

# Surrogacy and Health Issues

Dr. Jyotsna Jain

Assistant Professor, Department of Zoology, Kanoria P.G. Girl's College, Jaipur, 302004, Rajasthan, India

**Abstract:** Surrogacy refers to the carrying of a pregnancy and giving birth to a child for intended parents. It is an arrangement where the womb of a female is said to be rented for a couple who is unable to otherwise give birth to a child. Two main types of surrogacies are known, gestational and traditional. Surrogacy brings along many, apart from physical health, her physiological as well as psychological health is a matter of deep concern. Some women experience emotional distress, while some women might experience psychological reactions like depression or refusal when surrendering the child, grief, sorrow etc. The overall procedure of Surrogacy has been known to involve some risks and medical complications like Ovarian hyper-stimulation syndrome, Preterm labour, Gestational diabetes, Preeclampsia, Placental abruption, Intrauterine Growth Restriction (IUGR), Ectopic pregnancy and miscarriage. The side effects of fertility drugs given to conceive the embryo properly include mood swings, hot flushes, irritability and headache. Additionally, risk of transferring hepatitis and HIV can also not be denied. Some other common side effects which might occur include: Severe exhaustion, Nausea and vomiting, Heartburn, Indigestion, Weight gain, Dizziness, Acne, Swelling and pain in joints, Bleeding gums, Breast pain, Anaemia etc. Thus it becomes very important to develop best quality infrastructure and medical facilities for the surrogate mothers along with providing them a reasonable amount of physical, emotional and financial benefits.

**Keywords:** Surrogacy, gestational, physiological, psychological, disorders

## 1. Introduction

A new branch of medicine dealing in human reproduction is emerging worldwide. It can also be called "a post-industrial miracle" which has developed due to a rapid growth of high technologies, biochemistry, microsurgery and genetic engineering. Surrogacy is one such method of human reproduction which uses applications to new advances in Science and technology. **Surrogacy** refers to the carrying of a pregnancy and giving birth to a child for intended parents. It is an arrangement where the womb of a female is said to be rented for a couple who is unable to otherwise give birth to a child. It is generally intended when either pregnancy is medically not possible or when pregnancy risks present an unacceptable danger to the mother's health. Surrogate motherhood existed since early human civilizations. There are many examples in the history quoted in Code of Hammurabi, in the Bible's Old Testament, has also been witnessing examples of surrogate mother since vedic times which continued in the royal families of 17<sup>th</sup> and 18<sup>th</sup> century also. Nowadays its practice has brought about new technological and ethical elements along with manifold controversies. The first agreement for surrogacy in form of document by means of artificial insemination took place in 1976. In India surrogacy is legal and has come as a ray of hope for those parents who are not able to give birth to a child. If the surrogate mother receives money for this arrangement it is referred to as 'commercial surrogacy', while if she receives no compensation except reimbursement of medical and other expenses it is known as 'altruistic'. [1] The legality and costs of surrogacy may vary between various jurisdictions.

There are two main types of surrogacy:

- Gestational surrogacy / host / full surrogacy [2]
- Traditional surrogacy / partial / genetic / straight surrogacy. [3]

Gestational surrogacy was first reported in April 1986 [3], it is an expensive and complicated type of surrogacy, where the pregnancy results from the transfer of an embryo created

by in vitro fertilization /IVF, here the fertilised egg is transferred to the surrogate's womb and the whole process is carried out in a manner so that the resulting child remains genetically unrelated to the surrogate mother. Gestational surrogates are also referred to as gestational carriers [4].

