

Final Report
***Surrogate Motherhood-
Ethical or Commercial***



Submitted by

CSR



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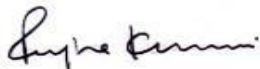
Acknowledgements

This unique research study provides a nuanced analysis of the motivations, experiences and consequences of surrogacy that is rapidly proliferating in metro cities of India like Delhi and Mumbai. The study focuses on the reasons for the woman's decision to become a surrogate mother and for commissioning parents to opt for surrogacy. It provides a retrospective view of the relationship between commissioning parents and surrogate mother before the pregnancy, during the pregnancy, and after the birth. Furthermore, the study analyses societal response to the commissioning parents' decision to opt for a surrogacy service and the surrogate mother's decision to provide a service. The study also looks into the so far under the cover, hidden actors of health tourism field, the agencies who walk out of this surrogacy arrangement as the main beneficiaries.

The research study was conducted in two of the most prominent metros Delhi and Mumbai where there are most famous ART clinics are operating and high incidences of surrogacy is reported in the recent future. Since metros are easily accessible to NRIs and foreign nationals alike with modern hospital and health care facilities, latest technological availability and more avenues to provide secrecy/privacy about the couple's identity, the metros are becoming new hubs for surrogacy unlike the pain, endurance and adaptability issues related to smaller towns. The sample size consisted of one hundred surrogate mothers and fifty commissioning parents and their families from both the metros. The methodology, adopted for the study, was exploratory research using both qualitative and quantitative research tools, such as the situation analysis, the informal investigation, survey analysis and questionnaires.

The research findings indicate that in the absence of a concrete law regarding surrogacy arrangement all the three parties involved i.e. the surrogate mother, the commissioning parents and the child are subjected to the whims and caprices of handful of infertility physicians/agencies who gained the most out of this arrangement. The unfavorable socio-economic conditions make the surrogate mothers financially vulnerable to search for extra income. There is very little interaction between the surrogate mother and intended parents, who in their desperation to beget a child do not question the clinics' dealings with their surrogate mother. The research reveals that it does not seem to be a problem for intended parents to acquire a baby through surrogacy arrangements, whereas the surrogate mother sometimes has to pay a high cost of exclusion by her family members and society. Last but not the least the child born through surrogacy arrangement also at times has to suffer due to the crisis regarding citizenship issue, divorce of intending parents or physical abnormalities. Hence, the study strongly recommends certain policy formulation for surrogacy arrangement with the enactment of a concrete law and against commercialization of surrogacy.

I, hereby, acknowledge the support extended by the Ministry of Women & Child Development (MWCD) in conducting the project. I extend my thanks to Mr. J. P. Arya, Joint Director and Mr. Sudesh Kumar, Deputy Director (Research) for showing a keen interest in the successful completion of the project. My immense gratitude are due to all the surrogate mothers and the commissioning parents interviewed, their relatives/ husbands/partners, Heads of Clinics/Hospitals/Agencies, Infertility Physicians, Doctors/nurses/mid-wives of the Clinics/Hospitals, In-charge/Superintendents of Shelter homes, drivers/helpers/cooks of Clinics/Hospitals/Shelter homes, all the Key informants in the selected study areas who participated in our interviews and all those who supported and participated in the implementation of the project. I want to acknowledge the contributions made by Ms. Maninder Kaur, Ms. Divya Chopra, Ms. Annu Daftuar and Ms. Lalita Yadav for field visits, documentation and preparation of secondary literature review, Mr. Manoj Kumar for data processing and SPSS analysis and Ms. Sangya Pandey for drafting the report. We are grateful to Prof. Alok Kumar for providing research inputs as Project Advisor. My special thanks are due to Dr. Manasi Mishra for supervising and successfully completing the study. My appreciation is also due to Mr. Balakrishnan, Mr. Sandeep Gupta and Mr. Anil Kumar Jha for managing the administrative and financial matters relating to the project work and facilitating the field visits.



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Contents

<u>Table of Contents</u>	<u>Page No.</u>
Acknowledgements	
Chapter 1: Introduction	4
1.1 Government initiatives	
1.2 Need of the study	
1.3 Objectives	
1.4 Methodology	
Chapter 2: Literature review	17
2.1 Theoretical background	
2.2 Commercialisation	
2.3 Incidents related to surrogacy	
2.4 Legal issues	
2.5 Landscape of surrogacy in India	
Chapter 3: Surrogate Mothers	40
3.1 Profile of the surrogate mothers	
3.2 Demographic & socio-economic background	
3.3 The surrogacy decision	
3.4 The surrogacy birthing arrangement	
3.5 Experiences before and during pregnancy	
3.6 After the pregnancy - Relinquishing the child	
3.7 Consequences of surrogacy for the surrogate mother and her family	
3.8 Conclusion	
Chapter 4: Commissioning Parents	98
4.1 Demographic & socio-economic background	
4.2 The surrogacy decision	
4.3 The surrogacy arrangement	
4.4 Experiences before and during pregnancy	
4.5 After the pregnancy – Relinquishing the child and the consequences of surrogacy on the commissioning parents	
4.6 Conclusion	
4.7 Surrogacy clinics	
Chapter 5: Conclusion and Recommendations	148
5.1 Conclusion	
5.2 Recommendations	
<i>Bibliography</i>	
<i>Annexures</i>	

Chapter I

Introduction

Nature has bestowed women with the unique ability to procreate a life. However in some cases, women or couples are unable to/decide not to conceive due to social, physiological or some other reasons. The urge for parenthood leads them to seek alternative solutions like Artificial Reproductive Technology (ART), In-Vitro Fertilisation (IVF), Intra-Uterine Injections (IUI), etc, infusing hope into many childless couples who long to have a child of their own. With advances in medical science and technology, particularly in assisted reproductive techniques which have come up with techniques like donor insemination, embryo transfer methods, etc, revolutionizing the reproductive environment, methods such as ‘surrogacy’ are also gaining popularity for various reasons. As commonly understood, a surrogate mother is one who is hired to bear a child that she turns over at birth to her employer. The word ‘surrogate’ means ‘substitute’.¹Besides surrogacy arrangements taking place within the family, the community, the state and within the country, because of cheap medical facilities coupled with advanced reproductive technological know-how, slowly but steadily India is becoming a popular destination for surrogacy arrangements for many foreigners, notably rich westerners. With the entry of financial arrangements in exchange of the surrogate child, making the child a ‘saleable commodity’, complications and issues arise, such as the rights of the surrogate mother, the child and the commissioning parents.

According to the Artificial Reproductive Technique (ART) Guidelines,

surrogacy is an “arrangement in which a woman agrees to a pregnancy, achieved through assisted reproductive technology, in which neither of the gametes belong to her or her husband, with the intention of carrying it to term and handing over the child to the person or persons for whom she is acting as surrogate; and a ‘surrogate mother’ is a woman who agrees to have an embryo generated from the sperm of a man who is not her husband, and the oocyte for another woman implanted in her to carry the pregnancy to full term and deliver the child to its biological parents(s)”.²

¹ ‘ Surrogacy from a feminist perspective’ by Malini Karkal, published in Indian Journal of Medical Science (IJME), Oct.- Dec. 1997 – 5(4), link; <http://www.Issuesinmedicalethics.org/054mi15.html>. Also in *Nelson Hilde Lindemann, Nelson James Lindemann: Cutting motherhood in two : some suspicions concerning surrogacy. In: Holmes Helen Bequaert, Purdy Laura (Eds.): Feminist perspectives in medical ethics. New York: Hypatia Inc., 1992.*

² The Assisted Reproductive Technologies (Regulation) Bill-2010, Indian Council of Medical Research (ICMR), Ministry of Health &Family Welfare, Govt. of India, pg. 4 (aa).

2. Government Initiatives

To address and to regulate surrogacy arrangements the Government of India has taken certain steps such as introduction and implementation of National Guidelines for Accreditation, Supervision and Regulation of Assisted Reproductive Technology (ART) Clinics in India, 2005 by the Indian Council of Medical Research (ICMR) under the Ministry of Health and Family Welfare, Government of India.³ But, till now there is no law directly dealing with surrogacy to protect the rights and interests of the surrogate mother, the child or the commissioning parents. Hence, the risks and disadvantages involved in surrogacy many a times prove detrimental to the interest of the surrogate mother and the child in particular. At times the commissioning parents also face legal hassles, like in case of the Japanese couple and the child born to them out of surrogacy.⁴

Rights and duties in relation to surrogacy:

- (1) Both the couple or individual seeking surrogacy through the use of assisted reproductive technology, and the surrogate mother, shall enter into a surrogacy agreement which shall be legally enforceable.
- (2) All expenses, including those related to insurance if available, of the surrogate related to a pregnancy achieved in furtherance of assisted reproductive technology shall, during the period of pregnancy and after delivery as per medical advice, and till the child is ready to be delivered as per medical advice, to the biological parent or parents, shall be borne by the couple or individual seeking surrogacy.
- (3) Notwithstanding anything contained in sub-section (2) of this section and subject to the surrogacy agreement, 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.
- (4) A surrogate mother shall relinquish all parental rights over the child.
- (5) No woman less than twenty one years of age and over thirty five years of age shall be eligible to act as a surrogate mother under this Act, provided that no woman shall act as a surrogate for more than five successful live births in her life, including her own children.
- (6) Any woman seeking or agreeing to act as a surrogate mother shall be medically tested for such diseases, sexually transmitted or otherwise, as may be prescribed, and all other communicable diseases which may endanger the health of the child, and must declare in writing that she has not received a blood transfusion or a blood product in the last six months.
- (7) Individuals or couples may obtain the service of a surrogate through an ART bank, which may advertise to seek surrogacy provided that no such advertisement shall contain any details

³ 'National Guidelines for Assisted Reproductive Technology: Ethical issues in Surrogacy' - Paper presented by Dr. R.S. Sharma, DDG (SG), Division of RHN, Indian Council of Medical research, New Delhi at the meeting-cum-workshop organized by the Ministry of Women and Child Development, Govt. of India on 25th June 2008 at India Islamic Centre, New Delhi.

