

SURROGACY ARRANGEMENTS: ISSUES AND CHALLENGES

* **Poonam Thapa**

LLM Student, University of Legal Studies,

Chandigarh University

Email: - Poonam.adv2019@gmail.com

Dr. Renu

Associate Professor, University of Legal Studies,

Chandigarh University

Abstract: - *Surrogacy is that method where the infertile couple appoints a surrogate mother to have own biological child. In the procedure of Surrogacy arrangements, it involves the genetic surrogacy arrangements where the intended mother is biologically related to the surrogate child and in the non-genetic surrogacy arrangements the surrogate mother does not biologically related to the child. In surrogacy agreements the Intending parents and surrogate mother make sure about the rights and duties towards each other. In such contracts the monetary consideration may be involved or not. If the monetary consideration is involved in such procedures it becomes commercial surrogacy agreement and if monetary consideration does not involve in such procedures then it becomes the altruistic surrogacy arrangements. Generally in such contract, the rights and duties of the parties are mentioned and even their duties towards the welfare of the child. Meanwhile the enforceability of surrogacy contracts is still a controversial matter. The object of this article is to study the Surrogacy Contract which raises many questions or issues like how to settle the disputes if arises between the surrogate mother and intended parents. As result, it affects the welfare of the child. India has Surrogacy (Regulation) Bill 2020. In the absence of enforceability of this bill, The Indian Contract Act 1872 applies in the surrogacy contracts and The Specific Relief Act 1963 deals with such situation where the specific performance can be awarded or cannot be awarded.*

Key words: - Surrogacy contract, competent parties, enforceability, exploitation of women, public policies and altruistic surrogacy.

➤ Introduction

The surrogacy contract raises many questions about the various issues like consideration in contracts; if consideration is there it means it's a kind of selling or purchasing of child. Another issues like dignity of surrogate mother, whether it will be considered as prostitution or a kind of slavery. The surrogacy also criticised on the basis of commercialisation i.e. against the society and public policy. The surrogacy contracts whether enforceable by law are still a controversial issue. If any of the party means either the intended parents or the surrogate mother make the breach of contract then what would be the remedy.

It is very difficult to determine all such facts. Even all the countries have not uniform law for surrogacy contracts. As each country is different in ethical, legal and religious matter, so each country adopted the surrogacy law according to their diversification. Some of the countries adopted the surrogacy law that is legal but some of the countries considered that the surrogacy is illegal. Those countries which permit the surrogacy arrangements also recognised the surrogacy contracts. There are various legal aspects towards the Surrogacy Arrangements i.e. forbidden all type of Surrogacy Contracts¹, Altruistic Surrogacy allowed but commercial surrogacy prohibited by law² or permitted both kind of Surrogacy arrangements³. It is criticised that current law with context to surrogacy does not properly address the problem of surrogacy contract which adversely affect all the persons who involved in surrogacy contract⁴. So it becomes necessary to examine the issues raised in surrogacy contract.

➤ Surrogacy Arrangements or Contract: Meaning

¹ There are many states in USA which prohibits all forms of surrogacy like Arizona, New Jersey, and Michigan.

² They are New York, Washington, North Dakota, Kentucky and Nebraska

³ The countries like Israel, Ukraine, India, Iran, Bahrain, Lebanon, Saudi Arabia, etc. , various states of USA like Maryland, Ohio, Oklahoma, Illinois, Utah, Arkansas, Florida, New Hampshire, Nevada, Texas, Virginia also allows all forms of surrogacy contracts.

⁴ Valerie L. Baker, "Surrogacy: One Physician's View of the Role of Law", 28 University of San Francisco Law Review 603 (1993-1994)

Surrogacy agreement is made between the intending parent and surrogate mother. It contains the rights and obligations of parties in relation to each other. These Surrogacy agreements can be in writing or not. When the surrogacy agreements are in writing both the parties have clear intention to give effect on such agreement⁵. But it has been debatable matter that the agreement between the surrogate mother and intended mother is a contract or not, in order to know the enforceability of the surrogacy agreements in India with context to surrogacy.

There is need to understand the meaning of agreement and contract. The rules and regulations which govern the contract in India are given in the Indian Contract Act 1872. As per the Act the contract⁶ is that agreement which is enforceable by law. One thing is to be noted that there is difference between agreement and contract. Agreement is made between the parties who are competent to enter into the contract. It can be understood that in agreement there is offer by one party and acceptance by other party and it becomes contract when it is enforceable by law.

