child should be given Indian citizenship. To protect the human rights of the surrogate child is the duty of the Indian Government.

Health Insurance for both the surrogate mother and the surrogate child is essential to ensure a healthy life and tackle all the hurdles come between it. The government needs to monitor all the surrogacy clinics, which generally charge the arbitrary prices for all the surrogacy engagements. Rules and regulation would enable the government to ensure that the clinics charge a fair price. Proper Monitoring surrogate Committee should be established under the ART division of the specially Ministry of Health & Family Welfare (MOHFW) to control and regulate all the surrogacy engagements i.e. Ministry of Women & Child Development (MWCD). There is a really need of right-based and proper legal framework for the surrogate mothers, as the ICMR guidelines are not enough to tackle the problem of surrogacy. The surrogate mother should be provided with the photo copy of the contract as she is a party in the agreement or contract and her interests should be taken into account first. It often happens that the decision is taken by the intended parents as well as clinic, while surrogate mother does not have any of the any saying in this matter. There is a need of debate and urgent discussion of the stance that proper public policy and the law should take toward the surrogate mothering. Actually, there exists a wide range of choices from prohibition and regulation to active encouragement.
The Indian government should monitor the all surrogacy clinics, which generally charge arbitrary and unlimited prices for surrogacy engagements. Rules and regulations would enable the Indian government to ensure that the clinics charge fair prices. The contract signed between the willing couple-parents and the surrogate mother should mention something about insurance and emergency needs that the surrogate mother may require during the all period of pregnancy it has to mention something about her future after relinquishing the surrogate baby. The government should check properly and control the proliferation of more money-making of surrogacy. The government needs to monitor the procedure and admissions of surrogacy clinics, shelter homes and agencies for ensuring the rights of surrogate mothers, willing couple-parents and the child born through surrogacy engagements. The state government must look into poverty alleviation schemes to improve economic condition of the people in the area. Should plan programs to increase particularly in and around the areas or localities where surrogate mothers live.

The state government should encourage employment generation to give work to youths as well as schemes programs in those pockets where surrogate mothers live. There is an emerging need of right-based legal framework for the surrogate mothers, as the ICMR guidelines are not enough for control the emerging trend of surrogacy. Money-making and trading of surrogacy should be dissuaded. However, there should be proper monitoring of existing surrogacy system through concrete and proper legislation. It is crucially and partly important to maintain and monitor the anonymity of the surrogate mothers. The surrogate mother should have a copy of the contract signed by all parties involved in the surrogacy engagements including the total information of clinic also clinic or hospital and the infertility physician specially appointed for the surrogacy treatment. The surrogate mother should not undergo more than 3 trials, more than three in injurious to her health, and it has to be monitored properly by Government. officers. Both the intended couple or individual seeking surrogacy treatment through the use of assisted reproductive technology, and the surrogate mother, shall enter into a surrogacy agreement or contract which shall be legally enforceable. All relevant expenses of surrogacy including those related to insurance if available, of the surrogate related to a conceiving pregnancy and achieved in furtherance of assisted reproductive technology shall, during the total period of pregnancy and after delivery as per medical advice, and till the child is ready to be delivered as per given
medical advice, to the biological parent or parents, shall be borne by the intended couple or individual seeking surrogacy.

Notwithstanding anything contained in sub-section (2) of this section and subject to the surrogacy agreement or contract the surrogate mother may also receive monetary compensation from the intended couple or individual, as the incident may be, for agreeing to act as such surrogate mother. A surrogate mother shall relinquish and surrender all parental rights over the child. No woman less than twenty one years of age and over thirty five years of age shall be eligible to act as a surrogate mother under this act. She will use this technique as her earning purpose. Any woman seeking or agreeing to act as a surrogate mother shall be pre medically tested for such diseases, sexually transmitted or otherwise, as may be duly prescribed, and all other communicable and dangerous diseases which may endanger the health of the child also. They must declare this in writing that she has not received a blood transfusion or a blood product in the last six months. Individuals or biological couples may obtain the service of a surrogate through an ART bank, which may advertise to seek surrogacy treatment provided that no such advertisement shall contain any details relating to the particular caste, ethnic identity as well we or descent of any of the parties involved in such surrogacy engagement. No assisted reproductive technology clinic shall advertise or publish to seek surrogacy for its clients.