Thus there are three stages of host surrogacy:

- Egg donation: The female donar undergoes various procedures through which eggs are extracted out from her body.
- Fertilisation: These eggs are then fertilised with the intended father's semen in the laboratory.
- Transfer: The fertilised egg is transferred into the womb of the surrogate mother

Traditional surrogacy is the simplest and less expensive type of surrogacy. The surrogate mother is impregnated by natural or artificial methods and the baby conceives using the surrogate's egg and therefore is genetically related to the surrogate mother. [5]

In India surrogate motherhood is not a new concept, it was practiced since ancient times in somewhat a rudimentary form. In Primitive society there were arrangements to have different kinds of children, like :

- (1) Kshetraja was referred as the child begotten on the wife by another,
- (2) Gudaja was the child born to the wife by secret intercourse with some other,
- (3) Nishada or Parasava was the child born by a Sudra Woman,

These children lawfully belonged to a Hindu father and the arrangement actually conveyed the idea of surrogacy. (i) Kritrima or the sons made and (ii) Krita or the son bought, were also recognized as lawfully belonging to a Hindu father, conveyed the then existing concept of surrogate motherhood. [6]

India's first gestational surrogacy was reported in 1994 in Chennai, then In 1997, a case in Chandigarh was found where a female agreed to carry a child for 50,000 rupees. In 1999, a villager in Gujarat served as a surrogate for a

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German couple[6]. In India, the estimated number of births through surrogacy has been found to be doubled between 2003 and 2006 and estimates range to 3,000 in the last decade.

The only reported judgment of the Supreme Court in surrogacy matters in Baby Manji Yamada (2008) took due notice that in cases of “commercial surrogacy”, an intended parent may be a single male, when it had the occasion to consider the petition of a Japanese grandmother wanting issuance of a travel document for her Japanese divorced son’s daughter.[7] In another matter decided by the Gujarat High Court in Jan Balaz (2009) the matter in appeal is still pending in the Supreme Court and the decision of the High Court holding, that babies born in India to gestational surrogates are Indian citizens entitled to Indian passports, has been stayed by the Supreme Court. However, twin German children born to the German couple were permitted to leave India upon directions of the Apex Court India is now becoming a popular destination for surrogacy and is one of a handful of countries that allow commercial surrogacy. Indian females are coming forward as surrogates. Our country offers cheap medical costs along with high success rates, which makes it an attractive option for couples from all over the world. [8]

## 2. Legal aspects of surrogacy

Laws on surrogacy differ from one country to another. Altruistic surrogacy, a type of surrogacy where the surrogate mother is either not paid, or paid for nominally is allowed in countries such as Belgium, United Kingdom, Denmark, Netherlands, Israel, U.S. (Kentucky, Nebraska, Maryland, Washington, Michigan), Utah, Virginia, Canada, and Australia.[9] Commercial surrogacy, where the surrogate paid to carry a couple’s child, is allowed in some countries as U.S. States (California, Arkansas, Massachusetts, Texas, Nevada), India, Russia, Ukraine, Mexico and Thailand. In Sweden, Japan and Saudi Arabia, surrogacy is illegal for Swedish fertility clinics to make surrogate arrangements, while in Georgia, surrogacy is legal but the surrogate mother does not have any parental rights over the child. Countries such as France, Germany, Italy, Spain and U.S. states like Arizona, Washington D.C., New York, New Jersey and Indiana prohibit all forms of surrogacy.[10]

Commercial surrogacy is legal in India. It became legalized according to the Indian Council for Medical Research Guidelines in 2002. These guidelines further got updated in 2005. In 2008, the Supreme Court issued a decision stating that commercial surrogacy is permitted in India, but along with an appropriate law that regulated it. The Supreme Court of India also gave the verdict that Surrogates will be the legal mother of the child they carry and in order to transfer their rights they will have to sign a parental order after they give birth, this will then transfer her rights to the intended parents.[11] In the same year the Lok Sabha enacted the Assisted Reproductive Technology Bill, but that still remains pending. Supreme court also declared that the surrogate mother will also have the right to keep the child even if she and the child are not genetically related. The child born through this process carries the citizenship of its surrogate mother. Currently surrogacy is being regulated and

followed by the Indian Council of Medical Research guidelines, 2005. The Assisted Reproductive Technologies (Regulation) Bill, 2013 was tabled in the parliament and was pending and after three years has finally been passed by cabinet and will be presented soon in the parliament.[12]

## 3. Ethical Considerations

Both the couple and the surrogate sign up terms on ethical considerations involved with surrogacy. It is still a matter of debate whether surrogacy is ethically correct or not as many people keep a view that surrogacy is a means to earn large sums of money. As there is no law that prohibits surrogate mothers to have a child in this manner, it is up to surrogate mother and the intended parents involved to carefully evaluate the situation and decide whether or not it is the way they want to have a child or not [13].

