CHAPTER-1
INTRODUCTIONS

1.1 HISTORICAL DEVELOPMENT OF SURROGACY

1.1.1 Historical Significance of Surrogacy

Having another woman bear a child for a couple to rise, usually with the male half of the couple as the genetic father, is referred to in antiquity. Babylonian law and custom allowed this practice and infertile woman could use the practice to avoid the divorce, which would otherwise be inevitable.

One well-known example is the Biblical story of Sarah and Abraham, a nomadic Hebrew couple unable to conceive. Sarah offered her Egyptian slave Hagar as a surrogate, but later drove her away from the camp when Hagar became impudent during pregnancy. Hagar fled to Egypt, where an angel told her that her son Ishmael would become a leader amongst the Hebrews; she subsequently returned to Sarah and Abraham.

Surrogate motherhood is gaining great prominence in the recent times but the concept of bearing another woman’s child has been there since the early days of human civilization. One can find the mention of surrogacy in the form of regulations in the famous Code of Hammurabi. This dates back to 1800 BC. Even in the Hebrew bible, surrogate and surrogacy is found to be mentioned quite a number of times.

If I look into the 16th chapter of the Genesis, I will find that Sarah and Abraham are suffering for being a childless couple. Sarah is infertile, but she wants to become a mother. So she acquires the service of her servant Hagar, who agrees to be impregnated by Abraham and bears Sarah a child.

Then there is another instance where the two wives of Jacob, Leah and Rachel are unable to bear a child. Here too Jacob begets children from the two maids of his wives. According to this principle, Jesus can also be said to be a surrogate child. An angel mediates the birth of Jesus and the real mother or Mother Mary does indeed bears the child and rears him as well.
1.1.1.1 The First Documented Instance of Surrogacy

In the recent times, the case of Baby M did make quite a stir. In 1986, Mary Whitehead gave birth to a child. She was twenty-nine years of age and she bore the child of an infertile couple. In this case it was not artificial insemination and Whitehead was the biological mother of the child as well. The case got prominence as Whitehead did not want to hand over the baby girl after birth but wanted the custody of the child. This led to a legal tangle that went on for two years. Eventually she happened to lose the custody battle but she was awarded with periodic visitation rights.

This is a very significant case as after this legal tussle, it was decided in the subsequent surrogacy agreements that the surrogate mother or the woman who agrees to carry the embryo will not be the one who is also the donor of the egg.

Many developments in medicine, social customs, and legal proceedings worldwide paved the way for modern commercial surrogacy:

- 1930s: In the US, pharmaceutical companies Schering-Kahlbaum and Parke-Davis started the mass production of estrogen.
- 1944: Harvard Medical School professor John Rock broke ground by becoming the first person to fertilize human ova outside the uterus.
- 1953: Researchers successfully performed the first cryopreservation of sperm.
- 1971: The first commercial sperm bank opened in New York, which spurred the growth of this type of business into a highly profitable venture.
- 1976: Keane Brokers First Surrogacy Agreement: In 1976, lawyer Noel Keane (of Baby M fame) brokered the first legal agreement between a set of intended parents and a traditional surrogate mother. The surrogate mother did not receive compensation for this. Keane went on to create the Infertility Center, arranging hundreds of surrogate pregnancies per year. He was also involved in several high-profile cases and lawsuits over some of the arrangements made.
• 1978: Louise Brown, the first test tube baby, was born in England. She was the product of the first successful in vitro fertilization procedure.

• 1978: First Test Tube Baby Born On July 25, 1978, Louise Joy Brown was the first test-tube (aka IVF) baby born. While this was not a surrogate motherhood arrangement, this historic event paved the way towards gestational surrogacy in the future.

• The procedure was carried out by Doctors Steptoe (of Oldham General Hospital) and Edwards (of Cambridge University) who had been actively working on this project since 1966. Lesley Brown, Louise's mother, became the first woman (after more than 80 attempts) that successfully passed the first few weeks of pregnancy.

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

• 1980: Michigan lawyer Noel Keane wrote the first surrogacy contract. He continued his work with surrogacy through his Infertility Center, through which he created the contract leading to the Baby M case.

1980: First Paid Traditional Surrogacy Arrangement

In 1980, 37-year old Elizabeth Kane (a pseudonym), made the history of surrogacy by giving birth as a traditional surrogate mother to a son. She made history as the first documented surrogacy arrangement that was compensated. Ms. Kane received $10,000 for the successful delivery of her baby.

Kane was a good candidate for traditional surrogacy because in addition to her having children of her own, she had also, prior to her marriage, given a child up for adoption. None-the-less, Kane was completely unprepared for her feelings surrounding the birth of the surrogate baby, and though she experienced no trouble dissolving her
parental rights at birth, she came to regret her decision to become a surrogate mother.

Elizabeth Kane became an advocate against surrogacy, speaking out in the famous Baby M case. She chronicled her experiences in a book titled Birth Mother. In addition to the emotional difficulties she experienced, Kane's children experienced teasing and emotional distress, the family's social positions suffered, and her husband experienced difficulties in his career.

- 1983: First Successful Pregnancy via Egg Donation In 1983, a menopausal woman at Monash University in Melbourne, Australia became the first mother to give birth to a baby using donated eggs. Though again, not a surrogate pregnancy, this remarkable even made gestational surrogacy possible.

- 1984
  - Request to Government by medical/legal/scientific societies for a Standing Committee on ART
  - Request by Catholic Bishops for a parliamentary enquiry into IVF

- 1985: A woman carried the first successful gestational surrogate pregnancy.

- 1985: First Gestational Surrogacy The first gestational surrogate pregnancy took place in 1985, a monumental moment in the history of surrogacy. The surrogate carried the biological child of a woman who had had a hysterectomy, but had retained her ovaries.

- 1986: Baby M Case In 1996, Mary Beth Whitehead gave birth to Melissa Stern as a traditional surrogate mother. Upon the birth of her child, Mary Beth decided she wanted to keep the baby. What followed was a two year legal battle with Melissa's biological father, Bill Stern, and intended mother, Betsy Stern, over custody, which finally ended in the Sterns getting custody, and Mary Beth getting visitation. This
highly publicized case prompted legislation concerning surrogacy in New Jersey. More about Baby M.

- **1986**: Melissa Stern, otherwise known as “Baby M,” is born in the US. The surrogate and biological mother, Mary Beth Whitehead, refused to cede custody of Melissa to the couple with whom she made the surrogacy agreement. The courts of New Jersey found that Mary Beth Whitehead was the child's legal mother and declared contracts for surrogate motherhood illegal and invalid. However, the court found it in the best interest of the infant to award custody of Melissa to her biological father William Stern and his wife Elizabeth Stern, rather than to the surrogate mother, Mary Beth Whitehead.

- Publication of analysis of the 164 submissions, about 25% requesting a ‘watchdog’ committee

- **1987**
  - Interdepartmental Monitoring Committee on Assisted Human Reproductive Technologies (MCART) established by the Ministry of Justice to act as:
    1) a repository of information on ART
    2) Monitor developments
    3) Advise the Minister
  - Status of Children Amendment Act 1987 passed- clarifies legal parentage of children conceived through ART involving third parties.
  - Status of Children Amendment Act clarifies legal parentage of children... conceived through the use of donated, artificially introduced gametes

- **1988**: Patty Nowakowski Gets Custody of Surrogate Twins

- In 1988, Patty Nowakowski gave birth to boy/girl twins as a traditional surrogate mother. Upon their birth, the intended parents told Patty that they did not want a boy, only a girl, so they left their newborn son with her in the hospital. Patty, who had entered into surrogate motherhood
with no intention of ever having another child herself, was suddenly left with the prospect of raising an unexpected child.

- Patty and her husband eventually decided not only to raise her biological son, but also to seek custody of the twin daughter the intended parents chose as though they were picking a puppy from a litter. After a custody battle, they kept both children.

- 1990: In California, gestational carrier Anna Johnson refused to give up the baby to intended parents Mark and Crispina Calvert. The couple sued her for custody (Calvert v. Johnson), and the court upheld their parental rights. In doing so, it legally defined the true mother as the woman who intends to create and raise a child.

- RTAC invited by some NZ service providers to accredit NZ clinics. Accreditation requires ethics committee approval of new and innovative practice 1991
  - Request made by consumer bodies and Ministry of Women’s Affairs for national body to assess ART applications and for legislation to govern ART
  - Report on ART “Biotechnology Revisited” (commissioned by the Medical Council) published
  - Manatu Maori Working Party publish paper on guidelines for ART

- 1990
  - First NZ legal decision on a case involving surrogacy
  - IVF surrogacy using donor eggs attempted (unsuccessfully) without ethics approval

- 1993
  - Interim National Ethics Committee on Assisted Human Reproductive Technologies (INECART) established by Minister of Health because of problems experienced by Regional Ethics Committees
  - Two person Ministerial Committee on Assisted Reproductive Technologies (MCART) established by Minister of Justice
  - About 100 submissions received
• 1994:
  o Latin American fertility specialists convened in Chile to discuss assisted reproduction and its ethical and legal status.
  o The Chinese Ministry of Health banned gestational surrogacy due to the legal complications of defining true parenthood and possible refusal by surrogates to relinquish a baby.

• 1994
    Recommends:
    ▪ a NZ supplement to RTAC Guidelines
    ▪ Establishment of a ‘Council on Assisted Human Reproduction’

• 1994
  o Application to INECART by clinic for ethical approval for ‘compassionate’ surrogacy declined due to lack of legal and policy frameworks
  o MCART Report critical of INECART’s refusal of ethical approval for ‘compassionate’ surrogacy and recommends clinic reapply
  o Clinic reapply and application again declined

• 1995
  o INECART reconstituted as the National Ethics Committee on Assisted Human Reproduction (NECAHR)

• 1996
  o Private Members Bill on Human Assisted Reproductive Technologies (HART Bill) introduced (based on UK legislation)
    o Submissions requested

• 1997
  o NECAHR approves principle of non-commercial surrogacy
  o NECAHR approves first case of surrogacy
• 1998
  o Government introduced the Assisted Human Reproduction Bill (AHR Bill)
  o Submissions requested
• 1998
  o Draft Guidelines on surrogacy sent to infertility clinics
• 2000
  o Select Committee hearings held

1.1.2 Recently in the History of Surrogacy - Surrogacy Today¹

The manner in which the surrogates are viewed by the society is also not very casual. Often in films, we come across surrogates being typically caricatured as ‘white trash’. This is absolutely prejudiced and unfair.

There is a general conception that surrogates are into the job only due to the monetary aspect. This is true but not the only defining truth. There are several other easier and convenient ways to earn money. There are loads of alternatives that do not carry the risk of throwing up for weeks, or bear the weight and other associated complexities attached to a life that is growing inside the body.

The surrogate agencies are well aware of the women and their reasons why they choose to become a surrogate in the first place. In a certain study that deals with this issue, it has been mentioned that women earn barely a minimum wage if the ‘work’ of surrogacy is broken down in terms of hours. Albeit a wry observation, this is but a fact.

It has often been observed that the real reason apart from the monetary benefits, the surrogate mothers experience a sense of self-worth and empowerment.

They feel that their life has so much meaning and they also feel themselves blessed that they are able to help a childless couple experience the joy of parenthood. Some of them also consider it being a sort of spiritual service. And not to forget the most complex part of the entire episode is the relationship between the surrogate and the genetic mother.

- **2001: Oldest Surrogate Mother**
  In 2001, a grandmother, Viv, became the world's oldest surrogate mother, giving birth to her own grandchild. That record has since been broken.

- **2001**
  - Guidelines for surrogacy revised after consultation with clinics and other interested organizations /persons

- **2003**
  - Government introduced the SOP to HART Bill
  - Submissions requested
  - Select Committee hearings held

- **2003**
  - Draft SOP prohibits commercial surrogacy

- **2004**
  - Report of Select Committee?
  - Passage of legislation?

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

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• **2007: Oldest Surrogate Mother to Twins**
In August 2007, 58 year old Ann Stopler gave birth to her twin granddaughters. Her daughter, Caryn Chomsky, was unable to conceive due to cervical cancer.

• **2008: Oldest Surrogate Mother to Triplets**
In 2008, 56 year old Jaci Dalenberg became the oldest woman ever to give birth to triplets. She acted as a gestational surrogate mother for her daughter Kim, and delivered her own grandchildren.

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

• **2009: The Chinese government cracked down on enforcement of the gestational surrogacy ban, and Chinese women began coming forth with complaints of forced abortions.**

There have been cases of clashes between surrogate mothers and genetic parents. For instance, genetic parents of the fetus may ask for an abortion when unexpected complications arise, and the surrogate mother may oppose the abortion.

