Chapter – 2
(Different Types, Alternative Names, Various Uses, Mythological References and Response of Three Religious institutions)

2.1 Etymological meaning of the word ‘surrogacy’

The term ‘surrogacy’ (noun) comes from the Latin word ‘surrogāre’ (past participle of ‘surrogatus’) which means ‘in the place of’ or ‘to substitute,’ especially for a person in a specific role (1). Etymologically, surrogacy is a kind of substitute motherhood, an alternative form of motherhood. But, our study has observed that, apart from this high-tech form of alternative motherhood, we can also find distinct forms of substitute motherhood from Biblical ages. These alternative forms of motherhood, sometimes, adopt alternative methods of procreation which ultimately reshape our traditional belief, values or ideologies about parent-child relationship within a particular social framework. Our next query is: what are these alternative forms of motherhood and what purposes do these alternative forms of motherhood actually serve by replacing the age-old notion of motherhood?

2.2 Distinction between traditional notion of motherhood and alternative forms of motherhood

At first, in our study, we would like to clarify what is the traditional notion of motherhood and how does alternative form of motherhood differ from its traditional form? Traditionally, we believe that the notion of mother is a compound concept. The image of a mother is unificatory, which means, mother is one who is the genetic contributor, the gestator and, at the same time, the nurturer of the child. So, traditional notion of motherhood expresses a unique summation of genetic, gestational and social attributes. Any form of alternative motherhood basically fragments these unificatory attributes of motherhood into different, distinguishable parts for various reasons. Such fragmentation may occur in various shapes. For example, in case of ova donation, a woman who contributes her genetic materials in reproducing a child would not fulfill her responsibilities by gestating the fetus or nurturing the child. Thus, it becomes explicit, gestational and social attributes of motherhood are separated from its genetic contributor. As a
result, each attribute of motherhood could be separable from other composite parts.

Surrogacy is not a new practice. What is new, in present era, is its technological assistance. High-tech procedures like Artificial Insemination (AI), In-vitro-fertilization (IVF) Cryopreservation (freezing), Embryo Transfer (ET) and surrogate motherhood—provide unique opportunities to infertile as well as sub-fertile couples to procreate for their own. Starting from Biblical era, we find several references of surrogacy arrangements where women were employed as surrogate mothers. Intrafamilial surrogacy was a common, though in a hidden, covert fashion. In ancient times, surrogate motherhood had only one specific form, which is nowadays popularly known as ‘traditional’ or genetic surrogacy. Later on, an artificial tool was used for insemination, called ‘turkey buster.’ A woman, who acts as a surrogate mother, had been artificially inseminated by using utensil or needleless syringe. Except the form, no other form of surrogacy was possible till the mid twentieth century.

Now, the present modifications of surrogate motherhood with various technological assistances provide enormous opportunities to both infertile as well as sub-fertile couples to resolve the problem of childlessness. In ancient days, surrogacy was treated as a solution for female infertility. In this form of application, the commissioning or social mother of the child was no way related with her offspring genetically. Sub-fertile women were enforced to adopt traditional (genetic) surrogacy, because, there remained no other alternative for them to be genetically related with their children. ‘Gestational’ surrogacy, for the first time, provides unique opportunities for sub-fertile women to achieve genetic offspring. So, very prominently, we get two forms of surrogate motherhood: traditional and gestational. The traditional form of surrogacy has also modified with the help of technology. Let us, at first, discuss the various techno-assisted forms of surrogacy.

2.3 High-tech forms of surrogacy: Traditional and Gestational

Generally, in the process of reproduction, three agents play vital roles: ovum, sperm and uterus.
I. In *traditional* surrogacy, the ovum of the surrogate mother has been artificially inseminated by the sperm of the male partner of the commissioning couple with the help of a petri dish, through IVF. The fertilized ovum, then, implanted to the uterus of the surrogate mother to carry the fetus for full term of pregnancy. And, after giving birth to a child, she would surrender the resulting baby to the commissioning couple for adoption. Since, surrogate mother, in this case of traditional surrogacy, is also the genetic of the child, according to some thinkers, such as Peter Singer, this is *'partial'* surrogacy.

The couple who commissions a surrogate mother is popularly known as *‘commissioning parents’* or *‘intending parents’* of the child.

II. In *gestational* surrogacy, the fetus, carried by a surrogate mother, is not genetically related with her. The embryo produced by a commissioning couple is implanted to the uterine wall of the surrogate mother through IVF for full course of pregnancy. In this form of surrogacy, the surrogate mother *only gestates* the fetus. The commissioning parents are also the genetic parents of the child. This is known as *‘full’* surrogacy.

Therefore, this traditional-gestational classification of surrogacy mainly rests on the genetic contribution of the surrogate mother as well of the commissioning parents. The arrangements—prenatal contract, surrender of custody and parental claim, adoption—are same in both forms of surrogacy.