⁴ Hindustan Times, dated 7th August 2008, Nation Page, pg. 13, column 2.

relating to the caste, ethnic identity or descent of any of the parties involved in such surrogacy. No assisted reproductive technology clinic shall advertise to seek surrogacy for its clients.

(8) A surrogate mother shall, in respect of all medical treatments or procedures in relation to the concerned child, register at the hospital or such medical facility in her own name, clearly declare herself to be a surrogate mother, and provide the name or names and addresses of the person or persons, as the case may be, for whom she is acting as a surrogate, along with a copy of the certificate mentioned in clause 17 below.

(9) If the first embryo transfer has failed in a surrogate mother, she may, if she wishes, decide to accept on mutually agreed financial terms, at most two more successful embryo transfers for the same couple that had engaged her services in the first instance. No surrogate mother shall undergo embryo transfer more than three times for the same couple.

(10) The birth certificate issued in respect of a baby born through surrogacy shall bear the name(s) of individual / individuals who commissioned the surrogacy, as parents.

(11) The person or persons who have availed of the services of a surrogate mother shall be legally bound to accept the custody of the child / children irrespective of any abnormality that the child / children may have, and the refusal to do so shall constitute an offence under this Act.

(12) Subject to the provisions of this Act, all information about the surrogate shall be kept confidential and information about the surrogacy shall not be disclosed to anyone other than the central database of the Department of Health Research, except by an order of a court of competent jurisdiction.

(13) A surrogate mother shall not act as an oocyte donor for the couple or individual, as the case may be, seeking surrogacy.

(14) No assisted reproductive technology clinic shall provide information on or about surrogate mothers or potential surrogate mothers to any person.

(15) Any assisted reproductive technology clinic acting in contravention of sub-section 14 of this section shall be deemed to have committed an offence under this Act.

(16) In the event that the woman intending to be a surrogate is married, the consent of her spouse shall be required before she may act as such surrogate.

(17) A surrogate mother shall be given a certificate by the person or persons who have availed of her services, stating unambiguously that she has acted as a surrogate for them.

(18) A relative, a known person, as well as a person unknown to the couple may act as a surrogate mother for the couple/ individual. In the case of a relative acting as a surrogate, the relative should belong to the same generation as the women desiring the surrogate.

(19) A foreigner or foreign couple not resident in India, or a non-resident Indian individual or couple, seeking surrogacy in India shall appoint a local guardian who will be legally responsible for taking care of the surrogate during and after the pregnancy as per clause 34.2, till the child / children are delivered to the foreigner or foreign couple or the local guardian. Further, the party seeking the surrogacy must ensure and establish to the assisted reproductive technology clinic through proper documentation (a letter from either the embassy of the Country in India or from the foreign ministry of the Country, clearly and unambiguously stating that (a) the country permits surrogacy, and (b) the child born through surrogacy in India, will be permitted entry in the Country as a biological child of the commissioning couple/individual) that the party would be able to take the child / children born through surrogacy, including where the embryo was a consequence of donation of an oocyte or sperm, outside of India to the country of the party's origin or residence as the case may be. If the foreign party seeking surrogacy fails to take delivery of the child born to the surrogate mother commissioned by the foreign party, the local

guardian shall be legally obliged to take delivery of the child and be free to hand the child over to an adoption agency, if the commissioned party or their legal representative fails to claim the child within one month of the birth of the child. During the transition period, the local guardian shall be responsible for the well-being of the child. In case of adoption or the legal guardian having to bring up the child, the child will be given Indian citizenship.

(20) A couple or an individual shall not have the service of more than one surrogate at any given time.

(21) A couple shall not have simultaneous transfer of embryos in the woman and in a surrogate.

(22) Only Indian citizens shall have a right to act as a surrogate, and no ART bank/ART clinics shall receive or send an Indian for surrogacy abroad.

(23) Any woman agreeing to act as a surrogate shall be duty-bound not to engage in any act that would harm the foetus during pregnancy and the child after birth, until the time the child is handed over to the designated person(s).

(24) The commissioning parent(s) shall ensure that the surrogate mother and the child she deliver are appropriately insured until the time the child is handed over to the commissioning parent(s) or any other person as per the agreement and till the surrogate mother is free of all health complications arising out of surrogacy.

Determination of status of the child:

(1) A child born to a married couple through the use of assisted reproductive technology shall be presumed to be the legitimate child of the couple, having been born in wedlock and with the consent of both spouses, and shall have identical legal rights as a legitimate child born through sexual intercourse.

(2) A child born to an unmarried couple through the use of assisted reproductive technology, with the consent of both the parties, shall be the legitimate child of both parties.

(3) In the case of a single woman the child will be the legitimate child of the woman, and in the case of a single man the child will be the legitimate child of the man.

(4) In case a married or unmarried couple separates or gets divorced, as the case may be, after both parties consented to the assisted reproductive technology treatment but before the child is born, the child shall be the legitimate child of the couple.

(5) A child born to a woman artificially inseminated with the stored sperm of her dead husband shall be considered as the legitimate child of the couple.

(6) If a donated ovum contains ooplasm from another donor ovum, both the donors shall be medically tested for such diseases, sexually transmitted or otherwise, as may be prescribed, and all other communicable diseases which may endanger the health of the child, and the donor of both the ooplasm and the ovum shall relinquish all parental rights in relation to such child.

(7) The birth certificate of a child born through the use of assisted reproductive technology shall contain the name or names of the parent or parents, as the case may be, who sought such use.

(8) If a foreigner or a foreign couple seeks sperm or egg donation, or surrogacy, in India, and a child is born as a consequence, the child, even though born in India, shall not be an Indian citizen.

Right of the child to information about donors or surrogates:

(1) A child may, upon reaching the age of 18, ask for any information, excluding personal identification, relating to the donor or surrogate mother.

(2) The legal guardian of a minor child may apply for any information, excluding personal identification, about his / her genetic parent or parents or surrogate mother when required, and to the extent necessary, for the welfare of the child.

(3) Personal identification of the genetic parent or parents or surrogate mother may be released only in cases of life threatening medical conditions which require physical testing or samples of the genetic parent or parents or surrogate mother, provided that such personal identification will not be released without the prior informed consent of the genetic parent or parents or surrogate mother.

***Extracted from the ART (Regulation) Bill, 2010*

The ART guidelines and other legal issues are analysed under sections 2.4 and 2.5 of the next chapter.

In view of this and several other issues emerging out of the misuse of surrogacy arrangements and the effect it can have on the welfare of women and children born out of this arrangement, the Ministry of Women and Child Development, Government of India decided to call a meeting-cum-workshop of Government agencies, NGOs, Doctors and concerned Ministry personnel on 25th June 2008 to discuss the various aspects of drafting a legal procedure to address the issues. The follow up is being actively taken up by the Ministry and by concerned NGOs.

The following order was issued by the Ministry of Home Affairs in December 2012.

Type of visa for foreign nationals intending to visit India for Commissioning Surrogacy and conditions for grant visa for the purpose.

It has come to the notice of the Ministry of Home Affairs that some foreign nationals are visiting India for commissioning of surrogacy. In such cases, the surrogate mother is generally an Indian national. These foreign nationals are usually visiting India for this purpose on 'Tourist Visa', which is not an appropriate visa category. The matter was examined in the Ministry of Home Affairs and it has been decided that the appropriate category of the visa in this case will be a 'Medical Visa'. In such Medical Visa may be granted if they fulfil the following conditions: -

- (i) The foreign man and woman are duly married should have sustained at least for two years.
- (ii) A letter from the Embassy of the foreign country in India or the Foreign Ministry of the country should be enclosed with the visa application stating clearly that;

(a) the country recognizes surrogacy and

(b) the child/children to be born to the commissioning couple through the Indian surrogate mother will be permitted entry into their country as a biological child/children of the couple commissioning surrogate.

(iii) The couple will furnish an undertaking that they would take care of the child/children born through surrogacy.

(iv) The treatment should be done only at one of the registration Assisted Reproductive Technology clinics recognized by ICMR. (The list of such clinics will be shared with MEA from time to time).

(v) The couple should produce a duly notarized agreement between the applicant couple and the prospective Indian surrogate mother.

2. If any of the above conditions are not fulfilled, the visa application shall be rejected.

3. Before leaving India for their return journey, 'exit' permission from FRRO/FRO would be required. Before granting 'exit', the FRRO/FRO will see whether the foreign couple is carrying a certificate from the ART clinic concerned regarding the fact the child/children have been duly taken custody of by the foreigner and that the liabilities towards the Indian surrogate mother have been fully discharged as per the agreement. A copy of the birth certificate(s) of the surrogate child/children will be retained by the FRRO/FRO along with photocopies of the passport and visa of the foreign parents.