### 1.1.3 Surrogacy in India

India is a main destination for surrogacy. Indian surrogates have been increasingly popular with intended parents in industrialized nations because of the relatively low cost. Indian clinics are at the same time becoming more competitive, not just in the pricing, but in the hiring and retention of Indian females as surrogates. Clinics charge patients between $10,000 and $28,000 for the complete package, including fertilization, the surrogate's fee, and delivery of the baby at a hospital.
Including the costs of flight tickets, medical procedures and hotels, it comes to roughly a third of the price compared with going through the procedure in the UK\textsuperscript{3}.

Surrogacy in India is of low cost and the laws are flexible. In 2008, the Supreme Court of India in the Manji's case (Japanese Baby) has held that commercial surrogacy is permitted in India. That has again increased the international confidence in going in for surrogacy in India. But as of 2014, a surrogacy ban was placed on homosexual couples and single parents.

There is an upcoming Assisted Reproductive Technology Bill, aiming to regulate the surrogacy business. However, it is expected to increase the confidence in clinics by sorting out dubious practitioners, and in this way stimulates the practice.

1.2 SIGNIFICANCE OF RESEARCH

Nature has bestowed the beautiful capacity to procreate a life within women and every woman cherishes the experience of motherhood. Unfortunately, some women due to certain physiological conditions cannot give birth to their own off-spring. The desire for motherhood leads them to search for alternative solutions, and surrogacy presents itself as the most viable alternative. Advances in assisted reproductive techniques such as donor insemination and, embryo transfer methods, have revolutionized the reproductive environment, resulting in ‘surrogacy’, as the most desirable option. The system of surrogacy has given hope to many infertile couples, who long to have a child of their own. Taking advantage of the advanced medical facilities, they seek alternative solutions like Artificial Reproductive Technology (ART), In-Vitro Fertilization (IVF) and, Intra Uterine Injections (IUI), in the hope of having a child of their own. The very word surrogate‘means substitute‘. That means a surrogate mother is the substitute for the genetic-biological mother. In common language, a surrogate mother is the person who is hired to bear a child, which she hands over to her employer at birth.

Surrogacy, umm. What comes to mind? I put the question to my class and their responses were;

- Like godmother or foster mother, not biological parent?
- To have someone have baby for I? and
- Transplanting an egg and sperm inside me if I am having trouble having a baby? Finally a surrogate mother is a woman who carries a child usually for an infertile couple.

My study’s primary focuses are moral issues. The question may be asked,

- Is it wrong for a woman to loan her body out to someone for a fee?
- Why would a woman want to become a surrogate mother?
- What are the legal, moral, and religious issues involved in surrogacy?

I find that their interest far surpasses their knowledge. They are molecules of vibrant energy bouncing around with many questions. It is my
intent with the knowledge extrapolated from my seminar and the support of my professor that I will be able to answer all of their questions.

I plan to address the moral issues of surrogate motherhood. The areas to be developed in this unit are:

1. What are surrogacy and the types of surrogacy?
2. Who should or should not be a surrogate; is surrogacy for me?
3. Religion, from a Christian’s point of view how surrogacy is perceived?
4. Surrogacy and the Law

I was awestruck at the idea of a mother giving a child she gave birth to away. I totally ignored the idea of signing a contract. Morally they felt that surrogacy is “wrong”. I am not sure what made them so overtly irate. Was it my presentation or was it not being able to give them more information? Nevertheless, they left the door ajar indicating that they needed more time to think and talk the issue out.

Included in this unit is vocabulary list, resources, lesson plans, reading lists, and a bibliography?

1.2.1 INTRODUCTION

Ten to fifteen percent of married couples are unable to have children. Surrogate mothers are not a new solution to the old problem of not being able to reproduce an offspring. Surrogacy has been around a long time and dates back to biblical times. An interesting bible scenario is Sarah, the wife of Abraham. Sarah could not have children in the beginning. She gave her handmaid, Hagar, to her husband Abraham to produce them a child. The method used was copulation. The outcome in this arrangement did not prove to be a productive one and ended in disaster. In this scenario the spouse became jealous, the surrogate became proud and refused to give up the identity of the child and consequently the spouse had both her and her child ousted.
1.2.2 WHAT IS SURROGACY AND WHAT ARE THE TYPES OF SURROGACY?

A surrogate mother is a woman who carries a child, usually for an infertile couple. Making a decision to become a surrogate mother or hiring a surrogate requires a lot of planning, thought, and preparation. Becoming educated will help to alleviate some of the anxiety and disappointment that may result.

1.2.2.1 Types of surrogacy

A) Gestational surrogacy (GS)

A surrogate is implanted with an embryo created by IVF. The resulting child is genetically unrelated to the surrogate. There are several sub-types of gestational surrogacy as noted below.

B) Gestational surrogacy with embryo from both intended parents (GS/IP)

A surrogate is implanted with an embryo created by IVF, using intended father's sperm and intended mother's eggs.

C) Gestational surrogacy and egg donation (GS/ED)

A surrogate is implanted with an embryo created by IVF, using intended father's sperm and a donor egg where the donor is not the surrogate. The resulting child is genetically related to intended father and genetically unrelated to the surrogate.

D) Gestational surrogacy and donor sperm (GS/DS)

A surrogate is implanted with an embryo created by IVF, using intended mother's egg and donor sperm. The resulting child is genetically related to intended mother and genetically unrelated to the surrogate.

E) Gestational surrogacy and donor embryo (GS/DE)

A donor embryo is implanted in a surrogate; such embryos may be available when others undergoing IVF have embryos left over, which they opt
to donate to others. The resulting child is genetically unrelated to the intended parent(s) and genetically unrelated to the surrogate.

F) Traditional surrogacy (TS)

This involves naturally or artificially inseminating a surrogate with intended father's sperm via IUI, IVF or home insemination. With this method, the resulting child is genetically related to intended father and genetically related to the surrogate.

G) Traditional surrogacy and donor sperm (TS/DS)

A surrogate is artificially inseminated with donor sperm via IUI, IVF or home insemination. The resulting child is genetically unrelated to the intended parent(s) and genetically related to the surrogate.

There are two types of surrogacy, traditional and gestational. The traditional type of surrogacy involves the surrogate mother being (AI) artificially inseminated with the sperm of the intended father or sperm from a donor when the sperm count is low. In either case the surrogate’s own egg will be used. Genetically the surrogate becomes the mother of the resulting child.

In case of a sperm donor, cry preserved sperm may be used. This process involves placing the sperm in liquid nitrogen and storing in an insemination facility. The sperm is thawed just prior to being used. For a better pregnancy rate the sperm collection is usually placed into the uterus or fallopian tube rather than into the cervix.

How long a sperm can remain cry preserved is uncertain, but success has been recorded over 16 years. Cryopreservation process includes:

- Collecting the sperm (masturbation)
- Chemical removal of water; this process prevents the formation of ice crystals

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• A cryopreservant buffer for support and protection (glycerol)
• Actual freezing in liquid nitrogen 196°C, in plastic straws, glass ampules, or cryovials. These vials can be transported worldwide. The preserving of the sperm allows time for the results of the donors test to be gathered.

The intended father’s name is put on the birth certificate. The couple will have to consult lawyer and the wife will have to do a stepmother adoption in order for both spouses’ names to be put on the birth certificate. Laws vary from state to state and a knowledgeable lawyer will make the transition easier.

H) Gestational Surrogacy

In order for a pregnancy to take place, a sperm, egg, and a uterus are necessary. In gestational surrogacy, the surrogate mother has no genetic ties to the offspring. Eggs and sperm are extracted from the donors and in vitro fertilized and implanted into uterus of the surrogate. This is an expensive procedure. Again, the unused embryos may be frozen for further use if the first transfer does not result in pregnancy.

An indicator that a surrogate is needed is medical disorders that affect the ovaries. These medical disorders include: damaged ovaries caused by endometriosis, destroyed ovaries caused by previous chemotherapy, menopause (egg production ceases), severe adulatory disorders (polycystic ovaries), wife’s genetic disorders, or premature ovarian failure. In these scenarios, the surrogate donates both the egg and the uterus. The surrogate is artificially inseminated (AI) by placing the sperm of the husband into the uterus of the surrogate at the fertile time of the cycle, which is just prior to the egg reaching the uterus. If pregnancy does occur, in the third trimester of the pregnancy the couple may petition the court to have their names put on the birth certificate. Since laws do vary from state to state the couple may want to consult a lawyer. They will have a knowledgeable attorney negotiating in their behalf and a better chance of their wishes becoming a reality.

A contributing factor as to why the gestational surrogacy is the more expensive procedure is that centers have been known to give hormones to the egg donor causing them to hyper ovulate hence, enhancing the uterus for
conception. Indicators for a gestational carrier are evident when the uterus and fallopian tubes are unable to perform the designed function. Some of these disorders or abnormalities include:

- Hysterectomy: uterus and tubes absent
- Myomectomy: surgical removal of a noncancerous tumor from muscle
- Damage from infection or IUD (intra uterine device: a type of birth control)
- Malformed uterus
- Pelvic adhesions causing distortion to bowel

Some physiological impediments that can be life threatening would also necessitate in considering a gestational carrier are:

- Cardiac disease
- Brittle diabetes
- Potentially dangerous drugs (drugs that can harm developing fetus)
- History of ectopic pregnancies
- Emotional factors
- Physical disabilities (weight gain causing stress on back and legs)

- **Procedure for Becoming a Gestational Surrogate**

  In order to become a surrogate the individual undergoes a series of tests prior to the planting of the egg, sperm, or both. Some of these tests include.

  - Hysteroscopy/HCG, this procedure determines the fallopian tubes are clear and the size and shape of the uterus
  - Infectious disease test, to ensure there are no contagious diseases present.
  - A mock cycle, to see how the uterine linings will react to hormone replacements (estrogen).
  - Pap smear to check for a healthy uterus.
A physical, to see if there are any physiological impediments that would hinder the surrogate in carrying the baby.

Trial transfer, to check the length of uterus to find out how far to insert the catheter, which will be loaded with embryos.

Psychological testing, to check motivations, attitudes, and commitment.

Once all of the testing is completed and out of the way, the surrogate and/or egg donor are both usually given a birth control pill to synchronize their cycles and then a subcutaneous injection of Lupron, a steroid, which will shut down the production of hormones to control the cycles. Hopefully this process will ensure that the surrogate’s uterus is ready to receive the embryo. Since the surrogate’s cycle is a week or more ahead of the Egg Donor it will make the uterus more ready to receive the fertilized eggs. Once the cycle starts the Lupron dose is decreased and estrogen replacement is added.

The egg donor starts on fertility hormones on day three to stimulate her ovaries to produce more eggs than the norm. A shot of HCG is given, which includes a (LH) luteinizing hormone surge causing the eggs to mature at a rapid pace. The drugs given to stimulate the ovaries produce more than enough eggs for a single implantation. After thirty-six hours have passed, the eggs are retrieved and fertilized with waiting sperm. The fertilized eggs are then incubated for 2-5 days. When the fertilized embryos have developed to their proper stage they are loaded into a special syringe with a flexible catheter and inserted through the cervix into the uterus. Usually 3 of the 2-day-old embryos are used and the others are frozen. After the transplant has been completed, a 3-day bed rest is usually required.

After a pregnancy has been confirmed an ultrasound is done. In 6 weeks a check is done for a heartbeat. After 12 weeks the surrogate is released to a regular OB/GYN. Regular check-ups are still needed to ensure that hormone levels are maintained. Once the placenta takes over the hormone replacement is discontinued.
1.2.3 WHO SHOULD BE A SURROGATE?

If ever a woman should decide to become a surrogate, a word of caution, do not go into this endeavor blindly. All of the ramifications should be taken into consideration.

What groups of people mostly consent to becoming a surrogate? Statistically, mostly educated women with 13 or more years of education. It was not primarily a money factor that led them to make the decision. Mostly these women are employed and are not undergoing financial difficulties. They are predominately Catholic or Protestants.

The women want the intending family to enjoy the special love of a child and the wholesome gratification of their own child(ren). The surrogate is empathetically driven to share what they have, and relieve some of the social stigma of not being able to produce a child.

Some stresses associated with being a surrogate are: insemination (over several months), pain, unpleasant side effects, depression, sleep disturbance, guilt difficulty remaining unattached, intrusive or aloof couples, relinquishing, etc. It takes a special person to become a surrogate. If I cannot adhere to the demands no matter how much a person may wish to help out, don’t think about it!

1.2.4 RELIGION

The command given to man was to be fruitful and multiply (Gen. 2:28).\(^5\) when looking at the role religion plays or has played in surrogate motherhood; we tend to look at the story of Abraham and Sarah.