Now, from this classification, it becomes prominent that: (i) IVF is a novel technology through which procreation becomes asexual in nature, (ii) in both forms of surrogacy, excluding some extreme cases, commissioning father is genetically related with the offspring, (iii) a woman, genetically unrelated with the fetus who acts as surrogate, may contribute only her gestation and (iv) not only the commissioning father, even the commissioning mother may be the genetic parent of the resulting child.

2.4 Another Classification of Surrogacy: Commercial and Altruistic

These technological breakthroughs, asexual form of reproduction—gradually develop and popularize another form of surrogacy: Commercial and altruistic.
Women, who like to act as surrogate mothers, may provide her reproductive labor in exchange of money. Elizabeth Kane was the first recorded legal surrogate mother in United States of America in 1979. (2) The commercial application of this practice has two significant outcomes: (i) it actually reduces a woman’s reproductive labor to a kind of wage labor. And, (ii) like free open market situation, a class of people acts like broker, mediating two contracting parties. Sometimes, they are common people or lawyer, sometimes they work under a surrogacy agency. The Michigan Attorney Noel Keane, the self-proclaimed father of surrogate motherhood in USA, had arranged the first third party surrogacy (arrangement) in its commercial form in 1976 through his surrogacy agency (3).

In contrast to this commercial form of surrogacy, when a surrogate mother provides her reproductive labor not for pecuniary gain, but, out of ‘love’ or fulfills her altruistic motivation, it is known as ‘altruistic’ surrogacy. Traditional, Intrafamilial surrogacy, in most cases, falls in this category. Close relatives, friends, even nowadays, a grandmother also provides her womb to assist the birth-process of her grandchild out of altruistic motivations.

2.5 Different formulations of alternative motherhood

In different phases of civilization, we have seen different formulations of alternative, substitute motherhood, which, somehow, deform the traditional image of motherhood.

I would like to mention, at first, the oldest form of alternative motherhood: motherhood under slavery. In human civilization, slave mothers were the mothers who for the first time experienced fragmented motherhood. Children born through a slave-mother not only inherited slave status from their mothers, but, were treated as human resources of their slave masters. The slave-master would decide whether they would be sold in open market or kept for household labor. In this connection, I would like to mention two popular stories regarding surrogate motherhood in Bible.

2.6 Biblical references of surrogate motherhood

The Old Testament narrates two incidents of surrogacy (Genesis.16:1-6 and 30:1-13). (4) In the first story, Abraham and Sarah were childless couple. Sarah
intended to employ a surrogate mother. She invited Abraham to meet Hagar, a maidservant from Egypt, with an expectation that Hagar would produce a child on her behalf. (Gen.16:1-6). In Biblical era, the custom of having children through the assistance of a surrogate woman could also be found in the tale of another barren woman, called, Rachel. In this second story, (Genesis 30:1-13), Jacob had two wives, Rachel and Leah. Both remained childless for long time. They got sons of Jacob by employing their maids—Bilhah and Zilpah.

Our query is: whether Biblical references of surrogacy are in any way surrogacy at all? Our observation is: such Biblical references of surrogacy occurred under slavery. In any society, where slavery was practiced as a legalized institution, procreations of children were only used for the benefits of their masters. Like traditional surrogacy, slave mothers are the genetic, birth-mothers of their children. But, unlike present form of surrogacy, slave-mothers are neither pure volunteers nor paid service-providers. Surrogate mothers, or better called slave mothers, fulfilled the purpose of their masters in many ways apart from their pecuniary gains: firstly, surrogate or slave motherhood allowed an infertile female partner of their master to regularize her status as a mother of a child and secondly, it was believed that infertility is a virtual sign of divine disfavour. (Genesis 16:2) Thus, for obvious reasons, childless women would employ surrogate-slave mothers for discounting ‘divine disfavour.’

In ancient days, another form of fragmented motherhood is baby-selling, where birth mother sells her child in free, open market to the highest bidder. Our study would consider these two fragmented forms of motherhood in some details in chapter four. Here, we have just mentioned these two distorted, fragmented, but, substitute form of motherhood.

Adoption is more appropriate example of alternative motherhood. This practice has two broad forms: adoption within familial relationships and adoption from unknown parents or adoption of children from institutions like orphanage. In both types of adoption, adoptee parents would surrender their surplus, excess children to adoptive parents (sometimes in exchange of money, though such transaction is illegal). Now, we have already mentioned that surrogate motherhood ends with adoption. In both practices, the birth-mothers surrender the custody of their
children to others and relinquish the parental claims over the child. Is surrogatey equivalent to adoption? Our study thinks: No, for some significant reasons.

a) Unlike adoption, surrogateity is a prenatal contract,

b) Unlike surrogate, none of the adoptive parents is genetically related to the resulting child,

c) The objectives of these two practices are different. In adoption, we actually settle an unwanted child within a family structure. But, in surrogate, the situation is completely reverse. Surrogate motherhood is highly intentional arrangement, through which commissioning parents intend to begin a family with their most 'wanted' child.

So, at best, we can say that surrogate motherhood is not fully, but, partially akin to adoption.