4. For drawing up and executing the agreement cited at para 1(v) above, the foreign couple can be permitted to visit India on a reconnaissance trip on Tourist Visa, but no samples may be given to any clinic during such preliminary visit.

3. Need of the study

Surrogate motherhood raises difficult ethical, philosophical and social issues. With the monetary transaction the matter complicates even further as one has to look at it from a commercial/business point of view, while there is still no legal provision to safeguard the interest of the surrogate mother, the child or the commissioning parents in India. The practice of renting a

womb and getting a child is like outsourcing pregnancy. The business volume of this trade is estimated to be around \$ 500 million and the number of cases of surrogacy is believed to be increasing at a galloping rate. The exact extent of this practice in India is not known, but inquiries revealed that this practice has doubled in the last few years and normally women from small towns are selected for outsourcing pregnancy.⁵ The lack of research on surrogacy also poses a problem for Government agencies to initiate legal provisions and take substantive action against those found guilty. However, the Centre for Social Research (CSR) had conducted a pilot study on the issue of surrogacy in the areas of Anand, Surat and Jamnagar. After the success of the study and during the process of the study, we came across several factors which pointed towards a shifting trend in surrogacy from smaller cities to big metros such as Delhi and Mumbai which are more easily accessible and provide better health care facilities and anonymity.

Apart from the domestic rush, a large number of couples from abroad also travel to Anand, Surat, Jamnagar, Bhopal and Indore to fulfill their desire for a child. Several American, Russian and British women are duly registered with Akankshya Clinic of Anand and Bhopal Test Tube Baby Centre for the procedure. Often, couples have to wait for as long as eight months to a year for their turn.

Their reasons for coming to India are varied. For some, the treatment is far too expensive in their own country; for others, their national laws do not permit surrogacy. Recently, a 37-year-old Russian woman came to Bhopal as the expense for surrogacy is prohibitive in her country - between Rs. 15,00,000 and 20,00,000 - as compared to Rs. 200,000 in Bhopal. Besides, it is not easy to find a surrogate mother in those countries.⁶

Even as an increasing number of childless couples from overseas come to India, legal experts express their reservations. Many foresee hurdles after the child is born and caution that surrogacy should be carefully considered. According to senior advocate Kirti Gupta, "At present, it is not difficult to have a baby through surrogacy in India because there is no law to control or regulate

⁵ 'Surrogate mothers: Outsourcing pregnancy in India' article by Joseph Gothia, 26th June 2008, link: http://india.merineews.com/cat_Full.jsp?articleID=136421

⁶ 'Surrogacy Boom', article by Shuriah Niazi, October 14, 2007, by arrangement with WFS, Source: <http://www.boloji.com/wfs6/wfs1027.htm>

it. The technique is cheap, when compared to other countries, and surrogate mothers here charge comparatively less for the services." ⁷

As there are several clinics now that perform such services - gauged by the number of advertisements in the local media as well as on the Internet - it is easy to select a clinic. However, the real problem arises after the birth of the baby. In India, in the absence of any clear law on the issue, foreigners are unable to get legal assistance when it comes to taking their child back to their home country.

Childless couples in India, too, face some issues. For example, whose name will be mentioned as parents on the birth certificate of the newborn or what should be done in case the surrogate mother refuses to hand over the child?

To lay such doubts to rest, clinics that provide ART facilities take recourse to the guidelines set by the Indian Council for Medical Research that state that the surrogate mother has to sign a contract with the childless couple. But even then, counter lawyers, it is not clear whether such a contract has any legal sanctity.

Women who are willing to undergo the procedure come from lower middle class backgrounds, are married, and are in need of money. Childless couples often negotiate a good deal for themselves because of the competition. The need and necessity to protect the interest of the surrogate mother is apparent. Not only this, there is a growing demand for fair-skinned, educated young women to become surrogate mothers to foreign couples.

Most women who go for surrogacy insist on anonymity for fear of social stigma. Some men, particularly the husbands of surrogate mothers, react to this 'encroachment' on their rights. Women who participate in surrogacy programmes report that their partners, initially agreeing to their undertaking the responsibility, often change their attitude after they take on their new role. One American woman told of how her fiancée left her for another woman. The husband of another surrogate mother would not look at her after she was inseminated.

Surrogacy turns a normal biological function into a commercial contract. Surrogacy services are advertised. Surrogates are recruited and operating agencies make large profits. The

⁷ Ibid.

commercialisation of surrogacy raises fears of black market and baby selling, breeding farms, and turns impoverished women into baby producers, with the possibility of selective breeding at a price. Surrogacy degrades a pregnancy to a service and a baby to a product. Experience shows that like any other commercial dealing the 'customer' lays down his/ her conditions before purchasing the goods.

The surrogate may be forced to terminate the pregnancy if so desired by the contracting couple and she will not be able to terminate it if it is against the desire of the couple. There have been instances where the contracting individual has specified the sex of the baby, refused to take the baby if it was not born normal and filed a suit against the surrogate saying she had broken the contract.

In surrogacy the rights of the child are almost never considered. Early handover of the child hampers breastfeeding. Transferring the duties of parenthood from the birthing mother to a contracting couple is denying the child its claim to both the mother and the father. It could affect the psycho-social wellbeing of children born as a result of surrogacy. Recently a shocking case of surrogacy was unearthed in the Bombay International Airport, where a foreigner couple went for surrogacy in India only for organ transplant for their sick child in their country. This revelation further highlights the need for studies on surrogacy to provide a base for formulation of laws and regulations on surrogacy arrangements.

The supposed benefits of surrogacy are created by a capitalist patriarchal society. It is assumed that there is an equal exchange - money paid for the service rendered. In reality the contract between the parties in surrogacy would not exist if the parties were equal. The woman must give more than her egg in order to gestate a child - an important gender difference. Within this framework the contract is always biased in favor of the financially secure male. The freedom of the surrogate mother is an illusion. The arbitration of rights hides central social and class issues which makes surrogacy contracts possible.⁸ In addition, bio-ethicists are concerned that Indian surrogates are being badly paid and working as surrogates in a country with a comparatively high maternal mortality rate.

⁸ Malini Karkal, ref. no. 1

Surrogacy poses a series of social, ethical and legal issues which remain unanswered, like: Is it legal to become a surrogate mother in India? Will the child born to an Indian surrogate mother be a citizen of this country? Who arranges for the birth certificate and passport that will be required by the foreign couple at the time of immigration? Whose name will appear on the birth certificate? How will the commissioning parents claim parenthood? What happens if the surrogate mother changes her mind and refuses to hand over the baby or blackmails for custody? Who will take the responsibility of the child if the commissioning parents refuse to take the child? What would happen if the child is born disabled? What would happen if the sex of the child is not to the liking of the commissioning parents? All these need to be analysed thoroughly before designing any policy relating to surrogacy and making legal provisions.

To address all these issues relating to surrogacy, this comparative study on surrogacy was conducted in the metros of India: Delhi and Mumbai, which are slowly and steadily rising as surrogacy centers of the world. Since no research study had addressed the issues pertaining to surrogacy in the metros and since CSR had the prior experience of conducting a similar study on surrogacy, we felt it would be appropriate to conduct a first-hand comparative study to find out the field-level realities.

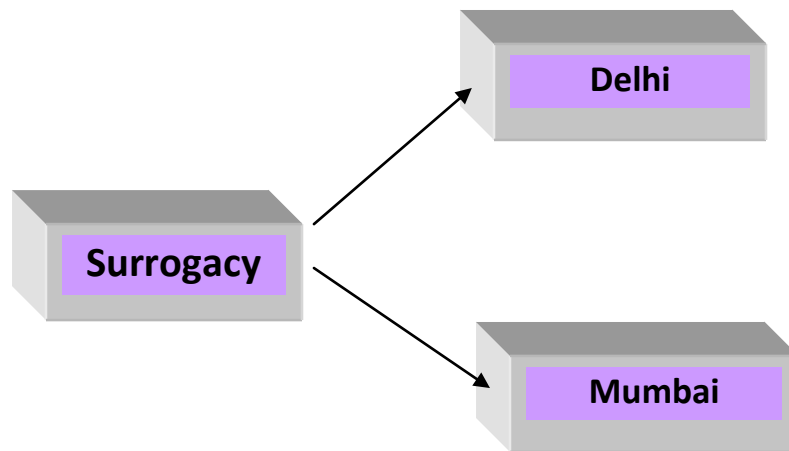
4. Objectives

The study had the following objectives:

- ◆ To conduct a situational analysis of surrogacy cases in the two study areas and the issues involved
- ◆ To examine the existing social and health protection rights ensured to surrogate mothers
- ◆ To analyse the rights of the child in surrogacy arrangements so far
- ◆ To study the rights and issues pertaining to commissioning parents
- ◆ To suggest policy recommendations for protection of rights through legal provisions of surrogate mother, child and the commissioning parents based on the study

5. Methodology

The project was conducted in the two prominent metros of India where famous ART clinics operate and where high incidences of surrogacy have been observed in the recent future. Since metros are easily accessible to NRIs and foreign nationals, with modern hospital and health care facilities, latest technological availability and more avenues to provide secrecy/privacy about the couple's identity, the metros are becoming new hubs for surrogacy, unlike smaller towns like Anand, Surat and Jamnagar.