\(^5\) Rulon T. Burton (2004) “Doctrines and the principles of the church of Jesus Christ of latter-day saints of ‘family and Parenthood” tabernacle books inc., USA page-259 retrieved from https://books.google.co.in/books
The moral and ethical issue surrounding the scenario was Sarah arranging for Abraham and Hagar to have them a child. It was the practice of her native country where there was no hope in bearing children for the spouse to give her maid to provide an heir for the family. This was one of the legal codes of Mesopotamia. Precisely the wife determined the rights of the offspring.

God did not condone the practice of surrogacy. Abraham was accused of following in the footsteps of Adam. They allowed their spouses to lead them astray instead of trusting and obeying.

The outcome was suffering and disappointment. Scriptures also tells us that their imagined blessing proved to be a curse. Domestically there was a lot of tension, heartache, and hatred between the women.

The situation of the Egyptian maid could very well be mirrored today. Being a surrogate gave Hagar an elitist feeling and she became pompous and proud. Hagar would not consent to the plan to turn her child over to the mistress. Her question was, why should her child be passed off as the wife’s son? She had second thoughts and this still happens today. Biblically the very bitter dissension between the offspring’s of Sarah and Hagar is so intense until the repercussions are felt in the modern world today. Sarah’s descendants, the Jews, and Hagar’s descendants, the Arabs, are still contending for the possession of the Holy Land.

Considering all of the pain and heartache associated with surrogacy in the Bible the scenarios emphatically point out man choosing to be selfish. They made laws for self-aggrandizement. Some feel that the inability to conceive is a result of past sin and they are being punished.

It is the belief of many Christians that God has given man the freedom of choice. It is a common belief that the use of technology is a personal decision between a couple and God. Christians agree that a stable and supportive family benefits the child. This will limit the assisted reproductive technology to married couples only where one or both partners are unable to
either produce eggs or sperm, or carry a pregnancy. This supports the principle
that God is the moral Arbiter of the world who differentiates with absolute
exactness, the moral from the immoral, and is also a loving and compassionate
God.

In vitro fertilization can bring about the ethical issue of being able to
pass on social and spiritual heritage to the offspring if the genetic make-up
cannot be passed. Another issue to be considered is the number of ova that are
fertilized with in vitro fertilization. Discarding the unused embryos does not
follow Biblical principles. The availability of cryo-preservation or freezing is
available to bring about some relief of this problem. This procedure can allow
the couple to have more children in the future. Biblically, life starts at
conception and all stages of development are important. In using the current
technologies including in vitro fertilization there are chances of multiple
births. In the case of multiple fetuses, severe prematurity and non survival of
babies may occur. A solution to this problem may be selective termination of
embryos in uterus. This can raise moral issues. Is it right to intentionally take
the life of a fetus to spare one or others? Should the pregnancy continue and
possibly risk the survival of all the babies?

Another issue that should be considered in sperm or egg donations are
the feelings of surrogate. How does the husband or wife feel about a third
party being involved in the conception of their child? Is their privacy being
invoked? When, if ever, will the recipient parent tell the child about the
manner of his or her conception? Technology is expensive and certainly in the
manner in which the couple will use their finances, both of them should be in
agreement. Christians believe that God has given them the responsibility of
being stewards. Therefore, how and for what money is spent is very
important. Man’s knowledge is a gift and a blessing when used in the proper
manner.

Adventist Protestants believe that medical technology has enhanced
human procreation through such procedures as in vitro fertilization, (AI)
artificial insemination, cloning and yes, surrogacy embryo transfer. In seeking
to do God’s will, these options have raised serious ethical questions.
Christians agree that being barren (childless) weighs heavily upon couples, as we saw in the Abraham and Sarah scenario. Many are sad because of infertility and turn to reproductive technology for assistance. The question they ponder is when should assistance be used or if it should be used at all. This becomes a mind-boggling issue.

Adventists believe that God is concerned with all dimensions of human life and his principles should be followed. God gives the power to procreate. This gift should be used to glorify God. It is believed that:

1. Procreation is God’s plan (Gen. 1:28); children are blessing from God, (Ps. 127:3, 113:9) medical technologies that aid infertility that does not venture from biblical principles are acceptable in good conscience.  
2. All developmental stages of life should be respected (Gen. 1:5, Ps. 139:13-16)  
3. The decision to use medical technology is a personal matter. There are acceptable reasons and forms of Christian service that may limit or refrain procreation (1 Cor. 7:32, 33)  
4. Due to cost, Christian stewardship is a relative factor (Prov. 3:9)  

As Christians apply these principles to their decision-making they can be confident that the Holy Spirit will be there to assist them. Infertile couples should always keep the door ajar, so if necessary they can fall back on adoption as an alternative. I am aware however, that there are some that do not exactly follow these beliefs. They may choose other logic to arrive at their desired goals.

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1.2. 5 THE SURROGATE AND THE LAW

It is advantageous to be well informed of rights before deciding to become a surrogate. Therefore, seeking legal counsel is a necessity. The lawyer will assist the surrogate in defining her right, prior to signing any document. It is important for the surrogate to be knowledgeable of her rights as well as the rights of the infertile couple. Once the contract is agreed upon and signed, a lot of the surrogate’s privacy is done away with. The infertile mother is privileged to accompany the surrogate to her medical appointments and be present when certain examinations are conducted.

In case of a married surrogate the spouse is a necessary party and many states presume him to be the genetic father. If the spouse is not in full agreement a contested legal proceeding may ensue.

In the traditional scenario of an unmarried surrogate with a semi-permanent significant other, some states may allow him the rights of a common law husband and he is at liberty to contest the legal proceedings. In either case the surrogate’s spouse or significant other would have to agree to sexual abstinence during the duration of fertilization or embryo transfer. These men are also subject to infectious disease testing. Diseases could be problematic during pregnancy or delivery.

When it comes to compensation to the surrogate, this issue comes under close scrutiny. The surrogate is usually paid $10,000.00 for her services upon completion of her contract. If the contract is not fulfilled she gets nothing (if she backs out). If the pregnancy results in a miscarriage, the surrogate receives partial payment. If for any reason remuneration is out of order, it is looked upon as baby selling (reproductive prostitution, baby trade, selling body and parts, prostitution, renting uterus) by the pregnant woman. The law frowns upon baby selling and in many states it is classified as a felony and punishable by heavy fines and many years in prison.

In the adoption procedure the amount of money exchanged is disclosed along with purposes it is intended to be used for. In an informal adoption procedure the amount that is allowed are restricted to the reimbursement of medical fees, cost of living and legal fees. Adoption agencies are flexible in
allowing reimbursement expenses. Wages lost due to illness may not be allowed. All compensation issues must be reported.

Some issues arising out of gestational compensation are:

- The pregnancy was deliberate and consciously arranged (after being advised by lawyer)
- Legal matters were agreed upon by all parties (as advised by lawyer)
- Surrogate has no genetic ties.

In the state where the child is to be born (if the surrogate just happens to be passing through) has a sufficient connection and has to issue the birth certificate. It is also a legal matter as to whose names are listed on the birth certificate.

It is a requirement of some states that a contract be drawn up among the parties involved in birthing arrangement. All points in the contract should be carefully and fully explored. Parties that should be present are:

- The surrogate (spouse/significant other)
- The infertile couple
- Legal counsel

In order to avoid disputes, most infertility clinics require a contract. Legal counsel is recommended in order that all involved, to ensure that local laws are kept in compliance.

A possible checklist for the surrogate and the intending couple to explore with their attorneys are:

a) The infertile couple (intrusting their child’s care and nurturing to another and surrendering of child)

b) Surrogate (forfeit her privacy) i.e. Roe vs. Wade issue the U.S. Supreme Court Fundamental Rights of Privacy. The issue includes a woman’s ability to control her reproductive freedom hence her pregnancy

c) Surrogate’s spouse or significant other must agree to sexual abstinence at certain times; must submit to medical examination

d) Infertility physician? If insurance is not assessable the infertile couple will assume all costs

e) Psychiatrist/Psychologist/Counselor assists in surrendering the child to the infertile couple and counseling
f) Birthing hospital provide birth certificate information
g) If a contract is not required, they are certainly essential to protect all parties involved in keeping their transactions legal

The surrogate must at no time place the fetus at risk. Behaviors that may lead to inappropriate risk are: taking non-prescription drugs, contraband drug usage, smoking of any type (a word of caution is also to avoid the company of smokers), and alcohol consumption.

It is left up to the laws of a particular state to determine the mother or father of the child prior to birth. All parties must agree to provide affidavits, a court appearance, and testimony to effectuate the designated mother and father of the unborn fetus. The courts will honor contracts and agreements between surrogate and intending parents, unless circumstances significantly change that will jeopardize the best interest of the child. The gestational bond is not an issue. The question is asked, how much bonding actually takes place? The decision is always for the best interest of the child. This may not always be the most applauded solution; nevertheless it is what it always boils down to.

Frozen embryos are costly and should be addressed in the last will and testament of infertile couple. Methods of disposal can be controversial and should be addressed. The methods commonly used are: donate to unknown couple (separate consent is preferred and the parties may wish to screen each other), disposal (thawed embryos degenerate and cease to grow), and tissue donation for medical research. The later is truly an ethical issue that should be explored. The rights to life activists are very vocal on this ethical issue regarding pre-embryo embryo. The board of trustees of the American Medical Association (AMA) recommends that the gamete providers (sperm and egg) be the primary authority over the frozen embryos.
1.2.6 THE ASSISTED REPRODUCTIVE TECHNOLOGIES

(REGULATION) BILL-2010

It is estimated that 15 percent of couples around the world are infertile. This implies that infertility is one of the most highly prevalent medical problems. The magnitude of the infertility problem also has enormous social implications. Besides the fact that every couple has the right to have a child, in India infertility widely carries with it a social stigma. In the Indian social context specially, children are also a kind of old-age insurance.

With the enormous advances in medicine and medical technologies, today 85 percent of the cases of infertility can be taken care of through medicines, surgery and/or the new medical technologies such as in vitro fertilization (IVF) or intracytoplasmic sperm injection (ICSI). It may be recalled that the birth of the first child, Louise Brown in 1978, through the technique of in vitro fertilization by Robert G Edwards and Patrick Steptoe, was a path-breaking step in control of infertility; it is, in retrospect, considered as one of the most important medical advances of the last century.

Most of the new technologies aimed at taking care of infertility, involve handling of the gamete – spermatozoa or the oocyte – outside the body; they also often involve the donation of spermatozoa or oocyte, or the use of a surrogate mother who would be carrying a child with whom she has no biological relationship. These technologies not only require expertise but also open up many avenues for unethical practices which can affect adversely the recipient of the treatment, medically, socially and legally.

The last nearly 20 years have seen an exponential growth of infertility clinics that use techniques requiring handling of spermatozoa or the oocyte outside the body, or the use of a surrogate mother. As of today, anyone can open infertility or assisted reproductive technology (ART) clinic; no permission is required to do so. There has been, consequently a mushrooming of such clinics around the country.
In view of the above, in public interest, it has become important to regulate the functioning of such clinics to ensure that the services provided are ethical and that the medical, social and legal rights of all those concerned are protected.

The bill details procedures for accreditation and supervision of infertility clinics (and related organizations such as semen banks) handling spermatozoa or oocytes outside of the body, or dealing with gamete donors and surrogacy, ensuring that the legitimate rights of all concerned are protected, with maximum benefit to the infertile couples/individuals within a recognized framework of ethics and good medical practice.⁷

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1.3 RESEARCH PROCESS

Legal research for Issue of Surrogacy is not a linear process. The following represent steps that are typically taken when doing legal research. The order in which the steps are taken may vary depending on information that is known at the outset of the project, on information that is discovered during the research process, and on the scope of the project.\(^8\)

- **Analyze the facts and formulate a preliminary statement of issues of Surrogacy.**
  This is a continuous process. Be prepared to reframe the issue(s) as my research progresses.

- **Create a Research Plan**
  This plan may change or evolve as I work, but it can still provide guidance and a checklist for complete research. List the tools I intend to use and the initial search terms I will use. Be prepared to add new terms or searches to the list as I learn more about the issue.

- **Conduct background research to get an overview of the subject area, identify issues and terms, and get clues to primary sources.**
  My research plan should begin with building on what I already know about the problem. Begin with background reading in secondary sources if I am unfamiliar with the subject. Determine the appropriate jurisdiction for my legal issue, and determine whether state or federal law applies. Learn the types of authority involved, i.e. whether the issues are governed by case law, statutory law, administrative law or a combination. Identify any “terms of art” specific to this area of law, and read secondary sources to find additional search terms.