Our study has observed that this practice of separating children from their mothers is deeply rooted in Western cultures. Actually, the practice of abandonment of children is affirmed in Christianity. In Christianity, there is a popular practice, called, 'oblation,' through which parents may donate their surplus children to Church. This practice is encouraged by the parents for two crucial reasons: firstly, their children would get better placement and secondly, parents feel the spiritual benefits of sacrifice.

In addition, Roman Catholic Church also granted resettlement of children left to Church by ashamed mothers only to prevent infanticides. Children of the poor were also assigned value by larger community through various forms of substitute care to protect them. In Roman times, abandoned children were taken by strangers, raised by alumni, a cross between a foster child and a favoured servant. (5) We feel that this long-existing Western tradition gradually developed different other forms of alternative motherhood only to secure proper arrangements of child-care, nurturance for unwanted, poor, destitute children within family frameworks.

In most cases, the unclaimed child, the orphan or children with disputed custodial problems—are all reared by foster mothers. In some cases, court or government had employed foster mother until the dispute is resolved.

Step-mother is also a form of alternative motherhood. There are however instances of deprivation of a stepchild by the stepmother when compared to her
own children. Yet, undisputedly, a step-mother also provides a substitute child care. On behalf of child's birth-mother, a step-mother is regarded as an alternative form of surrogate mothering.

Until the invention of pasteurization in 1880, in order to survive, a large number of new-born babies required breast milk. Mothers—with ill health, with insufficient breast milk, working women—often preferred to send their babies to breast-feeders. Breast-feeder is the birth-mother of her own child, but, with enough milk to suckle her own and also other's children too. They were paid for their services. In western countries, two terms, 'wet-nurse' and 'breast-feeder,' are very often used equivocally. But, our study thinks that the connotations of these two terms are not identical. A wet-nurse not only takes the physical care of a child, she also contributes huge labor, monitors the activities of the child with great care only to socialize the child through intimate contact with her nursling. A wet-nurse, thus, has been believed to play the social role of a mother on behalf of birth-mother. Wet-nursing was taken as a profession mostly by women from financially backward section. Valerie Fildes in her book 'Breasts, Bottles and Babies: A history of infant,' (6) has stated that in England around 1500, it became the fashion for wives of the aristocrat gentry and rich families to forgo the nursing for their own babies to wet-nurses.

Throughout our discussion, we have discussed different types of alternative motherhood. We notice that assistance in motherhood may be of two types: assistance in child-birth and assistance in child-rearing. Foster mother, step mother, wet-nurse or breast-feeders purely share the responsibilities of child-care, nurturance of children on behalf of birthmothers. So, substituted motherhood provides assistance in child-rearing, not in child-birth. But, in other forms of motherhood—Biblical surrogate, slave mother, birth-mother in baby-selling or adoption—all offer assistance in child-birth. Thus, any form of alternative motherhood, explicitly or implicitly, fragments the notion of motherhood into two prominent segments: birth-mother and social mother. But, fragmentation in motherhood through surrogacy, especially gestational surrogacy, provides a unique form of alternative motherhood. Gestational surrogacy, for the first time, divides biological motherhood into two significant parts: genetic and gestational. Before application of gestational surrogacy, no other alternative form of motherhood fragment biological motherhood in this way.
2.7 Mythological references of surrogacy

In different Hindu mythological scripts, we find several instances of Artificial Insemination by Donor (AID) and donation of sperm or embryo. But, what seems astonishing to us is: the references of gestational surrogacy. Not only that, in those mythological scripts, we find various references of novel applications of technologies which are ultramodern and high-tech. These mythological stories prove how authentic and rich our ancient culture was, how modern and progressive our scientific thinking was. Let us, consider a few of them.

I. Devaki, princess of Jadukul, got married to Basudev, son of King Surasen. At the time of their marriage, a divine revelation, addressing to Kansa, cousin of Devaki, was heard: You would be killed by the Eighth son of this newly wed couple. Hearing that oracle, Kansa sent them to the prison. Later on, he killed six newborn children of these couple. At the birth time of seventh child, before Kansa killed the baby the full-grown embryo of Devaki was transferred and implanted to the womb of ‘Rohini,’ another wife of Basudeb, with the help of māyā. The gatekeeper of the prison had reported to Kansa that Devaki aborted that full-grown fetus. The child born with the gestational help of Rohini is popularly known as ‘Balabhadra’ or ‘Balaram’ in Hindu scripts. In our traditional usage, the act of attraction is commonly known as ‘sankarshan.’ Since the fetus of Devaki was attracted by Basudev with the help of māyā and it was implanted in another woman’s womb, the child born by applying attraction or ‘sankarshan’ is known as ‘Sankarshan’ also. This story clearly shows the application of gestation surrogacy in a conventional way. The birth of Balaram, thus, fragments motherhood into two parts: Devaki as a birth mother and Rohini as gestational mother. We can find this story in Bramhabaibarta-Purāna, Sri Krishna-janma khanda, Chapter -7, Sutra - (30-37), (7).