There are risks involved for both parties in a surrogacy contract, while the surrogate mother runs the risk of manifold complications during pregnancy and child birth that might have an ill effect on her health. The intended couple too runs the risk of pregnancy failure or an abnormal child.

### Physical and Physiological effects of surrogacy

There can be many health issues related with the surrogate mother. During pregnancy and child birth, the surrogate mother can undergo stress.[14] The overall procedure of Surrogacy has been known to involve some risks and medical complications like Ovarian hyper-stimulation syndrome, Preterm labour, Gestational diabetes, Preeclampsia, Placental abruption, Intrauterine Growth Restriction (IUGR), Ectopic pregnancy and miscarriage. The side effects of fertility drugs given to conceive the embryo properly include mood swings, hot flushes, irritability and headache. [15] Additionally, risk of transferring hepatitis and HIV can also not be denied. Some other common side effects which might occur include:

- Severe exhaustion,
- Nausea and vomiting,
- Heartburn,
- Indigestion,
- Weight gain,
- Dizziness,
- Acne,
- Swelling and pain in joints,
- Bleeding gums,
- Breast pain,
- Anaemia,
- Constipation,
- Bloating,
- Backaches,
- Difficulty in sleeping,
- Higher blood pressure,
- Hormonal mood changes,
- Stretch marks and loose skin,
- Abdominal and vaginal muscle weakness,
- Varicose veins,
- Pre-eclampsia,
- Placenta Previa,

- Gestational diabetes,
- Embolism,
- Cardiopulmonary arrest,
- Placental abruption,
- Molar pregnancy,
- Future infertility,
- Permanent disability, and
- Death(in severe cases)

### Psychological effects of surrogacy

Apart from physical health, her physiological as well as psychological health is a matter of deep concern. Some women experience emotional distress when participating as a surrogate mother which could be due to a lack of emotional support throughout the process, wholesome women might establish such a firm emotional bonding with the child and experience psychological reactions like depression or refusal when surrendering the child, grief, sorrow etc. [16] There is a risk of postpartum depression and psychological feeling of guilt or anger in these women. Many females undergo surrogacy due to economic problems but few of them do undergo the stress of handing over the child born to her. It is also possible for the rented mother to be rejected by society that may also pose negative effect on her psychological health not only on her but also on her family.[17]

### Here are few case studies which will throw light on the physical, physiological and psychological health effects

#### Case I:

##### Psychological effects

Surrogate who refused to give up baby to mum and stepdad: 'My bond with daughter is stronger'

- The 26-year-old Leanne of Wallsend, North Tyneside decided to keep baby Mollie, despite initially agreeing to be a surrogate for her own mum Judith.
- Leanne became pregnant by using Traditional method ie., a syringe of sperm provided by her stepdad, Judith's new husband Mark Roberts.
- But refused to hand over the baby due to an emotional bonding developed between her and the baby in the womb.
- Leanne is bringing up Mollie while distraught Judith and Mark, both 50, currently play no part in her life.
- Ref :23:05, 23 MAY 2014, UPDATED 17:33, 12 AUG 2014, BY MIRROR.CO.UK

#### Case II

##### Psychological effects

- The surrogate – an inner-city single mother raising her own two children on benefits – agreed to give the baby to a wealthy man and his wife who had contacted her via email.
- She believed they were the 'perfect couple' to raise a child and was paid £4,500 in expenses for her part of the deal
- But she refused to hand over the child and won the legal right to keep her baby.
- The surrogate when came to know that the intended parents did not shared a healthy relationship, she got depressed and refused to hand over the baby girl after her

birth, prompting an extraordinary six-month court battle as the couple attempted to force her to give them the child.