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Secondary sources will often cite directly to governing statutes and regulations and cite to key case law, which will be useful starting points for searching for primary law.

- **Search for primary law.**

  Using a variety of tools will ensure comprehensive research and compensate for difficulties that one may encounter in using particular sources. For the most efficient primary law research, use citations found in secondary sources to guide me directly to relevant primary law. For statutes and regulations, use annotated codes or Sheppard /Key Cite to find cases that cite the statute or regulation. In cases

  a) obtain citations to additional relevant cases cited in the opinion;

  b) look at case head notes to find topics and key numbers to find additional cases on the issue;

  c) B Cite, Shepardize or Key Cite cases to obtain citations to additional authorities; and

  d) Read the case to discover possible additional search terms. Always look for pocket parts and other supplements when using print sources. Note the dates of coverage in all sources consulted.

- **Read and evaluate all materials as I proceed with my research.**

  Do not skim secondary sources simply to find pointers to primary law. Instead, read carefully to fully understand the issue. In many cases, secondary sources will fully answer my legal research issue, and I will need to search for primary authority only to make sure that the information learned in my secondary source research is correct and that the cited legal authorities are still good law.

  Never overlook the importance of reading cases and other primary authority. Do not substitute reading of the head notes,
synopses or interpretations in secondary sources for own thoughtful reading of the authorities I find. Look for holdings of cases, not just broad statements of the law.

- **Make sure cases are still good law and I have the current version of statutes.**
  
  Once I have determined that a case is relevant and/or important, use citation tools to verify that the case remains good law for legal issue... Make sure I have checked all available supplements if using print sources. Look up statutes in electronic form to check for recent amendments.

- **Refine analysis and formulate conclusion.**
  
  Do not be frustrated if I return to tools already consulted earlier in the research process. I may have discovered new relevant terms as I gained a fuller understanding of the research issues. Returning to secondary sources near the end of a research project can be helpful. These sources can be easier to understand after I have read some of the primary authorities.

- **When should I stop?**
  
  - When I have completed the steps in the model;
  
     -When I have used a variety of appropriate sources;
  
  - When I am finding the same authorities over and over again;
  
  - When cost exceeds benefit, i.e. I run out of time.

1.3.1 Legal Research Process

1.3.1.1 What is legal research?

- Finding relevant cases and legislation (primary sources of law) using textbooks, journal articles, encyclopedias and other reference tools (secondary sources of law).
• Verifying that the law one has found is still valid and not overruled, repealed or otherwise questioned or criticized.

1.3.1.2 Primary vs. Secondary resources.

• Starting my research using secondary sources of law to locate a broad overview or explanation of the law. Then finish research by consulting and verifying primary sources of law.
• Primary sources of law are: legislation, case law and decisions of administrative tribunals.
• I must consult primary sources since these affect legal rights
• Secondary sources of law are: textbooks, journals, encyclopedias, reference or finding tools.
• Secondary sources have only persuasive in value and are not binding on courts.

1.3.1.3 Print and online research

• It is important to be able to properly integrate both print and online research resources and to know when to use one source over the other.

• Print Material

Some material, especially textbooks, older cases and journal articles, is only available in print.

1.3.1.4 Online Material

• Online resources are often more up-to-date than their print equivalents.
• LexisNexis / Quick law and Wikipedia have large up-to-date databases of case law, legislation, journal articles and newspapers and are particularly useful for noting up cases and legislation.
• Supremecourtofindia.nic.in is a free source of case law and legislation.
Online journal indexes such as the *Index for* full-text journal articles databases like Hein Online are also provide useful resources.

- The U of T library catalogue -

### 1.3.1.5 The research and writing process

- Legal research is more than just the effective use of books and online resources; it is also the analysis and thought processes that occur as part of conducting legal research.

- Before actual research begins, think about and analyze the problem. By taking a systematized, logical approach to legal research, I will minimize the risk of inadvertently overlooking something. Maureen Fitzgerald, in her book *Legal Problem Solving: Reasoning, Research & Writing* (5thed) [KE250 .F57 2010 Course Reserves] identifies a five-step legal research process that she identifies as **F - I - L - A - C**: 9

- **F**acts: Many legal research questions are driven by the specific facts underlying the question. If the facts are changed, the entire approach to answering the question - and the answer itself - will most likely change.

It is therefore important for the legal researcher to ensure that he or she has all the necessary facts before proceeding further in the legal research process. In real life situations, it is important I ask questions to determine what actually happened in the client's situation. Sometimes, at the beginning of the process, I may not know enough law to be able to determine what facts are relevant, so it may be that I will re-evaluate the facts once I have started to actually conduct the hands-on research.

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9 Bora Laskin Law Library, Faculty of Law, University of Toronto retrieved from [http://library.law.utoronto.ca/legal-reseach-tutorial/legal-research-process](http://library.law.utoronto.ca/legal-reseach-tutorial/legal-research-process)
• **Issues**: Once the necessary facts have been uncovered, it is equally important to then identify the relevant issues arising from the facts. In many cases, the issues will be quite obvious or may be directly identified by the lawyer I am working with.

Often, the issues will be framed in terms of the question to be answered. The issues as identified will drive the legal research by affecting the type of resources to be consulted, the jurisdictions to be covered and the type of information to be obtained.

• **Law/Legal Research**: Once the facts and issues have been defined, the legal research can begin by using the various techniques and resources discussed throughout this tutorial. As mentioned elsewhere, it is usually more effective to start research by consulting secondary sources such as books, journal articles or encyclopedias to see what others have said about issues. I can then start to read, analyze and verify relevant primary sources of law such as case law and legislation.

• **Analysis/Application**: When the various bits of research have been uncovered, it is then time to analyze the research, and where necessary, conduct more research. Part of the analysis process involves applying the legal research to the facts of the case in order to answer the questions raised by the issues I have already identified.

• **Conclusions**: If the research done appears to address the various issues raised by the problem, it is then time for the researcher to draw conclusions from the research and, depending on for which the research is being conducted, prepare a legal research memo based on the research.

For many simple legal research problems, however, some of these steps may occur almost simultaneously, rather than sequentially. Think of this process as circular, not linear. Even if I have followed the FILAC steps in order, when at the "law" or "legal research" stage, I may uncover something in research that requires me to ask more questions.
In real life, it is also important to realize that legal research problems are often not clearly stated. In those cases, the legal researcher should engage in some analysis to identify the relevant facts and issues; plan the necessary legal research required, and then to analyze and draw conclusions from the research conducted.

1.3.1.6 Step-by-Step Legal Research Process

- Plan and organize the research
- Use commentary to define & understand issues
  - Texts
  - Encyclopedias
  - Journals and seminar papers
  - Memorandums and factums
  - Wikis, blogs and newsletters
- Does a statute apply?
  - Researching International Legislation
  - Researching National Legislation
- Search the case law
  - Law Source
  - Quick law
  - Wikipedia
- Restate the issues and refine strategy
- Review and assess the case law
  - Case citators
  - Stare decisis and legal reasoning
- Use finding tools
  - Words and phrases research, Case digests
  - Case reporters and indices, Topical case reporters
- Keep research current
  - Case citators
  - Legislative updates
  - Alerts, RSS feeds and other tools
- Consider the law of other jurisdictions
• When to stop, 10

1.3.1.7 Overview of the Legal research process

The research path I follow will vary depending on the nature of topic and legal issue. There is no single “right” path to take in conducting legal research. While there will be times when I will follow the research steps suggested herein in a linear fashion that will not always be the case.

I will find that as I move through the research process, I will identify sources that will require me to revisit sources consulted earlier in the process. For instance, a secondary source may direct me to a statute, which leads I to an annotated section of Halsbury’s Statutes. In the review of Halsbury’s Statutes, I will locate relevant cases. Upon the review of one of the cases, I may find a reference to another statute that provides an exception to the statutory rule identified by the original secondary source. The research would not end there, of course. I would return to Halsbury’s Statutes to review the section for the new statute to see if the exception applies to the factual scenario and to locate relevant cases.

Regardless of the path I follow using the steps below; if I am thorough and flexible in the research I will succeed!

• **Identify the scope of the legal question.** Ask specific questions to identify: (1) the relevant jurisdiction- India (2) key sources and search terms- at Anand and Nadiad and (3) the applicable time period.

• **Begin the research by consulting a secondary source.** Core texts, Halsbury’s Laws, key articles, can give perspective on how the specific issue fits into a broader legal context and will assist me in finding on-point primary authority. Note references to pertinent statutes and case citations.

• **Identify relevant statutes.** If I located an applicable statute in the review of secondary sources, review the annotations for the applicable provision in Halsbury’s Statutes. Browse the contents of the statute to identify any other pertinent sections. Browse the contents page of the Halsbury's Statutes volume to find other relevant statutes...

• **Identify the cases that are on-point for specific facts.** When reading secondary sources, note cases that relate to set of facts. Follow up the cases, checking head notes and reading judgments that seem applicable. One good case can be a great starting point for research on narrow topics.

• **Use digests to find more cases.** Digests provide another excellent resource to identify relevant case law. The Digest is a good source for finding English and Commonwealth cases by topic. It has the same subject structure as Halsbury’s Laws.

• **Confirm that authority is still good law.** Use Westlaw Case Analysis, Lexis Case Search or a print citator to check that the cases are still good law and provide the most current, direct authority available for set of facts.

• **Search online to fill any gaps in research.** Thorough research depends on the use of multiple research methods. Supplement the research uncovered in Interview of secondary sources, digests, and other sources with keyword and/or natural language searches of relevant legal databases in Westlaw, Justis and Lexis. Use Boolean operators and connectors when possible to increase the accuracy of results. Check the Journals Index in Westlaw for recent articles. Free sources such as the Legal Scholarship Network can be useful for recent articles. Blogs, policy websites and so on are also useful, depending on the topic.

• **Keep a record of research trail.** Document all sources reviewed, including all sections and page numbers, regardless of whether I located relevant materials in them. This will help I later when I write up research and need to check points.¹¹
Some keys to legal research success:

- Get to know librarians
- Take the courses on topics/searching/endnote etc on offer.
- Get out of the Google-search mindset – ask us the tricks of each database.
- Look beyond Lexis and Westlaw
- Use secondary sources
- Know when to stop!

A brief checklist of the typical legal research process is provided below. As discussed at the beginning of this Manual, good research begins with conducting an effective research interview with the person who is requesting research assistance. The research path I follow thereafter, however, can vary depending on the nature of assignment and legal issue. There is no single “right” path to take in conducting legal research. While there will be times when I will follow the research steps suggested herein in a linear fashion that will not always be the case.

I will find that as I move through the research process, I will identify sources that will require me to revisit sources consulted earlier in the process. For instance, a secondary source may direct me to a statute, which leads I to the annotated codes. In the review of the annotated codes, I will locate relevant cases. Upon review of one of the cases, I may find a reference to another statute that provides an exception to the statutory rule identified by original secondary source. The research would not end there, of course. I would return to the annotated codes to review the section for the new statute to see if the exception applies to factual scenario and to locate relevant cases.

Regardless of the path I follow using the steps below; if I am thorough and flexible in the research I will succeed!

- Identify the scope of the legal question. During the initial research interview, ask specific questions to identify: (1) the relevant
jurisdiction, (2) key sources and search terms, and (3) the applicable time period.12

- **Send a confirming memo or e-mail.** Immediately after the conclusion of the research interview, send a confirming e-mail to the person who assigned the research project for document understanding of assignment. This will enable employer to clarify instructions if understanding is incorrect and will protect I in the long run.

- **Begin research by consulting a secondary source.** Practice guides, form books, encyclopedias and ALR give perspective on how specific issue fits into a broader legal context and will assist me in finding on-point primary authority. Note references to pertinent statutes, case citations, and key numbers.

- **Identify relevant statutes.** If I located an applicable statute in the review of secondary sources, review the annotations for the applicable provision. Browse the chapter outline as well to identify any other pertinent sections.

- **Identify the cases that are on-point for specific facts.** Once I’ve located citations to promising cases in the review of secondary sources and annotated codes, review each case to determine its relevance. Focus on cases issued in the jurisdiction. Note cases and head notes that relate to set of facts.

- **Use digests to find more cases.** Digests provide another excellent resource to identify relevant case law. I may begin research with digests using their descriptive word index or I may continue research using the “one good case” method.

• **Confirm that authority is still good law.** Shepardize (LexisNexis) or Key Cite (Westlaw) cases to confirm they are still good law and provide the most current, direct authority available for set of facts.