We have already mentioned that there are several instances where modern technologies, like artificial insemination, donation of sperm (8) or embryo were applied to resolve the problem of childlessness due to sub-fertility or infertility of couples. We can also find numerous applications of surrogate fatherhood to resolve the problem of male infertility. In Hindu scripts, surrogate fatherhood is popularly known as ‘niyog.’ Some familiar applications of surrogate fatherhood: In Mahabharat, (18th. Chapter of Ādi-Parva, illustrated by Kali Prasanna Singha,
Published By Basumati) Vyasdev was employed as a surrogate father to produce khetraja sons like Dhritarastra and Pandu, though Vichitravirya was familiar as the social father of those children. Later on, Pandu employed ‘Dharma’ to produce ‘Yudhisthir,’ ‘Vāudev’ to produce ‘Bhim’ and ‘Indra’ to produce ‘Arjun’ on the womb of ‘Kunti’ and two ‘Ashwini Kumars’ to produce ‘Nakul’ and ‘Sahadev’ on ‘Mādri.’

Finally, we would like to refer some very unique birth-processes of alternative motherhood in these mythological scripts. Here are these stories:

II. In Hindu scripts, we can mention two popular versions of stories regarding the birth of Kartikeya, who is alternatively known as ‘Skanda.’

- ‘Swāhā,’ daughter of Rājā Daksha, loves ‘Agni.’ But Agni loves ‘Arundhuti,’ wife of Rishi Vasistha, and also six other women, known as Krittikā, the wives of six other Rishis. Swāhā, knowing the truth, took the shape of those six Krittikās in disguise, but, failed to do the same in case of Arundhati. Agni met Swāhā for six times, instead of six Krittikas, Swaha placed those fertilized eggs into a golden hole at Kailāsh. These six fertilized eggs in an assembled form gave the birth of a child who has six heads, twelve eyes and ears, but one neck and belly. The falling sperm is usually known as ‘skanna.’ So named the child, ‘Skanda.’ We can find this version of the story from Skandha Purān-Maheshwar Khanda, Kedar-27. (9)

- A group of deities (Devatās) prayed to Lord Shiva to reproduce a child who can defeat ‘Tarākā,’ a notorious demon. For this purpose, Shiva married ‘Pārvati.’ But after long times, no good news came. To know the reality, Devatas sent ‘Agni.’ He came to Shiva in a disguised look—a parrot, but Shiva recognized the disguised parrot and told Agni to carry the divine sperm for fruitful results. But, being unable to carry the sperm, Agni threw it to river Gangā, but she also did the same and threw it to ‘Saraban’ (cluster of reeds). With the help of this divine sperm, a very good-looking child was born, called ‘Kārtikeya.’ While traveling this ‘Saraban,’ few women found the boy, fed him with their breast milk and took him in their custody. Later on, Kartikeya was returned back and nurtured by Pārvati. This story can be found in Shiva Purāna, Jyansamhita, Sutra – 1-17. (10)
III. Vyāsdebe had offered a boon to newly wed ‘Gāndhāri,’ wife of Raja Dhritarāstra, to become the mother of hundred children. Within a reasonable time, she became pregnant, but no child took birth within two years. At the same time, Kunti, wife of Dhritarāstra’s younger brother ‘Pāndu,’ gave birth to a son. Being extremely disappointed, she tried to abort the fetus. But Vyāsdebe resisted. He prescribed Gāndhāri to place the iron-stiff fetus in a container (kumbha) full of cool water and then divided the entire fetus into hundred parts and placed each part into 100 containers which were full of pure clarified butter (ghee). After a year, Duryadhan and other ninety-nine children were born. (Mahābhārata, Adi Parva, Chapter- 115) (11)

Now, each case of child-birth reveals some new, unfamiliar assistance in child-birth. Each story provides some non-human, physical, inert objects which are utilized as substitutions of human womb. In these stories, the golden mountain (in Skanda Purān) or saraban (in Shiva Purān) or container full of clarified butter (Mahābhārata) play the role a non-human womb. In most of our Hindu scripts, the birth-process of a baby in an artificial womb, outside human body, is known as Pārthiv-genesis or ectogenesis. Unlike surrogacy, these birth-processes lack human gestation and involve child-birth outside women’s bodies.

Now, the question is: why do we consider this mode of procreation, referred to in different mythological stories, while discussing various kinds of alternative motherhood? The mode of procreation, discussed in Skandha Purān, Shiva Purān and Mahābhārata, is known as ‘Ectogenesis.’ The technique offers creation of human beings outside human bodies. It allows—fertilization, gestation and child-birth—outside woman’s womb. But, in ectogenesis, we need two human activities: genetic contribution and social nurturance, except artificial gestation. We discuss ectogenesis as a form of alternative motherhood for these human contributions. We would consider this issue in our study, in some details, later on.