It is to be noted that in surrogacy agreement offer is given by the intended parents and accepted by surrogate mother then it become agreement between them. So the agreement can be considered as a contract within the purview of Indian Contract Act 1872. So, the surrogacy agreements can be considered as a private agreement which is made between the surrogate mother and intending parents. Here surrogate mother gets ready to bear a child for another through ART and handover child to the intended parents after birth of child⁷.

Thus, the contract between them creates some rights and obligations towards each other. Most of the IVF clinics have to make contract between the surrogate mother and intended parents to avoid any kind of problems or dispute in near future. In most of the cases, in such kind of agreements, issues arise like the compensations, medical expenditures, parental rights⁸ or the custody of the child⁹. Every clinic has standard form of contract to

⁵ John Edward Murray, *Murray on Contracts* 10 (Lexis Law Publication, U.S.A.3rd edn.1990)

⁶ Dr. RK Bangia, *Indian Contract Act, 1872*, 2 (Allahabad law agency, Faridabad (Haryana) 15th edn.2016)

⁷ Amir Samavati Pirouz & Nassrin Mehra, "Legal Issues of A Surrogacy Contract Based on Iranian Acts Continuation", 5 *Journal of Family and Reproductive Health* 41 (2011)

⁸ Steven H. Snyder, "The Use of Pre-birth Parentage Orders in Surrogacy Proceedings", 39 *Family Law Quarterly* 633 (2005)

resolve all kinds of disputes and give remedies of any of the issues arises between the surrogate mother and intending parents¹⁰. In such contracts, it is mentioned that the surrogate mother will not consume alcohol or drugs during the period of pregnancy. In most of the contracts the provision which prohibits the abortion is there unless it harms the health of surrogate mother or there is some problem in the foetus.

The provision related to the medical expenditure and insurance cover to the surrogate mother or any other expenditure which loss due to the pregnancy will be paid by the Intending parents¹¹.

➤ **The Aim of Surrogacy Contracts**

The aim of the surrogacy contracts is to safeguard the rights of all people who involved in the surrogacy contract. That no one should suffer from the contract i.e. surrogate mother, surrogate child and intended parents. The main aim of the surrogacy contracts are:-

- (a) In the surrogacy contracts there are some rights and duties of all the people that they have to follow. The intended parents desire to have child and the surrogate mother is ready to conceive the child of intended parents through the process of ART.
- (b) The surrogate mother has to give up the right of parent after birth of child and should handover the child to the intending parents. If she does not handover the child to intended parents this would be loss to the intended parents who opts surrogacy.
- (c) In such agreements it is clearly mentioned that after the birth of child, the custody of the child shall be given to the intended parents.
- (d) The purpose of the surrogacy agreements for the intended parents is to have own biological child.
- (e) The surrogate mother and her husband are not in favour to take any kind of parental obligations. Such declarations helps the surrogate mother and intended parents to resolve the disputes if arises in near future.

⁹ Martha A. Field, *Surrogate Motherhood*, Harvard University Press, 1990

¹⁰ *Ibid*

¹¹ Stephen G. York, "A Contractual Analysis of Surrogate Motherhood and a Proposed Solution", 24 *Loyola of Los Angeles Law Review* 399 (1991)

- (f) The surrogacy contract mentioned that the intended parents will provide the reasonable and medical expenditure to the surrogate mother during her pregnancy in the altruistic surrogacy.
- (g) Surrogacy Contracts made it clear that towards the intended parents and surrogate mother that if intended parent got divorced or dispute arises between them who will take the custody of child¹².
- **Essential Components of Surrogacy Contracts under the Indian Contract Act, 1872**

The contract means that agreement which is enforceable by law, all agreements are not contract. So to enforce the contracts, that must have some essential components of contract. The Indian Contract Act, 1872, talks about that all agreements are contract when there is competent parties to contract, consent of the parties, lawful object and lawful consideration which is not void¹³. In the Surrogacy agreement between the intending parents and surrogate mother is kind of contract, this can be treated as valid contract as it justify all the essential components of valid contract. It has all the components that are:-

- **Agreement**

For agreement between the parties there must be offer and acceptance according to Indian contract Act 1872, agreement means the every promise or set of promises which forms considerations to each other. So in the surrogacy agreement intended parent asks the woman to become surrogate mother of their child. If she agrees then it becomes an agreement.