A surrogate mother must be in respect of all the relevant medical treatments or procedures in relation to the concerned child of the surrogacy, register at the hospital or such medical facility in her own name also, clearly declare herself for being a surrogate mother, and provide the name or names and addresses of the person or persons, as the incident may be, for whom she is acting as a surrogate, along with a copy of the birth certificate. If the first embryo transfer has permanently failed in a surrogate mother, she may, if she really wishes, decide to accept on mutually agreed all the financial terms, at most two or more successful embryo transfer for the same couple that had engaged her surrogacy services in the first instance. No surrogate mother shall undergo the embryo transfer more than three times for the same intended couple. The birth certificate issued in respect of surrogate baby born through surrogacy shall bear the name or names of individual or individuals who commissioned the surrogacy treatment as parents. The person or persons who have availed of the total services of a surrogate mother shall be legally bound to accept the custody of the child or children irrespective of any abnormality of the born child. The child or children may have, and the refusal to do so shall constitute an
offence under this Act. Subject to the provisions of this relevant Act, all information about the surrogate mother shall be kept confidential should not disclose to anybody for the maintenance of security and total information about the surrogacy shall not be disclosed to anyone other than the central database of the Department of Health Research, except by an special order of a court of competent jurisdiction. A surrogate mother shall not act as an oocyte donor for the couple or individual, as the incident may be, seeking looking only for surrogacy. No assisted reproductive technology clinic shall provide information donor surrogate mothers or about potential surrogate mothers to any person. Any assisted reproductive technology clinic acting in contravention of the any legal procedure shall be deemed to have committed an offence about surrogacy. In the particular event that the woman intending to be a surrogate is married, the consent of her spouse shall be required before she may act as such surrogate. A surrogate mother shall be given a certificate by the person or persons who have availed of her services, stating unambiguously that she has acted as a surrogate for them she should also have some evidences for the surrogacy with her.

A relative, a known person, as well as a person unknown to the couple may act as a surrogate mother for the couple or individual. In the incident of a relative acting as a surrogate mother the relative should finally absolutely belong to the same generation as the women desiring the surrogate mother. No maximum generation gap should be there between parents and surrogate mother. A foreigner or foreign couple not properly resident in India, or a non-resident Indian individual or couple, seeking or in fond of surrogacy in India shall appoint a local guardian who will be legally responsible for taking care of the surrogate procedure during and after the pregnancy also. Further, the party seeking the surrogacy must ensure and establish to the assisted reproductive technology clinic through proper documentation e.g. approve letter of their country, Government of India, letter from either the embassy of the Country in India or from the foreign ministry of the Country, clearly and unambiguously taking care of the following things,

(a) The country permits surrogacy, and

(b) The child born through surrogacy in India, will be permitted entry in the Country as a biological child of the commissioning couple or individual intending that the party would be able to take the child or children born through surrogacy, including where the embryo was a
consequence of embryo donation of an oocyte or sperm, outside of India to the country of the party’s origin as well as a residence as the incident may be. If the foreign party seeking surrogacy fails to take delivery of the surrogate child born to the surrogate mother commissioned by the foreign party, the local guardian shall be also legally obliged to take delivery of the child and be free to hand the child over to an adoption agency. If the commissioned party or their legal representative fails to claim the child within a certain period that period should be decide. A Study on Commercial Surrogacy engagement one month of the birth of the child. During the total transition period, the local guardian shall be responsible for the well-being and welfare of the child. In incident of adoption or the legal guardian having to bring up the surrogate child, the child will be given Indian citizenship. A couple or an individual shall not have the service of more than one surrogate at any given time. There child should be conceived by surrogate woman at a onetime only. A couple shall not have simultaneous transfer of embryos in the woman and in a surrogate at a one time. Any woman agreeing to act as a surrogate shall be duty-bound not to engage in any act that would harm the foetus during pregnancy and the child after the birth, until the time the child is handed over to the designated person or persons.

The intending parent or parents shall ensure that the surrogate mother and the child she deliver are properly or appropriately insured until the time the child is handed over to the intending parent or any other person as per the agreement and till the surrogate mother is free of all the relevant health complications arising out of surrogacy. India should make some legislative enactment for controlling money-making of surrogacy in India. Such legislation would safeguard the health of both the surrogate woman and the child. It would assist in the resolution of disputes, for example, if the surrogate mother later wants to keep the child, or the willing couple-parents refuse to pay the surrogate, or they don’t accept the child.