2.8 Use of surrogates in scientific experiments

Harry Harlow, an eminent behavioral psychologist, for the first time, introduced surrogate application in scientific experiment. In his classical experiment, he used two distinct groups of new-born rhesus monkeys removed from birth mothers and used two sets of surrogate monkeys—terry-cloth mother and wire-mother—
replacing birth-mother monkeys for each group. For one group of monkeys, he used terry-cloth mothers with no food and a wire-mother with a bottle containing milk. But, for the second group, he applied reverse combinations of surrogates: a terry-cloth mother with a bottle containing milk, while the wire surrogate had no food. Harlow observed that baby monkeys clung to the terry-cloth surrogates irrespective of the fact whether or not they provided food, but, in case of wire-mother, young monkeys choose them only when they were provided food. He finally drew a conclusion on his experiment in his article, 'The nature of love,' Published in the Journal of ‘American Psychologist,’ Vol. 13, No. 12, pp. 673-85, December, 1958, © American Psychological Association, that contact-comfort is a variable of overwhelming importance in the development of affectional response, whereas lactation is a variable of negligible importance.

On this surrogate-use of wire mother, George Annas makes a comment. For him, Harlow’s identification of a surrogate mother with inanimate wire-mother is significant and ‘complete’ (12), because, in the present form of surrogacy, a woman who acts as a surrogate is so powerless, so defenseless that she can only be equated with a mere inanimate object. Surrogacy is no way motherhood. Thus, instead of motherhood, for Annas, we may better call the practice as ‘surrogate womb’ or ‘surrogate uterus’ only to keep a proper balance.

2.9 Various alternative names of surrogacy and their justifications

We have already seen that the word ‘surrogacy’ simply means ‘to substitute.’ Now, in surrogate motherhood, who substitutes whom? Genetic mother substitutes a gestational? Or, gestational substitutes a social mother? It is too peculiar to categorize a pregnant woman with her fertilized egg as a surrogate. How could a birth-mother of a child become a surrogate or substitute mother? In contrast, a woman who fulfils her responsibilities as a nurturer, is the mother of the child. Thus, the use of the term ‘motherhood’ would create great confusions in surrogacy. Moreover, in normal cases of child-birth, parents acquire parental rights and responsibilities through their genetic relationship with the resulting child. But through surrogacy, the biological bond between a mother and child has been overshadowed by the right of father. Surrogacy virtually superimposes the genetic bond between father and child, ignoring that same with mother. For these
reasons, some critics like Hilde Lindemann Nelson (13), like to use 'surrogate womb' or 'surrogate uterus' instead of 'surrogate motherhood.'

Sometimes, surrogacy has been recognized as 'the antithesis of mainstream fertility treatment.'(14) Hormone treatment, artificial insemination, in-vitro-fertilization, egg donation—with the help of these traditional procedures, we get a result: the synthesis of three concepts – conception, pregnancy and baby. But, in case of surrogacy, instead of giving birth to a baby, intending mother “borrows, employs, rents, purchases—the womb of another.”(14) Thus, the synthesis or rather co-relation mentioned above is somehow turned into something distorted. Thus, for few like Debora L. Spar, surrogacy is simply 'renting a womb' (for money) or 'womb leasing' where intending couples rent out mother’s womb distorting the traditional synthesis.

According to some commentators, a relationship created through a contract is a paradigm case of artificiality though a social bond has been developed in-between mother and child during pregnancy. Thus, according to these critics like Sara Ann Ketchum, surrogacy is better known as ‘Contract motherhood’ or ‘baby contract.’ According to her, ‘baby contract’ is a more general term covering paid adoption contracts as well as so called surrogacy arrangement. Selling Babies and Selling Bodies, by Sara Ann Ketchum, Published in: Hypatia, Vol. 4, No. 3, Ethics & Reproduction. (Autumn, 1989), pp. 116-127. But, we have observed that the term ‘Contract motherhood’ is also problematic, since the term ‘motherhood’ is problematic. The phrase ‘baby contract’ seems to emphasize only on the baby, the role of a woman, of a mother—are kept aside. For this reason, some utilitarians like Laura M. Purdy has chosen terms like ‘contract pregnancy’ to overcome the conceptual disputes about surrogacy.

Last but not the least, I like to refer a non-conventional, but extremely disgraceful use of surrogacy, which is often used as a slang reference—'turkey baster babies.'(15) In ancient times, traditional surrogacy had been done through artificial insemination. This technique is neither new nor complicated. The sperm of male partner of the commissioning parents is injected into a surrogate’s uterus, using a needleless syringe. Turkey Buster is also a technique used for artificial insemination using a utensil like apparatus. The use of the term ‘Turkey baster’ in
the context of surrogacy, refers to almost similar kind of procedure used for the purpose of artificial insemination, (16) but the inherent undertone of such expression is not very decent; it indicates the degraded status of both mother and her child.

In our study, we would like to frequently use any name, surrogacy or surrogate motherhood or surrogate contract, in spite of these controversial issues. The use of any alternative name does not signify any specific connotation at all.