• **Search online to fill any gaps in research.** Thorough research depends on the use of multiple research methods. Supplement the research uncovered in review of secondary sources, annotated codes, digests, and other sources with keyword and/or natural language searches of relevant legal databases in Westlaw and Lexis. Use Boolean operators and connectors when possible to increase the accuracy of results. **Before** doing database searches, confirm with supervisor that she approves use of Westlaw and Lexis. Westlaw and Lexis research can be expensive, and I must be sensitive to the financial constraints of client and employer. Where relevant to research issue, I should of course search free online sources as well.

• **Keep a record of research trail.** Document all sources reviewed, including all sections and page numbers, regardless of whether I located relevant materials in them.
1.4 IDENTIFICATION OF PROBLEM/SELECTION OF PROBLEM

1.4.1 Definition of SURROGATE MOTHER

A woman who becomes pregnant usually by artificial insemination or surgical implantation of a fertilized egg for the purpose of carrying the fetus to term for another woman—surrogate motherhood noun

- Learn More About

Dictionary: Definition of "surrogate mother"

What made I want to look up surrogate mother? Please tell us where I read or heard it (including the quote, if possible).

sur·ro·gate

Transitive verb \sər-ə-, gāt, 'sə-rə-

sur·ro·gat·edsur·ro·gat·ing

- Definition of SURROGATE

: To put in the place of another:

A: to appoint as successor, deputy, or substitute for oneself

B: SUBSTITUTE

- Origin of SURROGATE

Latin surrogates, past participle of surrogare to choose in place of another, substitute, from sub- + rogare to ask — more at RIGHT

- Rhymes with SURROGATE

abdicate, abnegate, abrogate, acclimate, acerbate, acetate, activate, actuate, acylate, adsorbate, advocate, adulate, adumbrate, aggravate...
Noun, often attributive ˌgāt, -gət

: A person or thing that takes the place or performs the duties of someone or something else

- Full Definition of SURROGATE

1 a: one appointed to act in place of another: DEPUTY

   B: a local judicial officer in some states (as New York) who has jurisdiction over the probate of wills, the settlement of estates, and the appointment and supervision of guardians

2 : one that serves as a substitute

3 : SURROGATE MOTHER

- Examples of SURROGATE

1. He could not attend the meeting, so he sent his surrogate.

2. The governor and her surrogates asked the public to support the change.

3. They had their baby through a surrogate.

- First Known Use of SURROGATE

   1603

- Other Embryology Terms

   gravid, neonate, ontogeny, parturition sur·ro·gate

1.4.2 Problem in brief

   The ever-rising prevalence of infertility world over has lead to advancement of assisted reproductive techniques (ART). Herein, surrogacy comes as an alternative when the infertile woman or couple is not able to reproduce. Surrogacy is an arrangement where a surrogate mother bears and delivers a child for another couple or person. In gestational surrogacy, an embryo, which is fertilized by in vitro fertilization, is implanted into the
uterus of the surrogate mother who carries and delivers the baby. In traditional surrogacy, the surrogate mother is impregnated with the sperms of the intended father artificially, thus making her both genetic and gestational mother. Surrogacy may be commercial or altruistic, depending upon whether the surrogate receives financial reward for her pregnancy.

Commercial surrogacy is legal in India, Ukraine, and California while it is illegal in England, many states of United States, and in Australia, which recognize only altruistic surrogacy. In contrast, countries like Germany, Sweden, Norway, and Italy do not recognize any surrogacy agreements. India has become a favorite destination of fertility tourism. Each year, couples from abroad are attracted to India by so-called surrogacy agencies because cost of the whole procedure in India is as less as one third of what it is in United States and United Kingdom (10-20 lakhs).

1.4.3 Is Surrogacy Profitable for All?

At a glance, surrogacy seems like an attractive alternative as a poor surrogate mother gets very much needed money, an infertile couple gets their long-desired biologically related baby and the country earns foreign currency, but the real picture reveals the bitter truth. Due to lack of proper legislation, both surrogate mothers and intended parents are somehow exploited and the profit is earned by middlemen and commercial agencies. There is no transparency in the whole system, and the chance of getting involved in legal problems is there due to unpredictable regulations governing surrogacy in India.

Although in 2005, ICMR issued guidelines for accreditation, supervision, and regulation of ART clinics in India, these guidelines are repeatedly violated. Frustration of cross border childless couples is easily understandable who not only have to cope up with language barrier, but sometimes have to fight a long legal battle to get their child. Even if everything goes well, they have to stay in India for 2-3 months for completion of formalities after the birth of baby. The cross border surrogacy leads to problems in citizenship, nationality, motherhood, parentage, and rights of a child. There are occasions where children are denied nationality of the country.
of intended parents and this results in either a long legal battle like in case of the German couple with twin surrogate children or the Israeli gay couple who had to undergo DNA testing to establish parentage or have a bleak future in orphanage for the child. There are incidences where the child given to couple after surrogacy is not genetically related to them and in turn, is disowned by the intended parent and has to spend his life in an orphanage.

If we look upon the problem of surrogate mothers, things are even worse and unethical. The poor, illiterate women of rural background are often persuaded in such deals by their spouse or middlemen for earning easy money. These women have no right on decision regarding their own body and life. In India, there is no provision of psychological screening or legal counseling, which is mandatory in USA. After recruitment by commercial agencies, these women are shifted into hostels for the whole duration of pregnancy on the pretext of taking antenatal care. The real motive is to guard them and to avoid any social stigma of being outcast by their community. These women spend the whole tenure of pregnancy worrying about their household and children. They are allowed to go out only for antenatal visits and are allowed to meet their family only on Sundays. The worst part is that in case of unfavorable outcome of pregnancy, they are unlikely to be paid, and there is no provision of insurance or post-pregnancy medical and psychiatric support for them. Rich career women who do not want to take the trouble of carrying their own pregnancy are resorting to hiring surrogate mothers. There are a number of moral and ethical issues regarding surrogacy, which has become more of a commercial racket, and there is an urgent need for framing and implementation of laws for the parents and the surrogate mother.

1.4.4 Considering fertility treatment abroad: issues and risks

A substantial number of International patients are travelling abroad for fertility treatment. Their motivations may include lower costs for treatment and greater availability of donors.

Many patients have positive experiences of receiving treatment abroad; although, this is not always the case.
• **What to think about before going ahead?**

According to various surveys, many patients who travel overseas for treatment are very satisfied with the standard of care and quality of treatment they receive. However, if I am considering travelling abroad for treatment, I am advised to carry out thorough research.

We advise that I only select a clinic that has a proven record on quality and standards.

We suggest I take a number of issues into consideration, including:

- standards and safety abroad.
- Success rates (and how they are calculated).
- How is patient information stored and who has access to it?
- Complaints: what happens if treatment goes wrong?
- Donor issues.
- Surrogacy issues.
- Multiple birth rates.
- Availability of treatment/ ethical, social and legal issues.
- Counseling and support.

The Foreign and Commonwealth Office (FCO) has launched guidance on surrogacy overseas to give prospective parents information about the process to help inform them of the sort of issues they may face when embarking on a surrogacy arrangement in a foreign country. The guidance urges prospective parents to ensure they are fully aware of the facts and are well prepared before starting what can be a long and complex process.

- **Standards and safety abroad.**

The HFEA\(^{13}\) (Human Fertilization and Embryology Authority) licenses and regulates clinics in the UK only - it has no jurisdiction overseas.

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The level of legal or regulatory standards of clinics in overseas countries varies greatly and not all countries will have organizations equivalent to the HFEA. Some places have no specific laws or regulations relating to assisted reproductive services.

The EU Tissues and Cells Directive sets out standards of quality and safety that should be met within countries inside the EU/EEA. However, not all EU/EEA countries have implemented this legislation and clinics in these countries are not necessarily accredited by a competent body.

- **EU Tissues and Cells Directive Success rates abroad**
  According to various surveys, some patients have cited high success rates as one of their reasons for travelling abroad for treatment.

- **IN UK survey**
  There are a number of different ways in which success rates can be calculated and presented, and the overseas clinic may not do it in the same way as the HFEA. It’s important to take into consideration such differences to ensure that comparisons are not misleading.

For example, presenting success rates as a percentage of all treatment cycles (irrespective of whether they reached the embryo transfer stage) will provide a lower figure than if success rates are calculated as a percentage of all embryo transfers.

It is also important to be aware that success rates can be affected by:

- The type of patients a clinic treats egg, their age, diagnosis and length of infertility.
- The type of treatment a clinic carries out.
- A clinic’s treatment practices.

A clinic that treats proportionately more patients with complicated diagnoses may have a lower average success rate than clinics that treat more patients with common fertility issues.
The HFEA publishes data about UK clinics’ success rates on the online Choose a Fertility service. Choose a Fertility Clinic also includes information about the particular services offered by UK clinics and any areas they may specialize in.

- **Patient information**

If I am considering travelling overseas for treatment, it is advised to find out about:

- What happens to the identifying information I (and others) provide during the course of treatment

- Who will have access to it

- If I plan to use donated sperm and/or eggs, whether I (or any child born as a result of treatment) will be able to access information about the donor

- What happens to patient records if that clinic closes

- Transferring medical records to the UK.

UK clinics are required to keep all information relating to patients, donors and children born as a result of treatment confidential. Some (but not all) of the information is also passed on to the HFEA and included in a register.

The HFEA cannot include any information about treatment, including any information in relation to donation, on the HFEA Registers if treatment has been provided overseas. We have no jurisdiction to do so, and are not able to verify the information. This also includes cases where sperm, eggs or embryos have been exported from the UK.

- **Complaints abroad: what happens if my treatment goes wrong?**

However, the General Medical Council (GMC), the body that regulates and licenses individual medical practitioners, has guidance on ‘conflicts of interest’ which could, in certain circumstances, be of relevance.
• ‘Conflicts of interest’ - General Medical Council website
I am advised to find out in advance how a concern or complaint would be followed up and resolved in the event that something went wrong.

I might also need independent legal advice to clarify the enforceability of contracts and agreements between me and a clinic outside the UK.

• Donor issues
If I am planning to use donated sperm, eggs or embryos, I am advised to consider:

• The legal issues surrounding parental responsibility: If treatment is provided by a licensed clinic in the India, the donor does not have any legal responsibility to children born as a result of the donation. This may not be the case in other countries. Seek own legal advice to clarify position.

• Whether the form of donation is available in the destination country:
In some countries, treatment involving sperm donation is allowed but treatment involving egg or embryo donation is not. The process involved in recruiting donors (including screening to reduce the risks of passing on a medical condition). I might also want to find out whether there are any limits on the number of families that can be created per sperm donor. Whether or not donation is anonymous

• Donor information
Even in countries where donation is not anonymous, I should find out if the clinic is able to provide me with any information about the donor (for example, a physical description and medical history). In addition, their systems of recording donor information may not be the same as in the UK and I should be aware that if I receive donor treatment overseas, this information cannot be entered on the HFEA Register. This has implications for accessing donor and sibling information.
• **Surrogacy abroad**
  
  If I am planning to enter into a surrogacy arrangement overseas, I am advised to find out about the legal issues surrounding parental responsibility. These differ from country to country.

  I should also be aware that if the child is born abroad, the commissioning couple can only apply for a parental order if they are living (or domiciled) in the UK. A parental order officially transfers parental responsibilities to the commissioning couple.

  While waiting for the parental order to be processed, the child born abroad will require a visa in order to enter the UK.

  If I am considering surrogacy abroad, we advise I to seek own legal advice beforehand to clarify position.

Other issues I may want to consider:

- The processes involved in recruiting surrogates
- What financial agreements are in place to compensate the surrogate
- If treatment involves in vitro fertilization (IVF) or hormonal stimulation, whether the risks of a multiple pregnancy are being minimized by the clinic.

• **Multiple Birth rates**

  A multiple pregnancy (twins, triplets or more) is the single greatest health risk associated with fertility treatment. It carries risks to both mother and baby, including the risk of prematurity and below-normal birth weight.

• **Risks of multiple births – One at a time website**

  In IVF treatment, these risks can be minimized by avoiding multiple embryo transfer and, where suitable, opting for single embryo transfer. In the UK, all clinics are required to have multiple births policies in place to avoid any unnecessary risks. I am advised to discuss the risks of a multiple pregnancy with the overseas clinic and find out whether they have any policies in place to help minimize such risk.
• **Availability of treatment and ethical, social and legal issues**

Many countries have different laws or rules in relation to the various forms of treatment. This may have a bearing on various ethical or social considerations that are important to me. It may also have implications for the availability of treatment, given specific circumstances, in the destination country.