Legalizing commercial surrogacy with open and properly accessible information would give to all children born from surrogacy treatment similar rights to know their parentage and identity; and to be protected by law.

Surrogacy is not against the ethics but it is most important that, how society looks towards it. Most of person doesn’t know about surrogacy so the Campion or workshops should make for solving confusions about surrogacy.
Education of woman is important for knowing their rights. Surrogacy is a blessing of medical science to us, so we should use it carefully and the couples who are really in need of this treatment follow this.

India should form some strict laws for surrogacy, for giving protection to surrogate mother, surrogate child and biological couples. Human rights of three of parties should be protected in the total process of surrogacy.

This concept to help woman is a nice thing for woman but making money-making of it this concept is wrong and against the ethics. The woman make complete only after giving birth to child this concept is really attached with the emotional feelings, but the women who ignore it only because of figure consciousness that woman should not go for the treatment of surrogacy.

Our Government should make some improved planning’s for poor and underdeveloped women then they will not chose surrogacy for one of the way of earning. Our Government also make some good employment schemes for youths of India that they should not take help of their wives in this way as a earning source.

N.G.O. Non Governmental Organization should also take certain steps for protection of the woman and child. It is really surprising that nobody is coming forward in this matters. The reason is most of woman are from rural families and therefore they can’t fight for their justice.

There should be legislation directly on the subject of surrogacy engagement involving all the three parties i.e. the surrogate mother, the willing couple-parents and the child. There is a need of right-based legal framework for the surrogate mothers, as far as the ICMR guidelines are not enough.

A clearly defined law needs to be drafted immediately which will pronounce in detail the Indian government should take stand on surrogacy, so that discrete activity leading to exploitation of the surrogate mother can be stopped.

Although it is not a crime to bear a child for another, and then relinquish or give up it for adoption, it is not controlled by the law and may raise a most number of confusions.

It has to be controlled whether paying the mother a fee for adoption beyond medical expenses is a crime like in some countries India should also ban on the commercial surrogacy, as
well as cross border surrogacy. In incident it is recognized as crime and one pays extra charges then it should prevent the lengthy process adoption from being approved.

There should be a substantial regulation designed and make to protect the interests of the child legal recognition of termination and transfer of parenting rights. It is crucially important to maintain and monitor the anonymity or secrecy of the surrogate mothers.

The surrogate mother should not undergo more than 3 trials and it has to be monitored by keeping permanent and safe record. The surrogate mother should be provided by the copy of the contract as she is also a party in the agreement and her interests should be taken into account. It happens that very often decision is taken by the intended parents and biological parents and clinic, while surrogate mother does not have any say or statement in this matter.

Typically, after the birth of the child, the surrogate mother is left without any medical support; it is recommended that there should be a proper provision of intensive care and medical check-ups of their reproductive organs during the 3 months after pregnancy.

The commissioning couple should try to establish a relationship of trust and faith as well as interest with the surrogate, yet such a relationship creates reciprocal or mutual rights and duties and might create demands for an undesired relationship after the birth.

The citizenship right of the surrogate baby is also having crucial or critical importance. The Indian government needs to take a fix stand in terms of conferring the surrogate baby Indian citizenship as she or he is born in the womb of an Indian i.e. the surrogate mother and in India.

The rights of the surrogate child should be protected and in incident she or he is not taken by the willing couple-parents, then the child should be given Indian citizenship. Health Insurance for both the surrogate mother and the child is essential to ensure a healthy and happy life.

The government needs to monitor the surrogacy clinics, which generally charge arbitrary prices for surrogacy engagements. Regulations would enable the government to ensure that the clinics charge fair prices. Like some other countries there should be only one got hospital for giving these types of treatments.

The contract signed between the willing couple-parents and the surrogate mother should mention something about insurance and emergency needs that the surrogate mother may require during the pregnancy, because mostly in commercial surrogacy the economical condition of
woman is not that much satisfactory, it has to mention something about her future after relinquishing the baby.

In 2005, The Indian Council for Medical Research gave some guidelines to help regulate Assisted Reproductive Technology procedures. The Law Commission of India submitted the 228th report on Assisted Reproductive Technology and surrogacy procedures discussing the importance and need for surrogacy laws and also the steps taken to control surrogacy engagements.