2.10 Nature of surrogacy: is surrogacy a mere technology? A contract? Or an arrangement?

Our study has noticed that surrogate motherhood is a multidisciplinary issue. This means that different issues related to surrogacy have been discussed by professional and thinkers of various disciplines, like medical science, law and judiciary, moral philosophy, anthropology, psychology etc. But, each discipline has its own centre of attraction and scope of discussion. Each discipline discusses and resolves the controversies with diverse theoretical underpinning with a specific perspective. Let us, clarify the point. For any medical practitioner, clinician or technician, surrogacy is a mere technology and nothing else. They are mainly concerned with: how to employ technologies like artificial insemination, embryo transfer, implantation of the fetus in the uterine wall of the surrogate mother. They would also decide—who is medically fit to carry the fetus, when to conduct genetic tests like amniocentesis or genetic monitoring, when to abort fetus of inferior qualities and give proper advise for pregnancy, child-birth, pre and post natal care. All these concerns are fundamentally related to the technological benefits of surrogacy—from conception to child-birth.

But, from legal perspective, lawyers are not interested in mere technological applications. What would be the beneficial clauses of a surrogacy contract including restrictions of abortion, the amount and mode of payment of remuneration of a surrogate, consent for genetic tests and finally, consent of relinquishment and adoption of the resulting child—all these concerns are primarily related with prenatal issues. So, for a lawyer, surrogacy is a mere contractual agreement between two parties—commissioning couple and a surrogate mother.
The scope of a moral philosopher, in comparison with other two disciplines, is much more extensive. A moralist considers the risk-factors of this medical technology, as well as the moral justifications of different clauses of a surrogacy contract. Who is the real mother of a child? Genetic? Gestational? Or social? What are the moral significances of fragmented parenthood or enforceability of a surrogacy contract when a surrogate is unable to relinquish her child due to emotional bond?—all these concerns are deeply rooted in the moral assessment of technology as well as in the social consequences of the application of this modern technology. So, if one asks: is surrogacy a technology? Our reply is, no, it is more than a technology. Is it a mere contract? No, surrogacy is more than a contractual agreement. In our study, we would like to consider surrogacy, as an arrangement, as a practice, which incorporates some high-tech medical tools and devices with a well-framed contractual agreement in such a way that multidisciplinary issues may raise deeply-rooted controversies. Use of poor, coerced women, commodification of children, the best interest of children, psychological effects on a surrogate mother, effects on biological model of kinship and traditional family formation—these multifaceted issues could be properly handled under a wider connotation of surrogacy—arrangement. In our study, we think that surrogacy is a practice or an arrangement, more than a technology or contract, under which we can properly grasp its accurate connotation.

2.11 Three religious institutions: Christianity, Islam and Hinduism on surrogacy

And finally, I like to mention views of three major religious institutions on surrogate motherhood or procreation through third party intrusion. These three institutions are—Christianity, Hinduism and Islam. Any discussion on surrogacy would remain incomplete without referring to their attitudes towards life, family, marriage and procreation.

According to Christianity, God is the creator of life. Human lives are all sacred, because, they are created out of God’s image (Genesis 1:27). Each and every act of human life has been designed by God. Whatever is designed by God is sacred as well as natural. Thus, each conjugal act of married couple and also the process of human procreation—are natural and sacred since God has designed these acts
and processes. If we, human beings, impose any resistance on whatever is designed by god, then such imposition would not only be treated as artificial or unnatural, it is violation of God’s desire and failure of God’s design. Therefore, in Christianity, marriage, conception, pregnancy, childbirth, and parenthood—all are intimately connected with each other; one act could not be performed independently of other parts. These are the reasons why sex is reserved only for married couples and why they discard any reproductive technology which interferes the natural process of sexuality and procreation. Abortion, uses of contraception and birth-controlling pills—all these technologies, donation of sperm, ovum or embryo to assist reproduction—intrusions of third party in procreation are strictly prohibited in Christianity.

In our study, we mention Official doctrines of Christianity, mainly Catholic view on surrogacy. Catholic view on this issue has been properly expressed by two fundamental teachings of this school: *Humanae Vitae*, the encyclical letter by Pope Paul VI about artificial birth control in 1968 and the other document is *Donum Vitae*, the statement of Church entitled “Instruction on Respect for Human Life in Its Origin and on the Dignity of Procreation in 1987” on Vatican Congregation.

According to the first document (17), through marriage sex plays two significant roles—the unitive and the procreative role. Marital sex should be both physically and emotionally unifying and initiate the transmission of new life. If human beings truly are created in God’s image and likeness, then human love should imitate divine love. Therefore, human love should be both love-giving (unitive) and life-giving (procreative). The most prominent aspect of this teaching was: the intimate connection between unity and procreation was deemed to be inseparable, and required in each marriage. If it is wrong to separate procreation from unity with the use of artificial contraception, it is equally wrong to separate procreation from unity and have offspring apart from the sexual act of the married couple. So, for any Catholic Christian, there is no sex without child; and no child without sex. Thus, surrogacy can never be permissible in Catholic tradition.