Methodology:

The methodology adopted for the study was based on exploratory research of situational analysis on the basis of a survey. Both secondary data and primary data on the subject was collected and analysed and the final report highlights the major findings and suggest recommendations for future policy on the matter. The findings and recommendations will be shared with the Government, Non-Government agencies and other concerned persons/institutes/organisations in a national-level seminar.

Universe of the study:

The universe of the study is surrogate mothers, their families, commissioning parents, the surrogate children (if any will be suitably found and agreed upon), the clinics conducting surrogacy, families where such cases happened within those cities, agents who facilitate such procedures including travel agents who arrange for passports and other documents, other

stakeholders like the community members, owners/care takers of shelter homes/ guest houses, etc..

Sample size:

The sample size consisted of one hundred surrogate mothers and fifty commissioning parents and their families in the two cities. As it has been reported in several leading newspapers that 42 to 50 surrogate mothers are waiting for their deliveries at any given point of time under the surrogacy arrangements, and though it was a challenge considering the sensitivity of the issue and the secrecy involved, it was difficult to reach out to hundred surrogate mothers. The data of the last five years was also taken into account.

Besides the surrogate mothers, the stakeholder's opinions and views were also taken into account. The stakeholders included: the ART clinics, the doctors and the nurses who carry out the entire procedure, the immediate society and community members, family members, agents including travel agents who arrange for commissioning parent's arrival, stay, passport and departure with the child and guest house/hotel owners where foreign couples stay during the whole procedure and the maternity homes/shelter homes where at times surrogate mothers stay for nine months to maintain secrecy.

Tools:

The tools included structured questionnaires with 75% close ended and 25% open ended questions. The gender aspect was kept in focus as personal observation and interviews included the husbands of surrogate mothers and the male counterpart of the commissioning parents wherever possible. The questionnaires were first field-tested and then modified. Interview schedules were developed and administered to the stakeholders.

Focus Group Discussions (FGDs) were conducted with surrogate mothers, stakeholders and community members. The study tried to address the following issues:

- ◆ Situational analysis was conducted in the two study areas i.e. Delhi and Mumbai.
- ◆ The situation under which surrogacy arrangements are reached was studied
- ◆ Whether the surrogacy is forced or mutual was evaluated
- ◆ The role of ART clinics, agents including travel agents, their profit advantages, etc. were critically examined

- ◆ The situation/condition under which the commissioning parents are opting for surrogacy was reviewed
- ◆ Whether agreements are duly signed or reached verbally were checked
- ◆ The overall advantages/disadvantages, social and health risks of surrogate mother were assessed
- ◆ The nature of rights of the child under such an arrangements were viewed
- ◆ The responses of stakeholders including the community members were analysed
- ◆ In a country with high maternal mortality rate and where poor women normally opt for surrogacy arrangements, the nature and extent of protection of the social and health rights of the surrogate mother were examined
- ◆ Whether the surrogacy is forced or mutual was evaluated
- ◆ Under what circumstances the surrogate mother is opting for it was assessed
- ◆ The acceptance of her family and children of this arrangement was discussed
- ◆ The supposed attachment and bonding with the unborn child and the forthcoming separation issue was discussed
- ◆ The situation that may arise if the commissioning parents refuse to take the child or the child born is disabled, etc was discussed
- ◆ The protection of rights of child whether taken into account during the surrogacy arrangement or not was assessed
- ◆ Whether the child should remain with the surrogate mother till the minimum time of breastfeeding or should the child be separated just after birth was discussed with both the parties of surrogacy
- ◆ Issues like whether the child will be informed or not upon being an adult about his biological mother and the opinion of commissioning parents and surrogate mother were analysed
- ◆ The willingness of the surrogate mother to keep in touch with the child was discussed
- ◆ Whether the surrogacy arrangement has been opted by the commissioning parents as a last option due to health ailments or is it a choice due to lifestyle was analysed
- ◆ The benefit of choice of India being the destination for such arrangements was highlighted for evaluation
- ◆ Whether the arrangement is reached by agents, ART clinics, doctors, etc. was reviewed
- ◆ The choice of particular surrogate mother is preferential by the Commissioning Parents or chosen by the doctor was assessed
- ◆ Whether the surrogacy arrangements have been duly signed or a verbal consent was taken was examined
- ◆ Whether the surrogacy arrangement include money other than the pregnancy and hospital expenses was examined
- ◆ The situation that may arise if the surrogate mother refuses to give away the child after birth and the protection of their rights was studied

- ◆ Who will be taking care of the arrangement of passport for the new born and which country's citizenship the child should have was discussed
- ◆ If in any case the child is born disabled or not fair-skinned, the possibility of rejection by the commissioning parents was analysed

This report on Surrogate “Motherhood: Ethical or Commercial” has six chapters including an Introduction, a Literature Review and the Conclusion. Chapter II discusses the literature available on surrogacy, both national and international documents, and also analyses surrogacy arrangements across the globe, the legal issues so far, etc. at length. Chapter III chronicles the profile and plight of the surrogate mother before and after surrogacy and aims at analysing her status in the entire motherhood process, taking into consideration each and every aspect of the surrogacy arrangement. Chapter IV looks at the Commissioning Parents and aims to give an overview of the profile of the commissioning parents, their perspectives and views regarding surrogacy arrangement in India and a detailed analysis of different factors in surrogacy. This chapter also deals with the surrogacy clinics, primarily focussing on the detailed observations of the researchers during field visits as the medical practitioners concerned were unwilling to divulge information about their modus operandi. The last chapter consists of a conclusion on the existing situation of surrogate motherhood in India and recommends formulation of a strong legal framework to address the issue of surrogacy in India.

Chapter II

Literature review

Worldwide, approximately 259,200 children are born every day i.e. almost 3 children each second. The birth of a newborn child is often a very special and fascinating event for all the people involved. However, some couples, due to certain physiological, social and other reasons, cannot or do not conceive their own offspring.

Infertility affects about 1 out of every 6 couples. This includes not just those unable to conceive after 12 months of trying, but also those who cannot carry a pregnancy to term. Since the 1970s, the number of infertile couples has increased (Winston & Bane, 1993). Some might argue that this number only includes couples who seek clinical assistance for infertility. Over the years the social attitude towards medical interventions like IVF has changed. As a result infertile couples have become less reluctant to seek help, which is reflected in the percentage of infertile couples registered by the clinics. Others do not fully share this opinion. Medical experts believe that nowadays childbearing is postponed due to career prospects and contraception. Consequently, couples are older once they start trying to conceive a baby. Older women are generally less fertile because of age-related biological factors. There are several other reasons, such as changing sexual practices, the use of intrauterine devices, more and more women suffering from pelvic inflammatory disease, which is a leading cause of female infertility (Winston & Bane).

For many infertile men and women being unable to bear and raise children has severe emotional and psychological consequences. They often feel guilty and experience a loss of self-worth and confidence. To many infertile people their condition affects their most fundamental feelings about who they are and what their role in the family is. It influences one's personal identity and the extent of fulfilment. For that reason, infertility is regarded a major health problem. Also, it makes it clear why people who cannot have children the natural way look for other ways in order to become a parent.

In the past, couples unable to conceive were expected to turn to adoption to achieve their parenthood dreams. Nowadays there are many options for infertile couples, as well as singles and homosexuals who want children. The urge of parenthood leads them to seek alternative solutions including Artificial Reproductive Technology (ART), In-Vitro Fertilisation (IVF) and Intra-Uterine Injections (IUI).

Advances in medical science and technology, particularly in assisted reproductive techniques with techniques like donor insemination and embryo transfer methods which have revolutionized the reproductive environment, have led to an increase in popularity of surrogacy. With the introduction of financial agreements in exchange for the surrogate child, the child becomes a 'saleable commodity'. As a result, complications arise and questions must be raised regarding the rights of the surrogate mother, the child and the commissioning parents.

2.1 Theoretical background

Surrogacy is a method of reproduction whereby a woman agrees to become pregnant and deliver a child for a contracted party. The word 'surrogate' means 'substitute'.¹ Surrogacy arrangements do not only take place within the family, but also within the community, the state, the country and presently even the world.

When it comes to surrogacy, there are two types currently used: "traditional" and "gestational". Traditional surrogacy is done via artificial insemination, with the surrogate using her own egg and another man's sperm. Gestational surrogacy is done via In Vitro Fertilization (IVF), where fertilized eggs from another woman are implanted into the surrogate's uterus. Choosing which route to take is one of the most important and earliest decisions a surrogate and the intended parents will have to make.

Antagonists of traditional surrogacy often have a problem with the genetic link between the surrogate and the baby she carries. Most gestational surrogates believe that they would never be able to relinquish a child that they are genetically related to. Another reason to opt for gestational

surrogacy instead is that some people might feel comfortable with their children having half siblings out and about in the world (Weller, 2001).

Proponents of traditional surrogacy often argue that although there is a genetic link, this link is not as important as the link between the commissioning parents and their child to be. Those who do choose traditional surrogacy most commonly describe their feelings on the matter as being similar to egg donation: there is a genetic link, but that link is less important than the link between the intended parents and their child to be. Some intended parents worry about the legal ramifications of traditional surrogacy; but in reality this has never proven to be a problem (Weller, 2001). IARC (2010) does not fully agree. They state that judges are, to some extent, more likely to rule in favour of the traditional surrogate if conflicts arise. Since the surrogate is genetically related to the child, the intended mother will typically need to adopt the baby through a stepparent adoption process.