For example:

- some overseas countries do not allow single women or same sex couples to have access to IVF treatment
- sex selection for non-medical purposes with pre-implantation genetic Diagnosis (PGD) is illegal in the UK, but is permissible in a number of Overseas countries
- different countries may have different laws with regards the rights of Individuals to withdraw consent to the use of an embryo created using their Sperm or egg
- different counties have different laws or rules with regards to donor anonymity
- And compensation for or payment to donors.

• **Counseling and support**

In the UK, all clinics offer counseling prior to treatment involving donor gametes. This may not be offered by a clinic abroad.

It is vital to understand that if I choose to travel abroad for treatment, there may not be the support I would expect if I am being treated in the UK. Any problems or questions will be dealt with by phone, fax or email, and the HFEA cannot deal with complaints or problems which occur abroad.

A list of patient organizations in other countries can be found on the Infertility Network UK website.
• **Researching overseas clinics**

If possible, I am advised to speak to someone who has been treated at the clinic or in the country I am intending to go to and find out about their experiences. Patient organizations such as Infertility Network UK have chat rooms and forums where I may be able to contact others.

If I don’t know anyone who has travelled abroad for treatment I will have to do own research. Look carefully at the clinic’s website, at the sort of information and statistics they include.

I may want to check the qualifications and experience of the staff, and whether the clinic is accredited in any way. Initial contact with the clinic will probably give me some insights into how it is run. Are there English-speaking staffs available to answer queries? How much time are they willing to spend talking to me about the treatment they offer?

I should be wary of a clinic that is so eager to take I on as a patient that they are not interested in asking about own medical history. A good clinic should want to see all relevant test results and know about medical history.

**1.4.5 Questions to the overseas clinic**

I ask:

- Whether fertility treatment is regulated in their country and are there any rules clinics have to follow and regular inspections?
- What is the clinic’s record of standards and safety?
- Does the laboratory have to follow set procedures?
- How are patient records kept to ensure confidentiality?
- In the UK, all clinics offer counseling prior to treatment involving donor gametes, is this the case at clinic?
- Could language barriers cause any problems at the clinic?
- How frequently and at what stages of treatment would I am required to travel to the overseas clinic?
• Will the clinic provide me with a coasted treatment plan, or an equivalent?
• Is the treatment I seek available?
• What are the clinic’s success rates, and how they are calculated?
• Does the clinic have a particular specialism and is it relevant to treatment needs or to the clinic’s overall success rates?
• What is the clinic are multiple birth rates and do they have policies in place to minimize risks?
• Does the clinic store embryos, and for how long?
• What would happen to embryos in the event that one party in a couple changes their mind about continuing with treatment?
• If I am planning to enter into a surrogacy arrangement, how does the clinic recruit surrogates and what sort of agreements will be in place with them?

If the treatment will involve using donated sperm, eggs or embryos, ask:

• What is the clinic’s recruitment and screening process?
• What screening processes do they carry out on donated sperm to make sure it is free from any infections?
• How do they recruit egg donors?
• What information will I be able to have about the donor?

In the UK, a donor has no legal responsibility, or rights, towards the child conceived using their donation, because donations are made through HFEA licensed clinics. This is not necessarily the case in other countries, so I will need to get independent legal advice.

1.4.6 Problems with Surrogate Mothers

Surrogacy is an alternative when pregnancy fails. Sometimes couples who are unable to conceive a child on their own choose to use a surrogate mother, in which case another woman carries their child. One method of surrogacy is when a woman who is not able to carry a child to term, but is otherwise fertile, has her embryos transplanted into the surrogate mother. The eggs may be fertilized by the biological father or by artificial insemination if the male has fertility issues.
In other cases, a surrogate mother is actually the biological mother of the child as her own eggs are used to create the embryo.\textsuperscript{14}

- **Surrogate's Change of Heart**
  
  Sometimes a surrogate mother changes her mind and refuses to give up the child. However, in states where surrogacy is allowed, the biological mother usually does not win custody or visitation rights. In most cases, both the surrogate and the parents sign a contract to prevent this from happening. Nonetheless, there is always the chance that the surrogate mother might win her case.\textsuperscript{15}

- **Breach of Contract**
  
  Most surrogacy contracts state what the surrogate can and cannot do while pregnant. But in the end, the parents must trust the surrogate mother to do what is in the best interests of the baby. Problems can arise when a surrogate breaches the contract by smoking, abusing drugs or drinking alcohol while pregnant.

\textsuperscript{14} Amber Keefer, Aug 16, 2013, “Problems with surrogate Mother” retrieved from http://www.livestrong.com/article/117026-problems-surrogate-mothers/ on date 10-3-16 7:03 pm

\textsuperscript{15} Matthew Tieu March 2007  Oh Baby Baby: The Problem of Surrogacy Bioethics Research Notes 19(1):
- **Medical Complications**

  Like with any pregnancy, there is always the chance for medical or obstetrical complications, which could harm the baby or the surrogate mother. For one, there is the risk of transmission of infectious disease to the surrogate when another woman's eggs are transplanted into the surrogate. For this reason, both biological parents must be prescreened. If a surrogate develops complications early on that put her life at risk, she might want to end the pregnancy. Another problem that can occur is if doctors discover that the fetus has potential birth defects or other health concerns. In that case, the parents might decide they do not want to continue with the surrogacy. This creates all kinds of legal problems, especially if the sperm is from a donor or eggs other than the surrogate's were used for pregnancy. The question then becomes who gets to decide whether to proceed with the pregnancy.

  It is often a devastating and life changing experience for women to discover that for one reason or another they cannot become pregnant and have children of their own. In some cases, such as those involving repeated unsuccessful attempts at assisted reproductive technology (ART) or having a non-functional uterus, the remaining option (besides that of adoption) for these women and their partners is surrogacy.

  However, a major concern with surrogacy is the potential harm that may be inflicted upon the surrogate mother and the child. Therefore, any legislation like South Australia’s recently proposed Statutes Amendments (Surrogacy) Bill 2006, drafted by the Honourable John Dawkins (MLC), which would permit altruistic surrogacy arrangements, must be considered in relation to the possibility that the commissioning couple’s choices may harm the surrogate and the child she carries. Even if one were to take the liberal view that surrogacy should be presumptively allowed on the basis of autonomy, evidence of harm must be taken seriously. In addition to the ethically problematic nature of surrogacy in general, the Statutes Amendments (Surrogacy) Bill 2006 places a disproportionate burden of the terms of the surrogacy arrangement onto a contractual agreement between surrogate and commissioning couple.
In this article I will discuss a few of the major concerns in relation to surrogacy, focusing on the importance of foetal maternal bonding, the difficulty of a potential surrogate to give informed consent, and the contractual disputes that are likely to arise due to the logistical pitfalls of legislating for surrogacy. Furthermore, I will argue that there are good reasons, grounded in empirical evidence, to support the view that surrogacy objectifies and subordinates the welfare of both the child and surrogate mother.

1.4.7 Assisted Reproductive Technology Legislation

The Indian government has drafted legislation, earlier floated in 2008, finally framed as ART Regulation draft bill 2010. The bill is still pending with Government and has not been presented in the Parliament. The proposed law has taken consideration of various aspects including interests of intended parents and surrogate mothers. The proposed draft needs to be properly discussed, and its ethical and moral aspect should be widely debated by social, legal, medical personal, and the society before any law is framed.

The bill acknowledges surrogacy agreements and their legal enforceability. The surrogacy agreements are treated at par with other contracts under the Indian Contract Act 1872 and other laws applicable to these kinds of agreements. Both the couple/single parent and surrogate mother need to enter into a surrogacy agreement covering all issues, which would be legally enforceable. Some of the features of proposed bill are that an authority at national and state level should be constituted to register and regulate the I.V.F. clinics and A.R.T centers, and a forum should be created to file complaints for grievances against clinics and ART centers. The age of the surrogate mother should be 21-35 years, and she should not have delivered more than 5 times including her own children. Surrogate mother would not be allowed to undergo embryo transfer more than 3 times for the same couple. If the surrogate is a married woman, the consent of her spouse would be required before she may act as surrogate to prevent any legal or marital dispute. A surrogate should be screened for STD, communicable diseases and should not have received blood transfusion in last 6 month as these may have an adverse
bearing on the pregnancy outcome. All the expenses including insurance of surrogate medical bill and other reasonable expenses related to pregnancy and childbirth should be borne by intended parents. A surrogacy contract should include life insurance cover for surrogate mother. The surrogate mother may also receive monetary compensation from the couple or individual as the case may be for agreeing to act as such surrogate. It is felt that to save poor surrogate mothers from exploitation, banks should directly deal with surrogate mother, and minimal remuneration to be paid to the surrogate mother should be fixed by law.

The surrogacy arrangement should also provide for financial support for the surrogate child in case the commissioning couple dies before delivery of the child, or divorce between the intended parents and subsequent willingness of none to take delivery of the child so as to avoid injustice to the child. A surrogate mother should not have any parental rights over the child, and the birth certificate of the baby should bear the names of intended parents as parents in order to avoid any legal complications. Guidelines dealing with legitimacy of the child born through ART state that the child shall be presumed to be the legitimate child of the married/unmarried couple/single parent with all the attendant rights of parentage, support, and inheritance.

The ART clinics should not be allowed to advertise for surrogacy for its clients, and couples should directly seek facilities of ART Bank. The intended parents should be legally bound to accept the custody of the child/children irrespective of any abnormality in the child/children. Confidentially should always be maintained, and the right to privacy of the donor as well as surrogate mother should be protected. If a foreigner or NRI is seeking surrogacy, they should enter an agreement with written guarantee of citizenship for the child from their government, and they should also appoint a local guardian who would be legally responsible for taking care of the surrogate during and after the pregnancy till the child is delivered to the foreigner couple or reaches their country. Sex-selective surrogacy should be prohibited, and abortions should be governed by the Medical Termination of Pregnancy Act 1971.
1.5 OBJECTIVES OF RESEARCH

1.5.1 Surrogate Motherhood

Surrogate motherhood raises difficult ethical, philosophical and social questions. When a monetary transaction takes place, the matter becomes even more complicated: especially in India, where no legal provisions safeguard the interests of the surrogate mother, the child or the commissioning parents-to-be. Hence, I have conducting an exploratory study on surrogacy in three high prevalence areas: Anand, Nadiad and Ahmedabad of Gujarat state.

In common understanding, a surrogate – or "substitute" – mother is hired to bear a child that she turns over at birth to her employer. Due to relatively inexpensive medical care and rapid advancements in reproductive technology, India has become a popular destination for foreign couples in search of women willing to bear children in exchange for financial compensation.

The Government of India has made initial steps to address and regulate surrogacy arrangements. Most notably, the Indian Council of Medical Research under the Ministry of Health and Family Welfare enacted the National Guidelines for Accreditation, Supervision and Regulation of Assisted Reproductive Technology Clinics in India in 2005. However, legal provisions dealing directly with the rights and interests of the surrogate mother, child and commissioning parents remain nonexistent.

Therefore, this study contains the following key objectives:

- To examine the existing social and health protection rights ensured to Surrogate mothers
- To analyze the rights of the child in surrogacy arrangements thus far
- To study the rights and issues pertaining to commissioning parents
- To suggest policy recommendations for the protection of rights through legal provisions of surrogate mother, child and the commissioning parents

Conduct a situational analysis of surrogacy cases in the three study areas and the issues involved
Examine the regulation of surrogacy in India
Distinguish altruistic and commercial surrogacy
Conclusions as to whether commercial surrogacy causes harm to society or to the parties involved in the transaction

Data will be collected from both primary and secondary sources. Having prepared and vetted field questionnaires, the project team is currently in the process of collecting data in the concerned project areas in Gujarat. Upon completion of the project, findings and recommendations will be published and shared in a national-level seminar with governmental and non-governmental agencies, as well as with other concerned individuals and organizations.


The main aim of the research is

“To Investigate the Legal Issues, Ethical Issues, Religious Issues, Health Issues and Psychological Issues also consequences of Surrogacy in India and analyze the situations of issue of Surrogate Mother and her Legal Rights and find ways “

, more than

1. To Evaluate Legal issues for Surrogate parenting and agreements.
2. To Assess the Ethical issue: women to more contract about of her body, mean of motherhood.
3. To evaluate the Religious issues: different approaches to surrogacy.
4. To evaluate Psychological issues: surrogate and child.
5. The basic objective of the present study is to analyze the past and present of the issue of surrogacy discuss problem and issues and challenging to it.
6. The aim of the researches is too gained and presents new knowledge of Surrogacy ideas or Suggests change and reform.
7. To discover new facts, verify old fact, extend knowledge. Develop theory and arrive it general conclusion and make general statement.
8. To find out why surrogacy is developed among certain groups of people or uncertain places and surrogacy can be used in any way to minimize the adoption
9. A study may be determine in factor causing the problem and examine the question whether and what way effectively used as a mechanism of regulation. Control, change and reform.
10. To observe the issue of Surrogacy in India. To present the views about surrogacy in India. To examine the issue of surrogacy in India.
11. To analyze the legal frame work pertaining Surrogacy and to flesh out the scope and content of Surrogacy as well as to examine the nature of limitations in light of International standards.
12. To explore the contemporary Legal controversies, Religious and Social problems and challenges of Surrogacy.