- **Competent Parties**

The competent parties means where both the parties to the contract are competent to enter into contract. The Indian contract Act, 1872, defines that competency means that is of

¹² Noel Keane, "The Surrogate Parenting Contract", 2 *Adelphia Law Journal*, 47 (1983)

¹³ The Indian contract Act 1872, S.10- All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

sound mind, age of majority and not disqualified by any law to enter into the contract¹⁴. If any of the party in contract is minor, of unsound mind or disqualified by law, that person cannot enter into contract. So in the surrogacy contract the surrogate mother or the intended parent¹⁵ to be competent. Even of single person who wants to beget a child through IVF, should be major not be of unsound mind.

- **Free Consent**

Free consent means the parties enter into contract must be agree on the same thing in the same sense¹⁶. So in surrogacy contract, the surrogate mother must understand all terms of the agreement, there must be free consent and should not be under any influence, fraud, misrepresentation or coercion. Surrogate mother must understand that she has to gone through medical examination to conceive pregnancy by way of ART and carry the full term pregnancy and handover the child to intended parent. If surrogate mother understands all such things as stated in contract, it means free consent is there.

- **Lawful Object and Consideration**

The object must be lawful in the contract, means must be legally valid, The Indian Contract Act 1872 defines that any agreement which is prohibited by law, defeat the provision of any law, fraudulent purpose is there, immoral, opposed to public policy or involve in the matters which cause injury to the person or property of other¹⁷. So in the surrogacy agreement the object is to beget a child. It cannot be said unlawful. There is not any fraudulent activity done. There is no legal provision in India to prohibit the surrogacy for begetting a child. Surrogacy agreements can be treated as valid in India. Meanwhile some of the scholars oppose that it is against the public policy but it is not against the public

¹⁴ *Id* at S-11, every person is competent to contract who is of the age of majority according to the law and who is of sound mind and is not disqualified from contracting by any law.

¹⁵ Barbara L. Keller, “*Surrogate Motherhood Contracts in Louisiana: To Ban or to Regulate?*” 49 *Louisiana Law Review* 56 (1988) Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol49/iss1/7> (Last visited on April, 20, 2020)

¹⁶ The Indian contract Act 1872., S.13

¹⁷ *Id* at S.23 and Dr. RK Bangia , *Indian Contract Act, 1872*, 164 (Allahabad law agency, Faridabad (Haryana) 15th edn.2016)

policy, in this modern era through IVF technology individual can have child. Consideration is an important component of agreement¹⁸. In simple terms the consideration means something in return. The consideration should be lawful. The Indian Contract Act 1872 defines that any agreement which is without consideration is not valid i.e. void¹⁹.

The Surrogacy Agreements are similar like other contracts. In Commercial Surrogacy agreements the monetary consideration is involved that the intended parent has to pay consideration to the surrogate mother for her services (commercial surrogacy is banned in India since 2015). But in the Altruistic Surrogacy there is no monetary consideration. The Altruistic Surrogacy may not be considered as valid contract because of lack of consideration but in this aspect the section-25 of the Indian Contract Act 1872, gives exceptions that contract which is in writing, registered and made on account of love and affection between the parties who are in near relation. So, altruistic surrogacy can be treated as valid contract.

➤ Enforcement of Surrogacy Contract

The enforceability of surrogacy contract is very controversial matter in this contemporary era²⁰. The scholars who are opposed the surrogacy practices argued that the enforceability of the surrogacy contract leads to the exploitation of women²¹, children²² and make commoditifications of women²³ etc.

The scholars who are in favour of the enforceability of the surrogacy contracts argued that if surrogacy contracts would not be enforceable by law that it obstructs the right of women

¹⁸ *Id* at 16., S.2(d)

¹⁹ *Id* at S.25 Agreement without consideration, void, unless it is in writing and registered, or is a promise to compensate for something done, or is a promise to pay a debt barred by limitation law.

²⁰ Molly J. Walker Wilson, "Pre-commitment in Free-Market Procreation: Surrogacy, Commissioned Adoption, and Limits on Human Decision Making Capacity", 31 *Journal of Legislation* 330 (2005)

²¹ Katherine B. Lieber, "Selling the Womb: Can the Feminist Critique of Surrogacy Be Answered?" 68 *Indiana Law Journal* 230 (1992)

²² Larry Gostin, "A Civil Liberties analysis of Surrogacy Arrangements", 16 *Law and Medicine Health Care*, 7 (1988)

²³ Margaret Jane Radin, "Reflections of Objectification", 65 *South California Law Review*, 381(1991)

²⁴ to use her body for reproduction. Also claim that the surrogacy contract will not lead to exploitation of women or selling of purchasing of baby. In fact such contract would curb all such things. In the very famous and landmark case in the history of the surrogacy the *Baby M* case²⁵ raised the issues related to the enforceability of surrogacy contracts²⁶. After this case the many countries raise the questions about the legality of the surrogacy contracts.