Traditional surrogacy was previously the only way to conceive a child via a surrogate mother. Since artificial insemination is easy, not painful, and importantly, significantly less expensive than IVF, traditional surrogacy continues to be used by many people (Pande, 2009). Another argument for traditional surrogacy is the high success rate when the surrogate mother has proven to be fertile. Also, in general, traditional surrogates do not have to be on any special medication. Keeping track of their menstrual cycle and timing the inseminations around when they naturally ovulate will usually suffice. However, in order to increase the chances for twins or to fine-tune the timing of ovulation, some surrogates do take some mild fertility drugs (Weller, 2001).

Gestational surrogacy on the other hand is a more complex and more expensive process. Nevertheless, the reason that an increasing number of intended parents settle on gestational surrogacy is because that procedure can offer one thing that traditional surrogacy cannot: the chance to raise a child that is genetically completely their own. Surrogates can carry embryos that have been created from the commissioning mother's eggs and the commissioning father's sperm. The eggs are retrieved from the intended mother and fertilized with the sperm, allowed to grow, then transferred, via IVF, into the surrogate's uterus. In some situations the intended

parents cannot produce the necessary sperm and/or eggs. If that is the case a donor may also be used.

Although this procedure may seem to be surprisingly straightforward, the transfer of the embryos requires heavy medical intervention and weeks of preparation. In the United States surrogates usually receive daily injections for weeks. Firstly the surrogate's own ovulatory cycle has to be suppressed. This is done by taking birth control pills and hormone shots. This procedure will be followed by oestrogen shots to build her uterine lining. Once she is impregnated the surrogate must take daily injections of progesterone until her body realizes it is pregnant so it can sustain pregnancy on its own (Beski et al. 2000). These medications often have significant side effects the surrogate must live with. Examples are mood swings, headaches, hot flashes and drowsiness.

As previously outlined, gestational surrogacy is an expensive process. Each IVF cycle can easily cost thousands of dollars. In addition, there is a higher rate of miscarriage among pregnancies achieved this way than through traditional means. In the case of a failed transfer there is often a wait of several months before one can attempt another transfer.

The increased legal benefits of gestational surrogacy and existence of a genetic bond, however, are often strong selling points for the intended parents and surrogates who choose this route. However, given the costs of surrogacy in western countries like the United States and the United Kingdom, intended parents are coming more and more often to developing countries, like India, to find a surrogate mother. The fee the couples have to pay the surrogate mother – about a quarter of what mothers in Europe and North-America charge – is not the only reason for them to come to a country like India. Other reasons are India's cheap medical facilities and advanced reproductive technological knowledge. Hence, India is fast emerging as a popular destination for childless couples to seek help.

Apparently people are ready to travel halfway across the world and hire a surrogate to fulfil their desire to share a genetic tie with their children (Beski et al. 2000). Clearly the genetic tie remains a powerful and enduring basis of human attachment. Authors like Roberts (1995) and Field (1992) acknowledge that through this form of relationship surrogates form kinship ties that

disturb the sanctity of biology and genes within a system that might well be the pinnacle of the commoditisation of the genetic tie. They argue that with the entry of financial arrangements in exchange of the surrogate child, the child becomes a 'saleable commodity' and surrogacy commercialized. Hiring couples no longer have to cross borders: the child born would carry its parents' genes and subsequently their race, caste and religion. More on the commercialization and its consequences will be outlined in the section below.

As per Prof. Amrita Pandey 's work (Who Owns these nine months--- 2008), despite many news items appearing in both national and international media on commercial surrogacy in India, there is little emphasis on the thorny issues that surround this growing industry. According to her, most news items focus mainly on "outsourcing of pregnancy" in poverty- stricken Anand, life stories of poor, illiterate women and their drunk husbands, and the cost differences involved in surrogacy in India and US and its win-win outcomes. She writes that surrogacy is a multimillion dollar business in India and an ever growing medical tourism industry, but no law exists to regulate or control commercial surrogacy. She questions: Why is there no law if surrogacy is such a huge industry? On the contrary, are there no laws because unregulated surrogacy is a lucrative business?

Again she talks about who would support a law on surrogacy in India: a poor woman in need of money or the doctors benefitting from it, or the government whose health policy includes increased medical tourism in India?

Also, she asks whether commercial surrogacy can be banned on the basis of ethical issues (sale of pregnancy) only. Will it not go underground and foster black-marketing?

Next she talks about the complications of religion and race in surrogacy arrangements. When a Muslim Gujrati delivers a baby for an NRI Patel from New Jersey or when a skinny Maharashtrian gives birth to a chubby South Korean boy, does it mean that, in an era of modern technologies, differentiations based on caste, religion and race are losing ground?

However, the most sensitive question that she throws concerns the reproductive rights of women. She asks that while a poor woman is "advised" to go for sterilization, richer ones are "advised" "to attain ways to have children of their own. Does this mean there exists a new version of class division with respect to reproductive rights of women?

Surrogacy Analysis Report (News items)

17 May 2012, The TIMES OF INDIA news article on surrogacy reported the sudden death of a surrogate mother in Ahmedabad. The 30-year old surrogate, Premila Vaghela was being treated under Dr Manish Banker of Pulse Hospital. However, she “completed her job” (according to the news article) as the child was delivered through caesarean and was kept in NICU (Neonatal Intensive Care Unit) to recuperate from early birth. After delivery, Premila was taken to Sterling Hospital for better intensive care. The doctors claim that she was brought to hospital in a critical condition as she was suffering a major cardiac arrest, they tried to resuscitate her, but she failed to respond and died.

19 May 2012, another news article related to surrogacy appeared in The Times of India, Ahmedabad. It said that the biological mother of the baby, delivered prematurely by the surrogate mother, Prema Varghese had arrived in India to take back the child. The surrogate mother died due to unknown complications, leaving her two sons motherless. The US –based biological mother was “understandably shocked” at the surrogate’s sudden death and the related media publicity. She wanted to keep the matter private and desired the process of immigration work to be expedited at US embassy. According to the Doctors, the child is stable; however the US mommy will have to stay another 10 days in India for all the formalities to be completed.

2 June 2012 , The London Sunday Telegraph reported surrogacy in India to be a US \$2.3 billion industry with 1000 unregulated IVF clinics. Dr. Radhey Sharma of Indian Council for Medical Research opined that nobody can accurately say how many babies are being born through this commercial enterprise and they suspect it to be around 2000 babies, mostly of British nationals. He suspected this industry will grow further. “Wombs for rent” culture is raising fears on ethical grounds, as well as about its exploitative nature and its impact on socio-economic status of women. The culture is popular among homosexuals desperate to have a family.

26 April 2012, The Times of India: An interesting fact came up related to surrogacy in Ahmedabad. Women who use surrogate mothers for their babies take help of fake tummies to project themselves pregnant owing to familial pressures. Many women from traditional communities or even NRI women can't tell their in-laws and extended families that they have employed a surrogate and instead walk around with strap-ons for nine months to simulate a pregnant stomach.

I do not understand that why we need to succumb to social pressures. If women cannot give birth to babies due to whatever reasons, why can't they be accepted just as that. Why does every woman have to be recognized only in terms of her reproductive ethos?

The Guardian, UK Press: Commercial surrogacy remains controversial and is banned in many countries. But in [India](#), a socially conservative society, surrogacy has thrived since the Supreme Court legalised the practice in 2002. A report by the Confederation of Indian Industry estimates the practice will generate \$2.3bn a year by 2012.

Women's rights advocates claim that the lack of a clear law on surrogacy and the commercialisation of an unregulated sector have left room for unethical medical practices and the exploitation of both surrogates and infertile couples.

2.2 Commercialisation

As discussed briefly in the Introduction, originally surrogacy happened within families and friends. Known surrogates would give birth for infertile family members or friends. This was an altruistic deed as these surrogates were generally not paid for it. Over the last few decades however, there is a noticeable trend of the commercialization of surrogacy.

Some say that this is an undesirable development as giving birth to a child should not be regarded as a commercial activity. They feel that surrogacy is similar to baby selling and that a law comparable to the one prohibiting the sale of human organs should apply to the sale of childbearing.

Others argue that surrogacy arrangements are a win-win situation. On the one hand, the intended parents benefit by finally having what they have desired for so long. At the same time, surrogate mothers profit from the agreement economically and are thus able to take better care of their families. Therefore the needs of two desperate women are both met in a surrogacy transaction.

Most people agree the important aspects of who we are, what we know, believe or feel and how we function in our societies, is not decided by genetics. It is even less likely that the uterine

environment in which we grow as embryos and foetus will determine these aspects. The general perception is that the way we are raised, the care and guidance we receive and the experiences we encounter during this period are far more important in determining what kind of human being we turn into. This perception leaves little doubt about the prime value of parental nurturing. Bromham (1995) states this issue was stressed many years before the issue arose with gestational surrogacy, for instance when men became fathers following donor insemination.

Although society appreciates the importance of parenting and raising a child well, very few individuals question the position of surrogates for parental functions, such as nannies, wet-nurses and boarding schools, even though it seems reasonable to say that these functions are far more valuable to the development of the child than the initial uterine or even genetic origins (Bromham, 1995). Then why are so many people opposed to surrogacy? The reasons for this, as well as motives to advocate surrogacy will be discussed below. The focus will be on surrogate mothers from developing countries.