Surrogacy engagement will be continue to be governed by a contract amongst parties, which will contain all the terms requiring the consent of surrogate mother to bear the child, agreement of her husband as well as other family members for the same, medical procedures of artificial insemination, reimbursement of all reasonable expenses for carrying child to the full term, willingness to hand over the child born to the intending parent or parents etc. But such an arrangement or agreement should not be for commercial purposes.

A surrogacy engagement should provide for the financial support for the surrogate child in the event of the death of the commissioning couple or individual before delivery of the child, or divorce committed between the intended parents and subsequent willingness of none to take delivery of the child.

A surrogacy contract should necessarily take care of life insurance cover for surrogate mother not only till the birth of the child but also after the delivery of the child.

One of the intended parents should be a donor as well, because the child should be attached with one of the party concerns with their parents, the bond of love and affection with a child primarily emanates from biological relationship only. Also, the chances of various kinds of child-abuse, which have been noticed in incidents of adoptions, will be reduced. In incident the intended parent is single, he or she should be a donor to be able to have a surrogate child. Otherwise, adoption is the way to have a child, which is resorted to if biological i.e. natural parents and adoptive parents are different.

Legislation itself should recognize a surrogate child to be the legitimate child of the intending parent or parents without there being any need for adoption or even declaration of guardian for the surrogacy.
The birth certificate of the surrogate child should contain the name(s) of the willing couple-parents only and not of the surrogate parents.

Right to privacy of donor as well as surrogate mother should be protected, if surrogate woman does not want to disclose her identity. Sex-selective surrogacy should be also prohibited.

The Clinic must not be involved in initiating, not work as an agent or making arrangements between genetic and host couples. The relationship between genetic couple and host must be carefully considered and avoid creating conflicting between family relationships.

Independent counseling and advices must be available to both genetic and host couples. The principal motive of a prospective and related host should always be to help an infertile couple, and not to make only monetary expenses.

A prospective host should have had at least one own child before becoming a surrogate. The commissioning couple in a surrogacy engagement should be married. The host should preferably be in a stable relationship which is good for the future of the surrogate child. If the host is single then she should be adequately and properly mentally supported.

**Role of each factor**

The surrogacy trend is tremendously increasing in India. Increasing more and more money-making in the India, increasing various issues also. The task is not so easy because of the legalization related of the commercial surrogacy. The each and every factor should take the initiatives to control the surrogacy in India.

Every coin has two sides. Just like that surrogacy also has some favorable points. Though the surrogacy having some positive points it focuses on the some negative points also. It also creates ethical, physical, psychological and social problems. The problem of surrogacy is socio-legal problem. The laws are made for society for the goodwill of the society. The issues are created from the behavior of the people. Every kind of surrogacy has its different aspects and issues. In traditional surrogacy, the emotional issues are there due to biological attachment with the child. Gestational surrogacy is comparably easy due to intend couple is the biological couple of the child so, except delivering the child to other women no other issues is there. In money-making of surrogacy it gives tremendous increase in the fertility tourism of India.
Legislation

In July 2013, at the 2nd International Family Law and Practice Conference 2013 held in the London Metropolitan University, Chandigarh-based Supreme Court advocates Anil Amphora and Ramjet Amphora both presented a joint paper on 'New Medical Visa Laws to Regulate Surrogacy'. In this research report they mentioned about recent and new instances of surrogate children from Germany, Japan and Israel born to an Indian surrogate and leaving upon court intervention is an alarm to the legislators to enact a strict surrogacy laws for monitoring law in India.

Bollywood actor Shahrukh Khan had unnecessarily conducted the crime by illegally testing the gender well before his surrogate baby was born. This had made the legal commities to have a serious look over the issue of commercial surrogacy.

Government of India is now very well ready to pass the Artificial Reproductive Technology (ART) Bill. After it passes shall be introduced very soon in the Cabinet for the debate at winter session. After considering the problems it would be natural to try to devise or make a proposed and proper solution which could also protect the parents and children who use in international surrogacy engagements.

Judiciary initiatives

While most of the industry is experts are of the opinion that bringing in a surrogacy law is a must, there some opposing factions as well. Speaking about the ART Bill and the need for a surrogacy law Dr Bash feels that “The Bill describes the procedure for accreditation and supervision of assisted reproductive technology clinics and banks implying that such services need to be ethical.