In many countries they legally recognise the surrogacy contracts are valid, some of the countries do not recognise the surrogacy contracts. The different countries have different laws to govern the surrogacy contracts. The commercial surrogacy is valid in few countries and not in others and few countries recognised only altruistic surrogacy. The concept behind the legally recognising the commercial or altruistic Surrogacy is the ethical, religious or social aspect. The scholars, who are in favour of the surrogacy contracts claims that as surrogacy contracts comply with all the requirement of valid contract, should be enforceable. But such scholars who opposed the surrogacy contract argued that it commercialise the surrogacy practices and exploit the women on legal and moral aspects.

(a) Exploitation of Women and Children

One of the main reasons to go against the enforceability of surrogacy contract is that it exploits the women and children²⁷. The exploitation of women is that by the way of treating them like commodities to earn money²⁸. Such things lead to trafficking of women and children also. The prohibition of trafficking of human being is given under article-23 of

²⁴ Lori B. Andrews, "Surrogate Motherhood: The Challenge for Feminists", 16 *Law and Medicine Health Care* 78 (1988) and Ruth Macklin, "Is There Anything Wrong with Surrogate Motherhood? An Ethical Analysis", 16 *Law and Medicine Health Care* 59 (1988)

²⁵ In re Baby M 109 N.J. 396

²⁶ *Ibid*

²⁷ Raghav Sharma, "An International, Moral & Legal Perspective: The Call for Legalization of Surrogacy in India", *Available* at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=997923&rec=1&srcabs=1422180&alg=1&pos=2 (last visited on April ,08, 2020)

²⁸ P. M. Nair & Sankar Sen, *Trafficking in Women and Children in India* 74 (Orient Longman Private Ltd., Hyderabad 2005).

the Constitution of India²⁹. Trafficking of women means that the recruitment, transportation, or transfer of women from one place to another by way of threat or coercion³⁰.

In the surrogacy contracts all such elements are not there so it cannot be said that surrogacy Contracts are similar to the trafficking of women. The exploitation of children means to sales and purchase of children for the purpose of begging or any other purpose but in the surrogacy contract the child beget for the intended parents not for the exploitation motive. So it can be said that surrogacy contract does not exploit the women or the children.

(b) Sale and Purchase of Child

One of the main reasons to criticise the surrogacy contract is that it is kind of selling baby³¹ as after delivery of child, the surrogate mother gets compensation from the intending parents. This was criticised in 1984 by Waller Report of Victoria, in this report the commercial surrogacy contract were criticised on the basis of that the commercial surrogacy contract is kind of sale or purchase of child and should not be permitted by law³².

Another reason to criticise the commercial surrogacy contract is that the intending parent just pay to the surrogate mother to beget a child. It becomes the questionable matter that whether they are suitable parent to raise the child as they got the child from surrogacy arrangements. It is a form of selling child because in the act of sales it includes buyer and seller, goods or services render for consideration. The surrogacy contract provides that the surrogate mother handover the child to intended parent in return of money. It is important

²⁹ *Ibid*

³⁰ The Protocol to prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Conventions against Transnational Organized Crime 2000, Art-3(a) Available at <https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx> (last Visited on June, 04, 2020)

³¹ Martha A. Field, "Surrogacy Contracts-Gestational and Traditional: The Argument for Non-enforcement", 31 *Washburn Law Journal* 8 (1991) and Martha A. Field, "Reproductive Technologies and Surrogacy: Legal Issues", 25 *Cumberland Law Review* 1595 (1992)

³² Louis Waller, Victoria Committee to Consider the Social, Ethical and Legal Issues Arising from In-Vitro Fertilization, Govt. Printer, Melbourne, (1986). Available at <https://trove.nla.gov.au/people/783771?c=people> (last visited on April, 08,2020)

issue that in commercial surrogacy contract the goods are child or the parental rights on child.