Surrogacy report

As per Prof. Amrita Pandey's work (They are just wombs --- Gina Maranto citing Amrita Pandey---2010) commercial surrogacy was legalized in India in 2002 but no law exists to regulate surrogacy arrangements, the rights of the surrogate mother, child born and the commissioning parents. The clinics charge about 1-10th the price of IVF procedures charged in the US or Europe. Also, Press reports rarely talk of surrogate mother's rights.

Amrita Pande began her field work in Anand (Gujrat) at a clinic that offered reproductive services, being run by Dr. Usha Khanderia. Dr. Usha was performing IVF procedures along with matching infertile couples from bigger cities like Mumbai or other countries with surrogates from nearby agricultural villages. Pande's work shows that the chief motive for surrogacy was economic--- 34 out of 42 had family incomes below poverty line. Although women do view surrogacy as legitimate form of labor, it is a choice forced upon them due to economic reasons. Pande notes the dual implications of the term in this context.

Another aspect is maintaining the secrecy of surrogacy. According to Pande, in "Not an angel, not a whore" (published in Indian Journal of Gender studies, 2009), surrogacy is highly stigmatized in India because : it involves bodies of poor women, many Indians equate it with sex

work believing it involves intercourse, is considered “immoral” owing to “commercialization of motherhood”. Therefore, women during their pregnancies stay at 1-2 floor shelter homes or hostels near the clinic. They have nothing to do the whole day except pace up and down in elevators as they are not allowed to climb the stairs, share their woes with other surrogates and wait for the next injection.

Further, Pande traces “resistances” to this stigmatized condition. Surrogates try to enhance their self-esteem through moral comparisons, example—drawing boundaries between themselves and prostitutes, distinguish themselves from women who put up their biological child for adoption. Giving a child to the needy couples who will provide it with good home is not the same as “giving away your own child”. Also, they talk about the “generosity” and “high morality “ of their husbands to have allowed them to be surrogates. According to Pande, the surrogates erode their own significant role as workers and breadwinners of their family.

Pande has also talked about “mother-worker” combination in a surrogacy arrangement. The surrogate is expected to be disciplined and willing contract worker, who will give away the baby immediately after delivery without creating a fuss. But, simultaneously, she is expected to be a virtuous, nurturing mother attached to the baby, and a selfless mother who would not treat surrogacy like a business. This is evident in the “power of language (in the form of surrogacy contract and discourses deployed by the medical staff) along with meticulous control over the body of the surrogate.

For example, Pande writes about a clinic staff saying, “we make sure that the surrogates know that they are not genetically related to the baby, they are just wombs”. Simultaneously, they downplay the commercial aspects of the enterprise, praising the surrogates alternately for altruism and for their luck for receiving money for “renting their womb”.

Pande has commented that Assisted Reproductive Technology Bill of 2010 is vague in terms of its language concerning advertisements. According to a blogger on Be Informed, the bill seems to make the process run smoother, rather than making it harder for non-Indians to use Indian women to incubate their babies. Further, the Indian Govt. has built medical tourism into its National Health Policy, which “strongly encourages” medical providers to seek foreign clients. Amit Sengupta, a health analyst and associate coordinator in People’s Health Movement, points

out that it is an irony that in our country where only 17.3 percent of women have had any contact with a health worker and a very large number of women are denied basic health care, women from across the globe flock to India to take advantage of the booming market for assisted reproductive technologies.

2.2.1 Arguments for surrogacy

Advocates of surrogacy argue that the surrogacy agreements are beneficial for all parties involved as the respective needs of two women in difficult circumstances, are met. It is often said that in the surrogacy arrangement *'the barren gets a baby, the broke gets a bonus'*. The surrogate mothers often really utilize the money they earn.

Others claim that the right to procreate is an important right. For example, in the United States this right is protected by the Constitution (Field, 1990). The couple may exercise this right in the most practical way available to them given their infertility. However, Cline (2008) states this right is not literally spelled out in the constitution. Margaret Jane Radin (1988) argues that if men are to donate sperm and receive money for that transaction, then surrogacy should also be allowed as an analogous transaction for women. This constitutional argument can also be used as an argument against surrogacy. Due to the substantive due process privacy right the birth mother has a right to companionship of her children which cannot be overridden by contract.

The liberal argument for surrogacy is autonomy and free choice. As long as one does not harm others, one has a wide sphere for doing what one wants. This relates to the intended parents as well as the surrogate mothers. Practice often tends to be slightly different though, because duress and coercion affect the extent to which someone has free choice.

An economic argument, expressed by Judge Posner (1987), is that efficiency will improve with free trade. This will happen when there are parents who are eager for children and women anxious to be surrogates. However, once this trade of parental rights is prohibited, black markets will come into existence. Posner (1987) states that due to the complicated adoption regulations in many countries, people go to other countries to evade the regulations creating a vast black market. As a result, it is better to acknowledge the existence of such a market in order to better control it and make it more efficient.

Interestingly, there are very committed feminists on both sides of this issue. According to Radin, feminists who do want to fully legalize surrogacy follow the reasoning that the world is non-ideal. Women and men are not equal and for years women have been relegated to a separate sphere at home, away from the marketplace. This has made women powerless, because the place of power is the marketplace, which is dominated by men. This power has meant the liberation of men. Women want to achieve this as well. They do not want men to tell them what to sell and what not to. Whether or not it is morally wrong to engage in child selling and surrogacy should be decided by the women themselves. Many feminists use this reasoning as an argument for why surrogacy should be legal.

Other feminists though agree that women have been kept out of the market for a long time, feel historically women have been seen (in their separate sphere at home) and treated like baby producing machines. Allowing baby selling and surrogacy would mean that women remain being treated as anonymous interchangeable breeders which reinforces the objectification and subordination of women. Entering the market in this context is therefore far from liberating, it is rather degrading.

2.2.2 Arguments against surrogacy

According to Kembrell (1988) the practice of surrogacy exploits women economically, emotionally and physically. An important factor is that most women who get involved as surrogates do so because they are in desperate need of the money to maintain their family. In addition, agents are often involved and arrange contracts of questionable legality. Those contracts require the women to undergo all the rigors of childbearing, and eventually they have to give the child away (Kembrell, 1988). The surrogate mothers are often unaware of their legal rights and due to their financial situation they cannot afford the services of attorneys. Once the surrogate mother has signed the contract, it is impossible for them to escape. Kembrell (1988) goes even further saying: “the practice of surrogacy represents a new and unique form of slavery of women”. This a view supported by Davis (1993). During the time of slavery, slave women were often used as birth or genetic mothers who possessed no legal rights as mothers. Surrogacy is a new form of the same practice. In light of the commodification of the child, and of

themselves, slaves had the same status as surrogate mothers in contemporary times. Another similarity is that slave mothers could not speak freely about their pregnancy and the children they carried; an aspect that is also present in surrogacy as a result of social stigma. Davis is worried that, given this history, poor women may be transformed into a special caste of hired pregnancy carriers (1993). She believes that with the commodification of labour services of pregnant surrogate mothers, money is being made, which implies that someone is being exploited. Davis continues by saying that surrogacy appears as a procedure generative of life, while what is really generates is sexism and profits.

Horsburgh (1993) is opposed to the concept surrogacy arrangements because he believes surrogates are physically exploited once they have signed contracts agreeing to give birth to babies for clients. If there is a reason to abort the foetus, because of medical reasons or client's demands, the surrogate mother must comply. To make matters worse, if the pregnancy is indeed aborted, the surrogates often receive just a fraction of the original payment (Horsburgh, 1993). The contracts can also place liability on the mother for risks including pregnancy-induced diseases, death and post-partum complications (Kembrell, 1988).

Foster (1987) states that many surrogate mothers face emotional problems after having to relinquish the child. She recalls a woman said that she started praying not to go in labour so that she and her child could stay together. However, other authors disagree with Foster. A study by Jadv, Murray, Lycett, MacCallum and Golombok (2003) showed that surrogate mothers do not appear to experience psychological problems as a result of the surrogacy arrangements. Although they do acknowledge that some women experience emotional problems in handing over the baby, but these feelings tend to lessen during the weeks following the birth.

Other authors take a different stance. Radin (1996) raises the issue of surrogacy in fact being baby selling. She states: "if it were okay to think of children as property, then it would be okay to buy and sell them; and if it is not done to buy and sell them, then maybe it's not done to think of children as property". A New Hampshire judge ruled the following in a custody case: "At birth the father does not purchase the child. It is his own biological, genetically related, child. He cannot purchase what is already his (1987)." Radin (1996), however, believes that even if there is a genetic relationship between the adopters and the child, this does not necessarily make it a non-

sale. If some (surrogate) children are conceived as market commodities because there is a practice of paying money for relinquishing parental rights, then every child can be considered a commodity. As a matter of fact, we all are commodities, because we used to be children ourselves. If children are viewed as exchangeable market commodities, it might make the self-conception of those children as persons impossible. Therefore, if conceiving children as commodities has a negative effect on personhood, it means that baby selling, and surrogacy for that reason, is wrong (Radin, 1996).