1.5.2 Research Questions

With a view to filling this unfortunate gap, this innovative research project aims at exploring possible types of international regulation of surrogacy arrangements, employing a combination of an empirical and a library-based research. The ultimate goal of the research is to prepare a document that would serve as a basis for a future national and international Convention on aspects of surrogacy arrangements. The research aspires to outline the underlying concepts of the surrogacy. The inquiry focuses on four interrelated objectives. In particular, to develop:

1. A report of legally binding standards that should be observed in connection with international surrogacy arrangements;
2. A system of supervision to ensure that these standards are observed;
3. A model of co-operation between jurisdictions involved (i.e. the country of a surrogate mother and the country of intended parents); and
4. A model of formal channels of communication between jurisdictions involved (i.e. the country of a surrogate mother and the country of intended parents).

In preparation for dealing with the above research questions, the following practical aspects of international surrogacy arrangements will be addressed:

1. The scale and the pattern of the problem;
2. In-depth analysis of existing private international law problems arising in practical cases of international surrogacy arrangements; and
3. Examination of domestic surrogacy legislation in a number of jurisdictions (Australia, Argentina, Belgium, Brazil, Canada, China, Czech Republic, France, Germany, Greece, Hungary, India, Ireland, Israel, Japan, Mexico, Netherlands, New Zealand, Romania, Russia, South Africa, Spain, Uganda, Ukraine, United Kingdom, United States and Venezuela), and detailed scrutiny of the most worrying incompatibilities in national laws on surrogacy.

1.5.3 Research Methods

Due both to the novelty of its subject matter and the practical focus of its objectives, the project calls for a mix of methodological approaches. In recognition of this, the research takes the form of a combined empirical and library-based study.

The empirical part involves a statistical survey of surrogate mothers. The objective of the survey is to map the magnitude of the problem and current patterns in international surrogacy. To obtain the necessary data, a statistical questionnaire has been drafted and sent to a number of surrogate mothers/surrogacy agencies / relevant law offices in a number of jurisdictions. The responses to the statistical questionnaire will be analyzed using software. In addition, charts will be created using Excel software.

The empirical element of the research also includes personal interviews with surrogate mothers and surrogacy specialists from selected jurisdictions. The interviews seek to examine practical surrogacy problems arising in cases of national and international surrogacy arrangements. Jurisdictions selected for the purposes of the interviews are India. The main
reason for choosing these particular jurisdictions is their liberal approach to surrogacy. All three belong amongst the few countries that permit commercial surrogacy agreements. As a result, these jurisdictions have become highly popular destinations of “procreative tourists”. This in turn guarantees availability of large amounts of empirical data in these jurisdictions. The United Kingdom has been added as an extra jurisdiction.
1.6 HYPOTHESIS

The researcher after making the survey of various Surrogate Mothers, Clinics, Intended Parents, Doctors, Agents and Hospitals also literature, Books, Journals, Websites and constitutional provisions and the Supreme Court and high court Judgments on the subject has framed following Hypothesis:

1. *The legal issues, General Issues, Ethical issues, Religious issues, Health issues and Psychological issues and consequences Surrogacy in India*

2. *The situations of Surrogate mother her legal rights and find ways*

3. *Surrogate Parenting should not be banned by law.*

4. *Challenges of Surrogacy, Surrogate Mother and Child.*
1.7 RESEARCH METHODOLOGY

(SOCIO LEGAL RESEARCH)

The Literature Review as a Step within the Doctrinal Method

One point that must be made is that doctrinal research is more than simply a literature review. Every research project, no matter what methodology is being used, needs a literature review as a precursor to further study — a nexus to that which has been done before. A literature review routinely includes the following steps:

1. Selecting research questions;
2. Selecting bibliographic or article databases;
3. Choosing search terms;
4. Applying practical screening criteria;
5. Applying methodological screening criteria;
6. Doing the review;
7. Synthesizing the results

‘Testimony’ can include the secondary literature — texts, journal articles, government reports, policy documents, law reform documents and media reports. Just like any

1.7.1 DOCTRINAL LEGAL RESEARCH

Other research, doctrinal research requires background research of secondary commentary and sources as a first step. In this respect, doctrinal research requires a literature review, that is, ‘a critical analysis of the existing research literature, theoretical and empirical’, related to the research topic.

The literature review thus informs us of ‘what is known and not known’ about the topic.
1.7.2 Research Design

- Various Steps in Research: Research Process
- Research Problem: Identification and Formulation
- Hypothesis
- Use of Library
- Use of Modern Technology/ Computer Assisted Research
- Tools and Techniques for Collection of Data
  - Primary and Secondary Sources
  - Literature Review
  - Observation Method
  - Questionnaire
  - Interview
  - Case study
  - Sampling
  - Jurimetrics

- Analysis and Interpretation of Data
- Use of Deductive and Inductive Methods in Research
- Preparation of Research Report and Writing of Research report
- Budgeting of Research
- Ethical and Legal Issues: Plagiarism and Copyright Violation

- **Practical Research**: The practical approach consists of the empirical study of the topic under research and chiefly consists of hands on approach. This involves first hand research in the form of questionnaires, surveys, interviews, observations and discussion groups.

- **Theoretical Research**: A non empirical approach to research, this usually involves perusal of mostly published works like researching
through archives of public libraries, court rooms and published academic journals

1.7.3 Types of Research Method

- **Descriptive/Qualitative**
  
  This type of research methods involve describing in details specific situation using research tools like interviews, surveys, and observations.

- **Descriptive/Quantitative**
  
  This type of research methods requires quantifiable data involving numerical and statistical explanations. Quantitative analysis hinges on researchers understanding the assumptions inherent within different statistical models.

1.7.4 Choosing appropriate research Methodologies and Methods

It is vital I pick approach research methodologies and methods for the thesis – the research after all is what the whole dissertation will rest on.

- Using quantitative and qualitative research methods together
- Research methods in brief
- Developing and using a questionnaire - some tips

1.7.4.1 Using quantitative and qualitative research methods together

This is a common approach and helps to 'triangulate' i.e. to back up one set of findings from one method of data collection underpinned by one methodology, with another very different method underpinned by another methodology - for example, I might give out a questionnaire (normally quantitative) to gather statistical data about responses, and then back this up and research in more depth by interviewing (normally qualitative) selected members of the questionnaire sample.
1.7.4.2 Research methods in brief:

Look at the very brief outlines of different methods below. Consider which I intend using and whether I could also find it more useful to combine the quantitative with the qualitative.

- Qualitative research methods include
- Quantitative research methods
- Qualitative research methods
- Interviews

Interviews enable face to face discussion with human subjects. If I am going to use interviews I will have to decide whether I will take notes (distracting), tape the interview (accurate but time consuming) rely on the memory (foolish) or write in their answers (can lead to closed questioning for time’s sake). If I decide to interview I will need to draw up an interview schedule of questions which can be either closed or open questions, or a mixture of these. Closed questions tend to be used for asking for and receiving answers about fixed facts such as name, numbers, and so on. They do not require speculation and they tend to produce short answers. With closed questions I could even give the interviewees a small selection of possible answers from which to choose. If I do this I will be able to manage the data and quantify the responses quite easily. The Household Survey and Census ask closed questions, and often market researchers who stop me in the street do too. I might ask them to indicate how true for them a certain statement was felt to be, and this too can provide both a closed response, and one which can be quantified (30% of those asked said they never ate rice, while 45% said they did so regularly at least once a week... and so on).

The problem with closed questions is that they limit the response the interviewee can give and do not enable them to think deeply or test their real feelings or values.
If I ask open questions such as ‘what do I think about the increase in traffic?’ I could elicit an almost endless number of responses. This would give very good idea of the variety of ideas and feelings people have, it would enable them to think and talk for longer and so show their feelings and views more fully. But it is very difficult to quantify these results. I will find that I will need to read all the comments through and to categories them after I have received them, or merely report them in their diversity and make general statements, or pick out particular comments if they seem to fit purpose. If I decide to use interviews:

- Identify the sample.
- Draw up a set of questions that seem appropriate to what I need to find out.
- Do start with some basic closed questions (name etc.).
- Don't ask leading questions.
- Try them out with a colleague.
- Pilot them, and then refine the questions so that they are genuinely engaged with the research object.
- Contact the interviewees and ask permission, explain the interview and its use.
- Carry out interviews and keep notes/tape.
- Transcribe.
- Thematically analyze results and relate these findings to others from other research methods.

- **Quantitative research methods:**
- Questionnaires

Questionnaires often seem a logical and easy option as a way of collecting information from people. They are actually rather difficult to design and because of the frequency of their use in all contexts in the modern world, the response rate is nearly always going to be a problem (low) unless I have ways of making people complete them and hand them in on the spot (and this of course limits sample, how long the questionnaire can be and the kinds of questions asked). As with interviews, I can decide
to use closed or open questions, and can also offer respondents multiple choice questions from which to choose the statement which most nearly describes their response to a statement or item. There is an art form in itself because in poorly laid out questionnaires respondents tend, for example, to repeat their ticking of boxes in the same pattern. If given a choice of response on a scale 1-5, they will usually opt for the middle point, and often tend to miss out subsections to questions. I need to take expert advice in setting up a questionnaire, ensure that all the information about the respondents which I need is included and filled in, and ensure that I actually get them returned. Expecting people to pay to return postal questionnaires is sheer folly, and drawing up a really lengthy questionnaire will also inhibit response rates. I will need to ensure that questions are clear, and that I have reliable ways of collecting and managing the data. Setting up a questionnaire that can be read by an optical mark reader is an excellent idea if I wish to collect large numbers of responses and analyze them statistically rather than reading each questionnaire and entering data manually.

I would find it useful to consult the range of full and excellent research books available. These will deal in much greater depth with the reasons for, processes of holding, and processes of analyzing data from the variety of research methods available to me.

1.7.4.3 Developing and using a questionnaire - some tips

- Identify the research questions
- Identify the sample
- Draw up a list of appropriate questions and try them out with a colleague, Pilot them
- Ensure questions are well laid out and it is clear how to 'score them' (tick, circle, delete)
- Ensure questions are not leading and confusing
- Code up the questionnaire so I can analyze it afterwards
- Gain permission to use questionnaires from the sample
- Ensure they put their names or numbers on so I can identify them but keep real names confidential
- Hand them out/post them with reply paid envelopes
- Ensure I collect in as many as possible
- Follow up if I get a small return
- Analyze statistically if possible and/or thematically
1.8 DESIGN OF RESEARCH

1.8.1 Meaning of research design

A research design is the arrangement of conditions for collection and analysis of data in a manner that aims to combine relevant to the research purpose with economy in procedure.

1.8.2 Research design has following parts

- Sampling design
- Observational design
- Statistical design
- Operational design

1.8.3 Determining the Research Design

Research design encompasses the methodology and procedure involved to solve different sociological questions.

- Research design defines the study type, research question, hypotheses, variables, and data collection methods. Some examples of research designs include descriptive, correlation, and experimental. Another distinction can be made between quantitative and qualitative methods.
- Sociological research can be conducted via quantitative or qualitative methods. Quantitative methods are useful when a researcher seeks to study large-scale patterns of behavior, while qualitative methods are more effective when dealing with interactions and relationships in detail.
- Quantitative methods include experiments, surveys, and statistical analysis, among others. Qualitative methods include participant observation, interviews, and content analysis.
- An interpretive framework is one that seeks to understand the social world from the perspective of participants.
- Although sociologists often specialize in one approach, many sociologists use a complementary combination of design types
and research methods in their research. Even in the same study a researcher may employ multiple methods.

- **Quantitative methods**

  Quantitative research refers to the systematic empirical investigation of social phenomena via statistical, mathematical, or computational techniques.

- **Qualitative methods**

  Qualitative research is a method of inquiry employed in many different academic disciplines, traditionally in the social sciences, but also in market research and further contexts. Qualitative researchers aim to gather an in-depth understanding of human behavior and the reasons that govern such behavior. The qualitative method investigates the why and how of decision making, not just what, where, and when. Hence, smaller but focused samples are more often needed than large samples.