When the surrogacy contract constitute between the intending parents and surrogate mother that time child does not exist, so the question raises that when the child does not exist at the time of forming contract, can this form of contract consider to be contract for sale of future goods? It also be noted that for selling goods in future one of the party must have right on the goods, but in gestational surrogacy procedure the surrogate mother does not have right on child³³.

As a result the surrogate child cannot be considered as existing good or future good. So the surrogacy contract does not come under the purview of sale of goods or contract to sell. Thus justification was applied by the US court in the *Johnson Case*. In India the surrogacy contract cannot be consider as contract for sale of good or contract to sale of goods.

To justify the surrogacy contract are not kind of selling contract, some of the scholars agreed that the intended parents are biologically connected to the child not surrogate mother. In traditional surrogacy arrangements she is biologically related to child, but she agreed to carry the child willingly not forcefully. She has to give up the rights on the child after the birth of child.

(c) Prostitution, Slavery or Hamper Human Dignity

The reason to object surrogacy contract is that it leads to prostitution. The scholars agreed that surrogacy as ethically wrong because it is like prostitution³⁴. As in prostitution there are females as in the surrogacy arrangements involves females, permit to use reproductive

³³ Barbra E. Homier, "Gestational Surrogacy: An Appeal to Reform Michigan's Surrogate Parenting Act", *Available* at https://www.researchgate.net/publication/254628793_Gestational_Surrogacy_An_Appeal_to_Reform_Michigan%27s_Surrogate_Parenting_Act . (last visited on June, 2,2020)

³⁴ Kathryn Venturatos Lorio, "Alternative Means of Reproduction: Virgin Territory for Legislation", 44 *Louisiana Law Review*, 1651 (1984) and Abby Brandel, "Legislating Surrogacy: A Partial Answer to Feminist Criticism", 54 *Medical Law Review* 480 (1995)

organ for other for monetary consideration and they do not have any emotional feeling for the surrogate child³⁵.

The advocate of surrogacy contract claims that it is baseless to compare the prostitution and surrogate mother. In the surrogacy procedure, there is no sexual intercourse between the surrogate mother and Intending father, but in prostitution there is need to make relation with customer and give him pleasure. But in surrogacy arrangements the surrogate other bears the child another with the help of ART. So it would be wrong to treat the surrogacy contracts similar to prostitution.

It is considered that the surrogacy contract is the new form of slavery. Where the surrogate mother has to undergo medical examination and stay at the place provided by the intended parents, and cannot consume alcohol or drugs in the period of pregnancy. It is kind of slavery where she has to act accordingly to the intended parents³⁶. Critics also agreed that it violate the dignity of woman, it reduces the status of woman³⁷.

It is to be noted that in slavery, there is sale or purchase of slave but in surrogacy contract, the surrogate mother is not purchased by the intended parents. Surrogate mother agrees to become surrogate mother for the child of intended parents. There are some rights and duties imposed not only on surrogate mother but on intended parents also for the welfare of the child. This would be wrong to say that surrogacy contract is similar to slavery or violates the dignity of the woman.

(d) Opposed to Ethical norms and Public Policy

Mostly the surrogacy contract are criticised on the basis that it's against the public policy. In India the contracts which are immoral and against the public policy treated as void. Indian Contract Act, 1872, talks about that every agreement is unlawful and void in which

³⁵ Erika Hessenthaler, "Gestational Surrogacy: Legal Implications of Reproductive Technology", 21 *North Carolina Central Law Journal* 178 (1995)

³⁶ Anita L. Allen, "Surrogacy, Slavery and the Ownership of Life", 13 *Harvard Law Review* 145 (1990)

³⁷ Judith Hendrick, *Law and Ethics in Nursing and Health Care* 155(Stanly Thomes Publishers Ltd., U. K. 2000)

the object or consideration is unlawful³⁸. So the surrogacy contract is criticised on the basis that there is no lawful object and it is against the public policy. Public policies are such principles which are designed for the welfare of the public. The Act, explicitly not define the form against the public policy.

In the case of *Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly*³⁹, the Supreme Court held that specific Govt. policy is not public policy but it's that matter which relates to public good⁴⁰. If practically see, the surrogacy arrangements does not affect the public interest. Even such surrogacy contract are beneficial to particular section of society who wants to have own child. Thus, there is no justifiable ground to oppose the surrogacy contract. That it is against the public good. It can be said that the surrogacy contract can be treated as legal contract. It should be regulated in proper way to avoid any kind of discrepancies. The Surrogacy (Regulation) Bill 2020 allowed altruistic surrogacy which is legal and enforceable by law, when matter comes to commercial surrogacy contract; it is declared void by bill.