In Donum Vitae (18), it has been acknowledged that surrogate motherhood actually denies the unity of marriage and the dignity of the procreation of the human person. Such arrangement represents an objective failure to meet the
obligations of maternal love, of conjugal fidelity and of responsible motherhood; it
offends the dignity and the right of the child to be conceived, carried in the womb,
brought into the world and brought up by his own parents; it sets up, to the
detriment of families, a division between the physical, psychological and moral
elements which constitute those families. “In surrogacy, a child is conceived
precisely in order to be abandoned to others and his or her best interests are the
last factors to be considered... There is great potential for psychological injury to
the child when he realizes that he was born, not of a loving relationship, but from a
cold, usually financial relationship.” (Surrogate Motherhood: Politics and privacy,
Edited By Larry Gostin, © 1990 American Society of Law & Medicine, pp. 140)

In Islam, the word ‘Rahim’ has two significant meanings. Firstly, the word refers
to Allah, the Most Compassionate or the divine attributes of Him. But, it is quite
interesting to note that the word ‘Rahim’ also denotes the womb of a woman. (19)
These two connotations of the word ‘Rahim’ have some religious underpinnings.
Since the manifestation of Allah's compassion to our mankind begins when he or
she is still in the dark recesses of mother's womb, so, mother's womb could be
equated with Allah as the medium of His expression.

In Quran, we find too much emphasis on the significance of the family unit. The
decisions of a man and a woman to marry and to have children are not only mutual
decisions, they all are rewards of God. God declares human beings as parents and
also recognizes their progeny. So, those who are kindred by mother's wombs are
described as the effects of ‘arham’ and they have possessed rights in book of God
in comparison to those products of ‘haram.’ Holy Quran supra note 1, at 90:3.
(Abdullah Yusuf Ali trans., 1982) (20) Thus, in Islam, woman's womb has been
attributed divine qualities, so, it should be one of the most sacred parts of human
body.

Like Quran, the rules of Shari’ah, also states that Allah instructs us to protect the
sanctity of human life. “... those who guard their chastity (i.e. private parts, from
illegal sexual acts) except from their wives or from their slaves, are free from any
type of culpability or guilt.” [al-Mu’minoon 23:5-6]. (21) And, “Whoever goes
against these holy verdict would be regarded as transgressors.” (al-Mu’minoon 23:
7) Allah, thus, forbids us to engage in any sexual activity, except one's wife and
his female slaves. This verdict, therefore, shows that the sexual relationship of a
man would be established only on the basis of his possession. It would be treated as ‘haram’ (or forbidden) to procreate a child by using a woman's ovum and womb fertilized by the sperm of a man other than her husband.

Thus, like Christianity, Islamic view also admits the significance of marriage and the union of procreation with marriage. Our study has noticed that we can put forward three justificatory grounds why in Islamic culture the application of surrogate motherhood is totally forbidden.

1. Woman’s womb is considered as one of the private parts of her body. Only the male partner of the couple is entitled to obtain proper access to this exclusive private region. No one else has any right to use it for an alien pregnancy. The woman who acts as a surrogate mother not only rents out her womb, she also allows stranger to use one of the most secret body-parts. Thus, surrogacy has been treated as a kind of haram. The practice violates the natural process of procreation designed by Allah.

2. Surrogacy permits the intrusion of third party within marital relationship. As a result, this practice may form identity crisis of the resulting child. In Islam, every child has a right to possess a definite parentage. Fragmented motherhood may produce a great confusion—who is the real mother of the child? Genetic or gestational?

3. Finally, the entire practice reduces to a dehumanizing form of labor. To treat human gestation as a commodity violates the dignity and honor of womb that Allah Almighty has bestowed on women.

Mufti Allie Haroun Sheik, in his book ‘Islamic Principles on Family Planning’ (pp 150-153) (22), has referred to some fatwa (Islamic verdict) regarding surrogacy articulated by some scholars of Islam. Some of them are as follows:

1. Unmarried women could be tempted to lease their wombs for financial benefits, which would, in turn, challenge the very institution of marriage and family life.

2. In order to reduce agony of childbirth, married women could be tempted to resort to this technique. Islam hates such actions.

3. Since pregnancy cannot be regarded as a burden, rather a blessing, a woman, who passes away whilst in the process of delivering, is given the status of a martyr.
**Hindu** believes that the atman is present in all forms of life and all life, therefore, is sacred. Most Hindu thinkers consider that the soul enters into a baby at the time of conception and till then, the baby is regarded as an individual.

In Hindu tradition, the institutions of marriage play a very crucial role in obtaining the sumum bonum of life. Dharma, Artha and Kāma – these ‘Trivarga’ could never be performed by a man except the assistance of his female partner (wife). Marriage serves or fulfills three kinds of purposes: i) **Dharma** (the performance of religious and righteous duties), ii) **Praja** (progeny) and iii) **Rati** (sexual pleasure) (23). Here, the role of ‘Dharma’ has been treated as the highest aim of marriage. Without ‘Dharma,’ marriage could never satisfy the sexual desires of mankind nor be beneficial to obtain progeny. Marriage enables a man to perform religious sacrifices to the God with the help of his wife. The second purpose of the marriage is to procreate a son, who would save men from hell. A son is called ‘Putra,’ because he protects his father from the hell called ‘Put.’ (24) In Hinduism, we find too much emphasis has been given on the birth of a son. A man would conquer the spiritual world and would obtain immortality and heaven by achieving a son.