A law will also ensure that medical, social as well as legal rights of all concerned are protected with maximum benefit to infertile couples or individuals within the recognized legal framework of ethics and good medical practices. The Bill will also specifically ensure the establishment of a national and international advisory board which will maintain a national registry of ART clinics and banks also.
State boards and registration authorities always fix their responsibilities and duties also. It will prescribe rights and duties of patients, donors, surrogates and surrogate children as well as prescribe the procedure for registration of complaints. The different speedy trials should be making for solving the complaints of surrogacy treatment. It also seeks to regulate research on embryos, gametes and other human reproductive material and will regulate sourcing and handling with that record-keeping for gametes, embryos and the surrogate mother. Explaining the reason behind this statement that, the rationale behind this is to ensure that the child conceived from such an arrangement should be protected, brought up in a stable and strict situation and is not big and abandoned later on in life. One has to be very careful of this legal interpretation because it would be socially and specifically contrary to consider such relationships to be unstable also.

However, certain propositions made by the Directorate General of Health Services (DGHS) such as restricting certain foreign couples, same sex couples, gay couples and single parents for seeking surrogacy in India has perturbed some industry experts. They feel that these propositions are irrational and could hamper the growth of the commercial surrogacy sector in India.

India has done much to promote itself as a professional but not in proper sector, safe and proficient destination for people who have many infertility issues and want to have a family. We have made to have a family possible for many who would also previously never be able to access this type of quality technology of medical care and treatment. Through our work we have created a regular demand for this service and hope for many infertile people across the world. Clearly other nations are keen to benefit from our work as the new demand and competition is coming into existence. India is the first choice for many, but if we are not being available to them then they will turn to other countries for taking treatment. The expresses Dr Shivaji Sachem Gourd, Gynecologist & IVF Specialist, Director, SCI healthcare. Restricting same-sex couples from taking or seeking surrogacy as an option to bear children is unfair.

Role of NGO’s

The Draft Bill should be balanced keeping in mind the interests of all the parties involved in the arrangement, which would also include: ART Bank, ART Clinic, Intended Couple(s),
Surrogate, Child or children born through the arrangement. In the current form, the Draft Bill seems to be skewed or tilted in favor of private providers and intended commissioning couple or couples. The Draft Bill in its current form does not make any legislative provision for the regulation of other players like the medical tourism agencies, surrogacy agencies as well as surrogacy law firms etc.

Though the Draft Bill of many N.G.O’s mentions about the ‘appropriate’ insurance of surrogate mother and the surrogate child by the intending parent and parents, it does not elaborate on the kind and extent of insurance that will be duly provided, particularly in the context of post delivery and follow-up care and expenses. Considering the health risks that surrogacy entails, there also needs to incorporate all the provision of the compensation to the surrogate and her family in the extreme incidents of severe and most health complications and death. Some of the recent instances have been highlighted the necessity of such provisions. Health risks in the surrogacy engagements and adjustments cannot be neglected and the health rights of the surrogate compromised during the entire process.

A balanced and equitable mode of payment to the surrogate needs to be perfect and stipulated in the given Draft Bill. The present Draft is exceedingly imbalanced as well as unfavorable towards the surrogate. In addition to increasing the number of the installments as both the parties allows the maximum payment of 75 per cent is to be paid as the last installment in completely contrast to the previous draft also.

Independent and long-term counseling should be mandated and compulsory for the surrogate and the intended parents. As of now, counseling remains finally one-time information giving surrogacy process completely dependent on the discretion and the judgment of the clinic. Further, there needs to be a clear demarcation or separation between the mandatory information that should be provided and counseling before adopting surrogacy procedure. As such, counseling as a process has to be a comprehensive or complete balancing the needs and well being of all the parties totally involved in the arrangement.

Considering the vulnerable and important position the surrogate always occupies and the absence of any kind of legal and judicial assistance, provision of a state sponsored legal and judicial council should be made mandatory in all arrangements of surrogacy. Such a step would
be useful in administration as well as preservation of the contract. This would also take care of any possible legal and judicial contests on behalf of the surrogate.

The surrogate does not allow being the egg donor, thereby eliminating the possibility of genetic and biological surrogacy, and only allowing gestational surrogacy, including the use of donor gametes. Such a provision closes any of the possible contesting should claim over the baby. This also means that less invasive and expensive procedure like Intra Uterine Insemination (IUI) cannot be used for the surrogacy engagements. The option of genetic and traditional surrogacy should also be weighed in all its pros and cons.