➤ **Breach of Surrogacy Contract**

The purpose of the surrogacy contract is to fulfil the Contract by the parties. It creates an obligation towards each other. Breach of surrogacy contract arises when any of the party fails to fulfil the contract. When the contract is breached by any of the party then other party seeks remedy. Under the Indian contract Act, 1872, if someone breaches the contract, remedies are given like other contracts; there may be breach in the surrogacy contract also.

As a result, any kind of non fulfilment from the side of surrogate mother or intended parents, they would be entitled to seek remedy. However the surrogacy contract is not enforceable by law so it is very difficult to determine the remedy. In the process of surrogacy arrangements, if the surrogate mother found physically and mentally fit then further process started. Firstly she has to artificially inseminate with sperm of intended father or donor or transplanted embryo. When she conceives, she has to go to physician for regular checkups. Intended parents have to pay medical expenditures and pay insurance

³⁸ *Id* at 16 , S.23

³⁹ AIR 1986 SC 1571

⁴⁰ *Ibid*

premium. When child born, the surrogate mother has to handover the child to intended Parents. The breach of surrogacy contract can be at any stage by any of the party.

- (a) *Breach of Surrogacy contract before Artificial Insemination*: - Sometimes it is found surrogate mother and intending parents both are ready for the procedure of surrogacy. Then that time the surrogate mother can refuse to get artificial insemination or the intended parent ay also refuse to proceed further. When the surrogate mother refuse for artificial insemination on fixed date, which is decided by the doctor, this refusal is known as the anticipatory breach of contract. When the intending parents inform the surrogate mother that they are not able to perform the duties like pay medical expenses etc. It is also an anticipatory breach of contract by intended parent.
- (b) If any of party breaches the contract the other party has right to terminate the contract or ask for damages⁴¹. If the surrogate mother after artificial insemination becomes pregnant and threatens the intended parent that she will abort the foetus, then intended parent cannot approach the court for continuity of pregnancy. But in other contracts other party can go to court for specific relief under the contract. The Specific Relief Act 1963 deals with such situation where the specific performance can be awarded⁴² or cannot be awarded⁴³. To carry the child and deliver it purely the matter of surrogate mother and court cannot force her for specific performance.
- (c) If the intending parents does not provide facility of medical expenses and insurance to surrogate mother then she can approach the court. Then the court can order to provide such facilities to surrogate mother, if the intended parent does not provides then surrogate mother can terminate the pregnancy or continue the pregnancy.
- (d) If after birth of child, the intended parent refuse to take custody of the child then the surrogate mother can approach the court under The Specific Relief Act 1963 the court has power to order specific performance of contract. The surrogate mother entered into the contract on such grounds that the intended parents will take the custody of child after birth. If they do not act accordingly, its breach of contract and

⁴¹ *Id* at 16., S. 73

⁴² The Specific Relief Act, 1963, S.10

⁴³ *Id.* at S.14

she can claim damages even after the order of the court the intended parent does not take the custody of the child then surrogate mother can give child in adoption and expenses will be borne by intended parent till the adoption procedure is completed.

- (e) It is to be noted that it happens where the intended parent refuse to accept the child on the basis of birth defect or multiple birth. In the case of *Baby Gammy* where the intended parent refuse to take the custody of child where the surrogate mother gave birth twin child who were suffering form Down syndrome and intended parents refuse to accept the child. It happened in Thailand, after this incident they banned commercial surrogacy⁴⁴.It is to be submitted that in such circumstances intended parents should accept the child as their biological child.

➤ Conclusion

Surrogacy arrangements is that procedures where the infertile couple gets the help of technology to beget own child. Surrogacy is form of Assisted Reproductive Technology (ART). But due to lack of proper regulations there are situations which arise between the surrogate mother and intended parent. In India still the surrogacy process is going on the basis of ICMR guidelines and Assisted Reproductive Technology (Regulation) Bill 2017. The Surrogacy (Regulation) Bill 2019 allows altruistic surrogacy but had some shortcomings, as it is amended in Feb., 2020 where the insurance coverage of surrogate mother increased from sixteen weeks to thirty-six weeks and widow or divorced woman can also get the benefit of Surrogacy (Regulation) Bill 2020.

⁴⁴ Available at <https://www.loc.gov/law/foreign-news/article/thailand-new-surrogacy-law/> (last visited on June,4, 2020)