Others might reason that commissioned adoption, in which someone pays a woman to conceive, gestate, give birth and subsequently relinquish the parental rights to this person, is illegal. The idea is that surrogacy, legal in some countries, is just commissioned adoption under certain special – a contribution of genetic material – circumstances. As a consequence: to permit surrogacy would be an irrational exception to the baby selling laws if that distinction is based on genetic relationship does not hold good. If legislation is passed which enables legal surrogacy arrangement, then the laws against baby selling in general should also be reconsidered.

2.2.3 Discussion

While opponents of surrogacy would like to ban surrogacy completely, some supporters would like countries to declare surrogacy fully legal. Neutrals, who seem to have the upper hand, feel surrogacy is a controversial subject and also acknowledge that the present situation, in which laws are non-existent or poorly enforced, is unfavourable. Field (1990) agrees with Posner and is very articulate about it. She is worried that if surrogacy was made illegal, surrogacy altogether would not disappear, but instead surrogacy would be driven underground, which would cause more harm than good. Like Behm (1999), Field (1990) believes that surrogate mothers should always have the option to withdraw from the contract, up until they voluntarily give the baby to the intended parents.

2.3 Incidents related to surrogacy

Baby M

A couple decided, due to the wife's illness, not to have children. Instead of conceiving children the natural way, the husband entered a surrogacy agreement with another woman. He donated his sperm and asked her to deliver the child. However, the deal broke down and the surrogate mother wanted to keep the child. Eventually the case went to the New Jersey Supreme Court. The court ruled that the surrogacy contract was invalid because, among other things, it violated the New Jersey law against exchange relating to obtaining a child.

Baby Manji

Baby Manji is a child born to an Indian surrogate. Her commissioning parents were a couple from Japan, who filed for divorce shortly before the child was born. The father, still wanting to take care of the child, faced severe legal issues as the Indian law prohibits single men to adopt. Neither the intended mother nor the surrogated mother wanted to take custody of baby Manji. The baby was eventually permitted to leave for Japan after the Japanese government issued a one-year visa to her on humanitarian grounds. However, her grandmother needed to accompany her because she was temporarily given custody over the baby. As a result of this case the debate within India about surrogacy has intensified. In the controversy that followed, several infirmities in the arrangement came to light including the absence of a legal contract between the parties, a fact that many saw as a worrying reminder of the potential for exploitation of native surrogates.

These problems exist because surrogacy contracts are often not clear and hold no legal value. Furthermore, some countries lack specific surrogacy legislation. Those that do have these laws often fail to implement or enforce them. An explanation for this lies probably in the assumption that up until now, medical technology, especially reproductive technology, needed no justification. Its 'benevolent' nature was taken for granted. However, with the commercialization of surrogacy, social, demographic, ethical, legal and philosophical issues have been raised. As the debates have shown, these developments have the ability to alter not only the face, but the very soul of human civilization. It might bring about the restructuring of society on lines of a

'reproductive brothel model' in which 'women can sell reproductive capacities the same way old time prostitutes sold sexual ones' (Ravindra, 1992). Currently, in the US, due to the fact that few states have developed legislation, disputes over surrogate parenting often go to court (Markens, 2007). Therefore, clear and enforceable laws should be implemented.

2.4 *Legal issues*

Nowadays a parent's surrender of a child for a fee, known as baby selling, is a crime all over the world. In addition, many countries have regulations limiting or prohibiting compensation for intermediaries related to the transfer of a child (Field, 1990). Although gestational surrogacy is (partially) legal in several countries around the globe, in most jurisdictions it is not.

Going to another country to avoid local prohibitions is not always an option. Sometimes the nation's provisions apply only to that country's residents. People who want to take advantage of the laws in that particular country must therefore first establish residency there. The surrogacy map of the world is enclosed here to give a better understanding of the legal provisions across the globe. The countries marked in red show nations that (partially) allow surrogacy agreements. The different (sub) continents are discussed below.

❖ North America

An estimated 25,000 surrogate babies were born in the US from 1976 to 2007.

A typical payment for a surrogate ranges from between US\$ 20,000 and US\$25,000.

States that allow but regulate surrogacy are: California, Arkansas, Florida, Illinois, Nevada, New Hampshire, Texas, Utah and Virginia. Commercial surrogacy in Canada has been illegal since 2004, although altruistic surrogacy is allowed.

❖ Western Europe

Although surrogacy is legal in the United Kingdom, no commercial arrangements are allowed and the surrogate mother can only receive compensation – in thousands of pounds through the Surrogacy Arrangement Act – for medical and pregnancy related expenses.

Most women become surrogate mothers for altruistic reasons. Only married couples can participate in a surrogacy agreement. Countries in the European Union who have banned all forms of surrogacy include Germany, Sweden, Norway and Italy.

❖ **South Asia**

When the Indian parliament passed the Assisted Reproductive Technology (Regulation) Bill & Rules, 2008, it allowed surrogate mothers to receive money for carrying the child, as well as for all the expenses paid during the pregnancy. This will be outlined further in chapter III.

❖ **South East Asia**

Unclear laws regulating assisted reproductive services make Thailand, Malaysia and Philippines an ideal option for foreigners seeking surrogacy services in this part of the world. However, all forms of surrogacy are banned in Singapore.

❖ **East Asia**

In Japan there is no law to regulate surrogate births. Medical councils, including the Japan Society of Obstetrics and Gynaecology and the Science council of Japan, have called for surrogacy to be banned. In 2008 it was reported that more than 100 Japanese couples have used surrogates to have children in the United States. Meanwhile, a law to regulate surrogacy is being studied. Last year media reported about a 61-year-old Japanese woman who became a surrogate mother to her own grandchild – possibly the oldest surrogate mother in Japan. Gestational surrogacy is banned in China.

❖ **Oceania**

In Australia, the state of Queensland bans all forms of surrogacy. In the other Australian states such as Victoria, the Australian Capital Territory, Tasmania, and South Australia, commercial surrogacy is prohibited, but altruistic surrogacy is allowed. Commercial surrogacy is banned in New Zealand.

❖ **Eastern Europe**

Russia and Ukraine are the only European countries where surrogacy is fully legalised. Foreign couples are allowed to pursue surrogacy arrangements in both countries.

Legal	Illegal
(no legislative provision) Finland, Ireland, New Zealand	Germany, Sweden, Norway, Italy, so on
Reallocation of Parenthood Rights after the Delivery of the Child: United Kingdom, Israel, Greece, and the States of Florida, Virginia and New Hampshire in the United States have enacted some kind of specific legislation in the above-mentioned areas.	in some states of USA (Arizona, New Jersey, and Michigan)
	Australia
In 2008, the Supreme Court of India in the Manji's case (Japanese Baby) has held that commercial surrogacy is permitted in India	Altruistic surrogacy permitted while commercial prohibited: France, Greece, Denmark and the Netherlands, UK

2.5 Landscape of surrogacy in India

In 1984 the world saw the first successful birth through gestational surrogacy. Ten years later, in Chennai, this happened for the first time in India. Three years after that, in 1997, an Indian acted as a gestational carrier, and got paid for it, in order to obtain medical treatment for her paralyzed husband. In the past couple of years, the number of births through surrogacy doubled with estimates ranging from 200 up to 350 in 2008 alone (Lal, 2008).

As briefly addressed before, India is rapidly becoming the most popular country for ‘fertility tourists’, which is due to a number of interrelated factors (Smerdon, 2008).

In 2002, the Confederation of Indian Industry (CII) published a study on the potential India has to develop a medical tourism sector. This was picked up on by the then Finance Minister of India who wanted India to become a global health destination. In order to stimulate this development he came up with measures to facilitate a medical tourism industry, including infrastructural

improvements (Chinai & Goswami, 2007). Also, hospitals that treat foreign patients were to receive financial incentives including low interest rates on loans and low import duties on medical equipment. In addition, the Ministry of External Affairs introduced a medical visa, which allowed patients and their family members to stay in India for a maximum of 12 months. The tourism departments teamed up with hospitals to attract foreign patients, and not without success: the number of medical tourists increased from 150,000 in 2005 to 450,000 in 2008 (Chinai & Goswami, 2008).

During these days, fertility tourism has also increased in popularity. The reproductive segment of the Indian medical tourism market is valued at more than \$450 million a year (Ramesh, 2006). These fertility tourists do not all come from Western countries; India is also a popular destination for medical tourists from Sri Lanka, Pakistan, Bangladesh, Thailand and Singapore. At the moment there are over 600 fertility clinics established in both rural and urban areas in almost all states of India. However, it appears that the state of Gujarat is particularly popular, especially among westerners.

It is not only the efforts of India which are causing the increase in number of surrogacy births on the South Asian subcontinent. As previously stated, many countries around the world prohibit commercial surrogacy contracts and in other countries the enforcement of surrogacy contracts is significantly limited. Due to the restrictiveness of their own countries, desperate couples cross borders into surrogacy-friendly countries, like India, to engage in a surrogacy contract here.

While commercial surrogacy is also developing in other countries, another contributing factor to the rise in popularity of surrogacy in India is that the patients find it easy to communicate with the English-speaking doctors. This also enables these doctors to promote surrogacy in the press (Ramachandran, 2006). As a result, the press only runs glorifying success stories and fails to pay attention to all the failed attempts. Clinics sometimes use the media, particularly the Internet, to deceive potential clients. Their websites often contain both facts and fiction as part of the marketing strategy (Mulay & Gibson, 2006) and it is not uncommon for them to encourage couples to ignore the implemented laws regarding surrogacy in their home country.