  The design of a study defines the study type, research question and hypotheses, independent and dependent variables, and data collection methods. There are many ways to classify research designs, but some examples include descriptive (case studies, surveys), correlation (observational study), semi-experimental (field experiment), experimental (with random assignment), review, and meta-analytic, among others. Another distinction can be made between quantitative methods and qualitative methods.
1.9 COLLECTION OF DATA

1.9.1 Primary and Secondary Data:

Primary data are those which are collected for the first time and are always given in the form of raw materials and originals in character. These types of data need the application of statistics methods for the purpose of analysis and interpretation. While secondary data are those which have already been collected by someone and have gone thought the statistical machines. They are usually refined of the raw materials when statistical methods are applied on primary their shape and become secondary data.

1.9.2 Methods of Collection of Primary Data:

The primary data are collected by the following methods.

1.9.2.1 Direct personal investigation.

1.9.2.2 Indirect personal investigation

1.9.2.3 Investigation thought questionnaire.

1.9.2.4. Investigation through questionnaire in the charge if enumerator

1.9.2.5 Investigation through local’s reports.

1.9.2.1 Direct Personal Investigation:

According to this methods the investigator has to collect his information himself personally form the source concerned. It means the investigator should be are the spot where the enquiry concerned. It means the investigator should be at the spot where the enquiry is being conducted, it is also expected that the investigator should be very polite and courteous. Further he should acquaint himself with the surrounding situation and must know their local customs and tradition.

Advantages:

1. The information collected by these methods is reliable and accurate.
2. It is a good method for intensive investigation.

3. This method gives a satisfactory result provided the scope of inquiry is narrow.

Disadvantages:

1. This method is not suitable for extensive inquiry

2. It requires a lot of expenses and time

3. The bias on the part of the investigator can damage the whole inquiry

4. Sometimes the informant may be reluctant to answer the question

1.9.2.2 Indirect Personal Investigation:

This method is used when the informants are reluctant to give the definite information. E.g., if a government servant is asked to give the information regarding his income. He will not be willing to give the information for the additional income which he earned by doing part-time work. In such cases what is done? The investigators put the informant some suitable indirect question which provides him some suitable information. Thus the only difference between the first and the second methods is that in the first methods the investigator puts direct questions and collects the information while in the second methods no direct question is put to the informant but only indirect questions are asked. Even then, if it is not possible for the investigator to collect the information by the above methods then the information is collected through indirect sources, i.e., from the persons who have full knowledge of the problem under study. The persons from whom the desired information is collected are known as witnesses. Usually a list of questions is prepared which is put before the collected by this method largely depends upon the persons who are selected to give information. Hence it is necessary to take the following precautions for the selection of the informant.
1.9.2.3 Investigation through questionnaire:

According to this method a standard list of questions relating to the particular investigation is prepared. This list of questions is called a questionnaire. The data are collected “By sending the questionnaire to the informants and requesting them to return the questionnaire after answering the questions. “ This method is an important one and is usually used by research workers, non-official bodies and private individuals.

Choice of Questionnaire: The success of the investigation largely depends upon the proper choice the questions to be put to the informants. While preparing a questionnaire the following points should be kept in mind.

I. Short and clear: - The questions should be short and clear so as to be easily intelligible to every man. There should be no ambiguity in the questions. If some technical terms are used in the questionnaire, their definitions should be given.

ii. Few in number and easy: The questions should be few in number. A large number of the questions would harm the informants because they take much time to answer, with the result they would not pay much attention to ever question and would try to save their akin by giving vague answers. Moreover the questions should be easy to answer.

a. Definiteness: The questions should be such the answers of which are definite and exact. Preferably the questions should be such the replies of which are in the form of “Yes” or “No” Such questions should not be framed the replies of which are vague in nature because such replies are of no use to a statistician.

b. Corroborating in nature: The questions should be such that their replies check the value replies and truth can be easily verified from them.

c. Non-confidential information: The questions framed should not be such which call the confidential information of the
informants. This will injure the feelings with the result that they would not give proper answer.

d. Logical sequence: The questions framed should be put in some logical order; their replies should also be put in the same order because this would facilitate the work.

1.9.2.4 Investigation through questionnaire in charge of enumerators:

According to this method enumerators are appointed who go to the informants with the questionnaire and help them in recording the answer. Here the enumerators explain the background, aim and object of the problem under investigation and emphasize the necessity of giving correct answer. They also help the informants in understanding some technical terms of question the concept of which is not clear to the informants. Thus the questionnaire is filled by the informants in the presence and help of the enumerators.

1.9.2.5 Investigation through local reports:

According to this method the collection of data is neither through the questionnaire nor through the enumerators but through local correspondents. This method of collecting the data is not reliable and it should be used only at those places where the purpose the investigation is served by rough estimates.

1.9.3 COLLECTION OF SECONDARY DATA

The secondary data are those which have already been collected by someone other than the investigator himself, and as such the problems associated with the original collection of data do not arise here. The secondary data can be collected directly either from published or unpublished sources. The following are the sources of published at from which secondary data can be collected.

1. Official publications, i.e. the publication of the central statistical office, Ministry, court etc… the provincial statistical Bureau etc.

2. Semi-Official publications, hospitals, clinics etc., the publication issued
3. Research publication, submitted by research workers, economists, University bureaus, and other institutions.

4. Technical or trade journals.

Sources of Unpublished Data: The secondary data are also available from the unpublished data.

Scrutiny of Secondary Data: In the words of Bowley, “It is never safe to take published statistics at their face value without knowing their meaning and limitations and it is always necessary to criticize arguments that can be based on them,” Thus the data collected by some other person should not be fully depended as they might have pitfalls. Thus it becomes necessary to find out the inconsistencies probable errors and omissions in the data. This necessitates the scrutiny of secondary data because it is just possible that the data might be inaccurate, inadequate or even unsuitable for the purposes of investigation. Hence the secondary data should possess the following qualities:

1.9.3.1. Reliability

1.9.3.2. Suitability

1.9.3.1 RELIABILITY: In order to test the reliability of the data following points should be considered:

I. Who collected the data?

ii. The source of collection of the data

I. Is the reliability of the compiler dependable?

ii. Is the source of the collection of the data dependable?

iii. What was the scope and object of the investigation?

iv. Were the data collected by the use of proper methods?

v. Were the statistical units defined in which the compiler collected the data?

vi. What was the period of the collection of data?

vii. What was the type of inquiry? Was it census or sample?
viii. What was the degree of accuracy desired and achieved?

ix. Were the data in comparable form?

1.9.3.2. SUITABILITY:

If the data are reliable it does not mean that they are suitable for every investigation. Data which are found suitable for one inquiry might not be suitable for another one. These necessities that the suitability of the data for the inquiry under investigation is very essential.

Books, magazines, websites, and government records can often be the thing that rounds out project and supports ideas. This kind of retrospective data collection lends weight to report. We can help me in gathering both primary and secondary sources and then analyzing them for data that will only contribute to goals. We have streamlined and primary and secondary data collection methods so I will have fast, efficient results. Don’t let the collection of secondary data weigh I down and the collection of primary date burden I.
1.10 UTILITIES OF RESEARCH

The present research has enormous social relevance and utility. It offers an opportunity to study the lives of surrogate women in the country particularly, the surrogate women and their personal struggle against hostile circumstances. It spreads across inter-disciplinary reference to sociology, history, legal, medical, psychology and religions exist in the country. The study will encourage the further research on cultural background and study of rational issues raised by them in their autobiographies. The present study is very much relevant as the approach to surrogacy literature and rise of issue of surrogacy in India and abroad.

1) Social aspects
   Social concepts, Social cohesion, Social welfare

2) Application aspects
   Judgments, practicing lawyers

3) Academic aspects
   To know what law is, Evaluation of law, Comparative law, Legal academicians

4) Legal aspects
   Working of law, Law administration, Law legislation, Law reforms
1.11 LIMITATION OF RESEARCH

The present research has certain limitations. It is a study, which concentrates mainly on surrogacy in India. It is in-depth representation of the issue of surrogacy. The study remain confined to a few women surrogates whose experiences may not cover the total problems of Indian surrogates women at large. This is a sample survey on surrogacy approaches in literatures in their respective issues. The researcher has attempted to study issues of surrogacy and surrogates, intended parents, child, clinic and different factors. The selection of these surrogate women is based on region and religion from different locations. They are Nadiad, Anand and Ahmedabad.

- A surrogate shall not be identified over the express objection of the patient, and a surrogacy shall terminate if at any time a patient for whom a surrogate has been appointed expresses objection to the continuation of the surrogacy.
- No physician or APRN shall be required to identify a surrogate, and may, in the event a surrogate has been identified, revoke the surrogacy if the surrogate is unwilling or unable to act.
- A physician or APRN may, but shall not be required to, initiate guardianship proceedings or encourage a family member or friend to seek guardianship in the event a patient is determined to lack capacity to make health care decisions and no guardian, agent under a health care power of attorney, or surrogate has been appointed or named.
- Nothing shall be construed to require a physician or APRN to treat a patient who the physician or APRN reasonably believes lacks health care decision-making capacity and for whom no guardian, agent, or surrogate has been appointed.
- The surrogate may make health care decisions for a principal to same extent as an agent under a durable power of attorney for health care for up to 90 days after being identified, unless the principal regains health care decision-making capacity or a guardian is appointed or patient is determined to be near death.
The authority of the surrogate shall terminate after 90 days.

- If an adult patient is unable to make or communicate health care treatment decisions, a health care provider shall make a reasonable effort to locate and shall follow a health care directive. A health care provider shall also make a reasonable effort to consult with a surrogate. If the patient has a health care power of attorney that meets the requirements of section, the patient's designated agent shall act as the patient's surrogate. However, if the court appoints a guardian for the express purpose of making health care treatment decisions, that guardian shall act as the patient's surrogate. If neither of these situations applies, the health care provider shall make reasonable efforts to contact the following individual or individuals in the indicated order of priority, who are available and willing to serve as the surrogate, who then have the authority to make health care decisions for the patient and who shall follow the patient's wishes if they are known:

1. The patient's spouse, unless the patient and spouse are legally separated.

2. An adult child of the patient. If the patient has more than one adult child, the health care provider shall seek the consent of a majority of the adult children who are reasonably available for consultation.

3. A parent of the patient.

4. If the patient is unmarried, the patient's domestic partner.

5. A brother or sister of the patient.

A. close friend of the patient. For the purposes of this paragraph, "close friend" means an adult who has exhibited special care and concern for the patient, who is familiar with the patient's health care views and
desires and who is willing and able to become involved in the patient's health care and to act in the patient's best interest.

B. If the health care provider cannot locate any of the people listed in subsection A of this section, the patient's attending physician may make health care treatment decisions for the patient after the physician consults with and obtains the recommendations of an institutional ethics committee. If this is not possible, the physician may make these decisions after consulting with a second physician who concurs with the physician's decision. For the purposes of this subsection, "institutional ethics committee" means a standing committee of a licensed health care institution appointed or elected to render advice concerning ethical issues involving medical treatment.

C. A person who makes a good faith medical decision pursuant to this section is immune from liability to the same extent and under the same conditions.

D. A surrogate may make decisions about mental health care treatment on behalf of a patient if the patient is found incapable. However, a surrogate who is not the patient's agent or guardian shall not make decisions to admit the patient to a level one behavioral health facility licensed by the department of health services.

E. If the admitting officer for a mental health care provider has reasonable cause to believe after examination that the patient is incapable as defined and is likely to suffer serious physical harm or serious illness or to inflict serious physical harm on another person without immediate hospitalization, the patient may be admitted for inpatient treatment in a level one behavioral health facility based on informed consent given by any surrogate. The patient shall be discharged if a petition for court ordered evaluation or for temporary guardianship requesting authority for the guardian to consent to admission to a level one behavioral health facility has not been filed within forty-eight hours of admission or on the following court day if
the forty-eight hours expires on a weekend or holiday. The discharge requirement prescribed in this section does not apply if the patient has given informed consent to voluntary treatment or if a mental health care provider is prohibited from discharging the patient under federal

1.12 **SCHEME of THE STUDY**

My study is divided into eight chapters.

**CHAPTER-1**  INTRODUCTION

**CHAPTER-2**  SCIENTIFIC ASPECTS OF SURROGACY

**CHAPTER-3**  SOCIO–PSYCHOLOGICAL ASPECTS

**CHAPTER-4**  LEGAL ASPECTS

**CHAPTER-5**  ISSUES OF SURROGACY

**CHAPTER-6**  DATA ANALYSIS

**CHAPTER-7**  JUDICIAL APPROACH

**CHAPTER-8**  CONCLUSION AND SUGGESTIONS

**ABBREVIATIONS**

**BIBILIOGRAPHY**