Traditionally, an infertile couple might adopt a child from relatives with many children, and this practice is still common. Artificial forms of conception are allowed by many Hindu thinkers. Artificial insemination by husband (AIIH) is allowed, but not artificial insemination by donor (AID). Because, it is important for any Hindu to be able to determine the caste of the child through its male ancestry. Though surrogacy had been recognized as an alternative form of fertility in Hindu mythologies, the practice did not get any popularity before last century. Our study observes that there are few reasons behind such unpopularity. In Hindu society, female infertility never occupies an essential position. Because the male partner of a married couple could remarry for several times. Once a woman’s infertility was detected, there were two very common way-out. Since adoption is a convenient popular practice among Hindus from ancient period, infertile couples either could adopt a son or the male partner of the married couple remarry for maintaining kinship and for the formation of new family line. So, it was adoption, not surrogacy, which got its social acceptance. Like surrogate motherhood, surrogate fatherhood is also acknowledged in Hindu mythology.
We would conclude our discussion by seeking answers of two very fundamental questions. The first one is: how does the idea of surrogate motherhood come to our mind? Is the idea of surrogacy a mere imagination? Our study thinks that the idea of surrogate motherhood gets proper inspirations from some common, natural events. In nature, the process of fertilization in both plants and animals may be of two types: internal and external fertilization. All birds, reptiles, mammalians adapt internal fertilization, in which fertilization occurs inside the body of the female parent. But, in case of external fertilization, fertilization takes place outside the body of the female parent. Frog, fish, amphibians etc.—they all fertilize egg externally. For example, the female frog or fish lay a mass of eggs unto the stems of underwater plants. Male fish or frog while it swims in water would release sperms into the water over the eggs. Under right conditions, the sperms fertilize eggs. Now, this external form of fertilization gradually develops another form of procreation—asesexual reproduction, which is popularly known as 'parthenogenesis.' Parthenogenesis, in short, is development of embryo without fertilization by male partner. There are different types of parthenogenesis. In some form, embryo develops directly from an egg cell without fertilization, sometimes it needs mating, but the sperm does not provide any genetic contribution to the offspring. Our study thinks that these natural events of procreation actually generate the key inspiration of surrogate motherhood. Surrogate motherhood is partially inspired from external process of fertilization, partially from parthenogenesis. Surrogacy adopts external fertilization, but, it also needs the biological nurturance of womb or gestation. Like parthenogenesis, surrogate motherhood employs the gestation of woman’s womb till the birth of the resulting child, but, unlike it, surrogate motherhood gives opportunity to the male parent to be genetically related with the child.

And, our second and final query, in this chapter, is: how does the practice of surrogate motherhood come to an end? Technology is a social phenomenon. Like all other social phenomena, it rises, develops, changes, flourishes or languishes—even come to an end. Throughout human civilization, technological developments as well as their extinction take places in different shapes, in different phases of time. In our study, we have noticed that surrogate motherhood involves modern advanced applications of technologies. Our query is: at what point of time the applications of surrogate motherhood become redundant? Would there be any technology that could replace human gestation? In course of pregnancy, woman’s
womb performs three types of activities: conception, gestation and child-birth. Now, modern technology provides various opportunities to replace these human activities. Advanced technologies like in-vitro-fertilization offer an artificial environment (petri dish) for fertilization, conception and nurturance of the fetus only for few weeks. We are still waiting for a more advance technology which could provide an artificial environment of womb for the nurturance of the fetus until birth.

Aldous Huxley in his popular novel, 'Brave New World,' introduced a novel application of artificial womb and child-birth—Ectogenesis. The Greek word 'ecto' means outer and 'genesis' means creation. Thus, etymologically, ectogenesis means creation of mammalian life outside the womb or uterus. This novel form of artificial womb could nurture the fetus till its birth without a host. This non-human, artificial form of womb could perform the role of woman's womb during the whole period of pregnancy. Thus, technology like ectogenesis could replace human gestation. Unlike a petri dish, this artificial womb could develop a fetus until it is ready to breath on its own. We need application of surrogacy until ectogenesis emerges as a full-grown technology. The extinction of one technology waits for the emergence of another.

2.12 Notes and Refernces

8. The birth process of Agsata Muni, Anga, Hanuman (Paurānik Abhidhān, edited by Sudhir Chandra Sarkar, Published By by M this Sarkar & sons, Bengali year, 1392, pp. 4,8,18)
10. 'Shiva-Puran,' edited by Sri Panchanan Shastri, Published By Nababharat Publication, Edition – First, jīnāsasamhitā, pp 74-75.
22. Islamic Principles on Family Planning, by Mufti Allie Haroun Sheik, Published By Qasmi Publication.

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