- <http://www.dailymail.co.uk/news/article-1356176/Surrogate-mother-wins-case-baby-giving-birth.html#ixzz4K0vkrckk>

#### Case III

##### Physiological and psychological effect Multiple pregnancy

##### Pregnant with triplets, surrogate mother refuses abortion against parents' demand

- **Melissa Cook** when she was 17 weeks pregnant went public about the pressure she was receiving to abort one of the three triplets she was carrying for a man.
- **Brittneyrose Torres** told the New York Post she is refusing the biological parents' demand that she abort one of the three babies – the female. The other babies are identical boys.
- According to The New York Post, Torres was to receive at least \$30,000 — \$25,000 for carrying one baby and \$5,000 extra for carrying two or more in her contract with the babies' parents.
- The biological parents are claiming that the contract includes a provision which allows them to tell Torres to abort, and they are withholding payments unless she does abort their daughter.
- Melissa suffered a lot of stress and went under depression.
- By Nancy Flanders | December 15, 2015 , 02:50pm

#### Case IV

##### Physical, Physiological and psychological effects

- **Andrea Ott-Dahl** agreed to serve as a surrogate mom to a Silicon Valley couple.
- Two months into Andrea's pregnancy in 2012, prenatal tests showed that the baby had Down syndrome, in addition to other complications.
- Doctors said that the unborn baby, nicknamed "Peanut," would most likely suffer from blindness, autism and a severe heart condition if she survived birth.
- The couple, who had contracted Andrea to be their surrogate, wanted her to abort the baby. So did Andrea's doctor, who said he could perform a termination the day Andrea had the ultrasound showing the baby had health complications.
- Andrea did not agree with them but suffered with lot of stress and high blood pressure and was diagnosed with gestational diabetes.
- Finally she fought a legal battle, delivered the baby and also refused to handover and is now raising the baby as a single mother.

Andrea chronicled her emotional journey about deciding to keep their now 2-year-old daughter, Delaney Skye, in an upcoming memoir, *Saving Delaney: From Surrogacy to Family*, out April 12.

BY K.C. BAKER, @kcbaker77777, 04/08/2016 AT 02:35 PM EDT

#### 4. Discussion and Conclusions

Surrogacy offer solutions to infertility. The health-care fertility services involve hi-tech reproductive techniques and huge amount of money. There are cases where even after a long procedure of fertility treatment there are no results.[18] On the same front there are many poor women who need to meet their financial requirements. If these females without any pressure or compulsion use the opportunity to earn by selling their own reproductive potential, then a lot of fertility and finances related issues can be solved. Over the past 10 years our country has seen a mushrooming of fertility clinics and has inspired the medical tourism, where surrogacy plays an important role in attracting couples from abroad. According to studies, Indian Institutions provide first world comforts and quality at the third world prices. Any issues and problems if at all are the result of unregulated profit earning private clinics with varying costs, standards and procedures. In India, surrogacy is purely a contract based on understanding between two parties and proper care has to be taken while drafting an agreement and few points should be taken into consideration as the intentions of the parents who opt for surrogacy, particulars of the surrogate, type of surrogacy involved, paternity issues, details of biological father of children in adoption cases, compensation clause, any unexpected mishappening to the surrogate mother, custody of the child, the jurisdiction for the disputes etc.[19][20]

We conclude that the government must seriously consider enacting a law to regulate surrogacy in India in order to protect and guide couples seeking such options. Without implementation of a legal framework the couples will invariably be misled and the surrogates exploited and it becomes very important to develop best quality infrastructure and medical facilities for the surrogate mothers along with providing them a reasonable amount of physical, emotional and financial benefits.

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