Comprehensive complete and stringent regulatory and related provisions towards protecting the rights and well being of the surrogate children born out of surrogacy engagements should be included also. Adequate follow up measures and implications especially in the context of trans-national surrogacy should ensure that no violations should take place.

The appointment of a local guardian in the incident of couple staying outside the country (Indian or otherwise) should be made. The provision makes the local guardian appointed by the intended couple should be responsible in incident the intended couple does not take the responsibility of the child. The local guardian has also been deeply entrusted with the responsibility of either bringing up the child or handing him or her to the proper adoption agency. Legislation should make clear provision with regard to the role of the local guardian to safeguard the well being of the child.

**Public participation**

The surrogacy is socio legal issue. The main concern of surrogacy is to solve all the problem of the childless couple. The main aim behind the surrogacy treatment is to give smile on the childless couples. The surrogacy is done through these three ways. The traditional and gestational surrogacy are well known, But beyond that the trend of commercial surrogacy is tremendously increasing and the bad luck is that our nation is becoming the higher qualified and having highest trade centre for surrogacy in all over the world. There are some issues arise from the surrogacy treatment. If people will take initiatives then only these issues would be in control.
Our Indian culture does not accept the unethical or antisocial thing. Surrogacy treatment should be understood by the people. The actual process does not consider the physical relationship between the surrogate mother and biological father. The surrogacy is the gift of medical science to us. The childless couple could enjoy the joy of parenthood through the way of surrogacy. The women should not make it a way of her earning. The surrogacy should be used by those people who are in really need of. No other should carry if without any physical disability.

The people who are in fashion industry, mostly women prefer this way of motherhood due to lack of time and figure caunciousness. In India these people in fashion industry makes very much impact on the common people, they always wanted to live like these people. The people in India make ideal to them. If they preferred this way of parenthood then it will change the basic concept of love and affection between mother and child in womb. It is very much inexpressible thing that what mother feels to having child in womb, and these nine months journey creates a close relationship between the mother and the child.

It is a fact that in India woman is exploited by her family members, parents, in laws, husband, children etc. The woman is considered as a thing and as human being. This thinking should be change nobody should force any woman for accepting surrogate motherhood as her profession. Every woman has her life to decide in what way she is going to live it.

If we look towards the availability of employment opportunities in India, the condition is very critical. Many men do not get any way for livelihood. These people force their wife or their woman family member to adopt this way of income. The woman do not have any option she choose this way only because to settle their married life. She looks toward the innocent, hungry faces of her own children and accept this to protect her children from the starvation.

In most of the foreign countries lots of test done of the child in womb. In India no any kind of the tests are done due to population and carelessness about the health of woman also. To taking care of baby properly the population should be in control.

Western tradition and culture making much effect on the Indians. We are losing our norms and values. Parenting control is also loosing and the result is youths are diverting toward the easy making money these people forcing women to adopt surrogacy to fulfill their basic needs. This is the one way of exploitation to the woman.
In commercial surrogacy the woman bears child only for the monetary purpose so, could she give the child ‘Garbh sanskar’, which effects on the baby in the womb, in natural pregnancy also sometimes woman get frustration of weight and uneasiness. This is the forced pregnancy so, it could affect on the emotional organ of the child. So, commercial surrogacy should be prohibited. Traditional and gestational surrogacy should be only permitted.

Definitely there is need of special legislative enactment for surrogacy laws in India. We should also follow the laws of different countries also. In some countries punishment has been prescribed for making commercial surrogacy engagements. So, punishment should prescribe for making these arrangements.

Cross border surrogacy should be prohibited within border surrogacy should be only permitted. At least, this step India will not become the tourism for surrogacy engagement. In India the most of the surrogacies are done for foreigners and they are buying the motherhood of our woman which will really affect on our next generation. What the values we are forwarding to our coming generation it will be difficult to control over them.

Future is at our hands, and now we can create the preferable future when it is certainly known that the higher the risk that subsequent illness will be serve severe and it is clear that there is relevant connection between body’s defense mechanism and the demands for change that the society imposes.

There is no other avenue but man has to explore himself-his goals-values-as much as he seeks the world to change their need be unending commitment to ensure that man will survive without falling into a state of worthless existence. “We need a faith which will assert the power of spirit over things and findings significance in a world in which science and organization seem to have lost their relationship to traditional values.”

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