The strongest incentive for foreigners to travel to India is most likely to be the relatively low cost involved in the process. The fees for surrogates are reported to range from \$2,500 to \$7,000. The total cost can be anything between \$10,000 and \$35,000. This is a lot less than what intended parents pay in the United States, where rates fluctuate between \$59,000 and \$80,000 (Sharma, 2008). On average, most Indian surrogate mothers are paid in instalments over a period of 9 months. If they are unable to conceive they are often not paid at all and sometimes they must forfeit a portion of their fee if they miscarry (Insight, 2006).

As an increasing number of childless couples from overseas come to India, legal experts express their reservations. Many foresee hurdles after the child is born because there is no law to control or regulate it. The real problem arises after the birth of the baby since foreigners are unable to get legal assistance when it comes to taking their child back to their home country, which has caused problems in the past. There have also been problems with claiming parenthood. In rare cases the surrogate mother has refused to relinquish the child. In order to deal with these problems the ICMR guidelines have been designed, the extracts of which have been cited below. However, these guidelines do not hold any legal validity.

2.5.1 Jurisdiction in India

ICMR guidelines

In 2006, the Indian Council of Medical Research (ICMR) published guidelines for accreditation, supervision and regulation of ART clinics in India. Below are the main points from these guidelines:

- ✚ DNA tests are compulsory to determine that the intended parents are indeed the genetic parents. If this is not the case the child must be adopted instead.
- ✚ Surrogacy should normally only be an option for patients for whom it would be physically or medically *impossible/ undesirable* to carry a baby to term.
- ✚ The payments received by the surrogate mothers should be documented and cover all genuine expenses associated with the pregnancy.
- ✚ The responsibility of finding a surrogate mother should rest with the couple, or a semen bank, not the clinic.

- ✚ A surrogate mother should not be over 45 years of age. The ART clinic should ensure possible surrogate woman satisfies all the testable criteria to go through a successful full-term pregnancy.
- ✚ No woman may act as a surrogate more than three times in her lifetime.
- ✚ The surrogate mother must declare that she will not use drugs intravenously and not undergo blood transfusion, except blood obtained through a certified blood bank.
- ✚ A relative, a known person, as well as a person unknown to the couple may act as a surrogate mother for the couple.

The draft ART (Assisted Reproductive Technology) Bill

A new bill is in the works to regulate the practice of surrogacy, aiming to avoid some of the pitfalls of the ICMR guidelines discussed above. In the previous chapter was given extracts from the draft ART bill particularly concerning the surrogacy arrangement, rights of the surrogate mother, the child, etc.

The bill empowers a National Advisory Board to act as the regulatory body for laying down policies and regulations. It also seeks to set up State Advisory Boards that are, in addition to advising state governments, charged with monitoring the implementation of the provisions of the Act, particularly with respect to the functioning of the ART clinics, semen banks and research organizations.

The **Artificial Reproductive Technology (Regulation) Bill** defines surrogacy as an “arrangement in which a woman agrees to a pregnancy, achieved through assisted reproductive technology, in which neither of the gametes belong to her or her husband, with the intention of carrying it to term and handing over the child to the person or persons for whom she is acting as surrogate; and a ‘surrogate mother’ is a woman who agrees to have an embryo generated from the sperm of a man who is not her husband, and the oocyte for another woman implanted in her to carry the pregnancy to full term and deliver the child to its biological parents(s)”.

By this definition, all surrogacy arrangements that involve the woman bearing a child using her own egg (oocyte) and the commissioning man’s sperm are illegal. Also, by this definition, fertile

surrogate mothers will necessarily have to use technology meant for treatment of infertility. Surrogates will now be forced to use only in-vitro technologies even though they can get pregnant with methods like artificial insemination which are much safer for them.

Further, in light of the Artificial Reproductive Technology (ART) practiced today, it reflects that there is no standardization of the drugs used, no proper documentation of the procedure, insufficient information for patients about the side-effects of the drugs used, and no limit to the number of times a woman may be asked to go through the procedure. They do not disclose the fact that a 'successful cycle' need not lead to a baby being born. Further, the clinics do not give exact information on the procedures and their possible side-effects.

A noticeable trend is that the ART clinics are becoming the central hub of all surrogacy-related activities. Some of the duties of the clinics involve selecting the surrogate mothers – the bill lays down the conditions that the surrogate mothers have to meet – and obtaining relevant information, informing all parties involved about their rights and obligations. The bill specifies what is and is not allowed regarding these topics. ART clinics are also required to treat all the information they obtain with utmost confidentiality. In practice this entails that ART clinics are not allowed to provide any information about surrogate mothers or potential surrogate mothers to any person. This creates a problem for intended parents since they have to turn to a middleman in order to find a surrogate mother. This is rather controversial, not just because of the involvement of agents, but also because it seems unfair that the intended parents, who are about to make a significant investment; have little control over the selection process. A better option could be to release personal information at the discretion of the surrogate.

Since several parties with dissimilar interests are involved in the surrogacy arrangement, controversy about someone's role can arise. The bill draws clear lines to avoid these problems:

- ✚ The donors should relinquish parental rights at the time of donation, and the surrogate mother, shortly after birth.
- ✚ Traditional surrogacy is no longer allowed. The reason for this is that when the surrogate is also the genetic mother, the risk of legal complications increases.

- ✚ NRIs and foreign couples are required to assign a local resident who is in charge of the surrogate's welfare until the act of relinquishment
- ✚ For the same group, it is also mandatory to be able to document their ability to take the newborn back to their home country with them (in response to the Manji incident).
- ✚ Interestingly, the bill allows unmarried couples and individuals to engage in surrogacy. However, the bill states that conception by surrogacy is not allowed when the intended parent(s) is able to conceive the natural way. Consequently, an issue arises when it comes to individuals: women have to prove that they are not capable of bearing a child, but on the other hand, men are not required to prove this.
- ✚ The surrogate baby will be recognised as the legitimate child of the commissioning couple even if they divorce or become separated, with the child's birth certificate carrying both genetic parents' names.
- ✚ The surrogate mother may receive monetary compensation from the couple or individual for agreeing to act as a surrogate mother.

Next, the Rules of the Bill assume that ART is being used only by heterosexual infertile couples. So they specify indications for various techniques based on the nature of infertility. The side effects are underplayed as 'ART procedures carry a small risk both to the mother and offspring'. Evidently, the 'risk' is small in comparison to the pain and trauma of infertility. In any case, the issue of fertile women's bodies for egg retrieval or for surrogacy does not figure in the discussion on risk.

The ART Bill has provided for many informed consent forms to be filled and records to be kept. But it does not require that adequate information be given to the surrogate mother about the possible side-effects.

Registration of surrogates with a 'sperm bank' further underlines the fact that the surrogate is seen as just another component of the technology – a womb. This ignores the fact that while donated egg or zygote gets separated from the woman's body, the womb continues to stay inside her and thus has to be looked at differently.

Thus, a Bill that is meant to safeguard the provider and the commissioning couples does not seem to protect the rights of the surrogate. She is the most marginalized and vulnerable one in this trade.

Therefore, surrogacy is both a threat and an opportunity. On the one hand it gives infertile couples and surrogate mothers the possibility to fulfil their desires: a child and the opportunity to take better care of their family respectively. On the other hand there is a risk that with the commodification of children and parenthood, women are exploited and turned into baby producers. Several reasons for and against surrogacy have been given and one cannot easily decide what is morally right and what is wrong. However, both opponents and supporters of surrogacy agree that surrogacy poses a series of social, ethical and legal issues.

Although there are now some rules and regulations in place, not enough is done at a national level to protect the interests of Indian women who serve as surrogate mothers, the children they bear, or those intended parents who travel considerable distances to commission pregnancies. These issues will be addressed in this study. The results will unveil the situation the mothers, parents and children are in and will make policy recommendations.

Chapter III

Surrogate Mothers

As surrogate motherhood in technical terms has been defined in many ways, before proceeding to the analysis of data collected from the two areas of study in Delhi and Mumbai, it is important to outline exactly what the term ‘surrogate mother’ means and how it has been defined in different contexts. Surrogate mother, as defined by the Collins English dictionary is, “*a woman who bears a child on behalf of a couple unable to have a child, either by artificial insemination from the man or implantation of an embryo from the woman*”⁹ The Oxford dictionary defines surrogate mother as, “*a woman who bears a child on behalf of another woman, either from her own egg fertilized by the other woman's partner, or from the implantation in her womb of a fertilized egg from the other woman.*”¹⁰ The ART Regulation Bill, 2010 defines the “*surrogate mother*” as,

a woman who is a citizen of India and is resident in India, who agrees to have an embryo generated from the sperm of a man who is not her husband and the oocyte of another woman, implanted in her to carry the pregnancy to viability and deliver the child to the couple/individual that had asked for surrogacy.

3.1 Profile of Surrogate Mothers

The women who engage in surrogacy are usually poor. They agree to conceive on behalf of another couple in return for a sum of money that would otherwise take many years to make. It is important to understand that these women generally do not have many career prospects as they are predominately uneducated, often engaged in casual work, sometimes migrants in search of better job opportunities and living in slum areas with inadequate housing facilities. They come from lower middle class backgrounds, are married, and are in need of quick money in order to, among other purposes, maintain their families, buy a house or pay for the children’s higher

⁹ Collins English Dictionary – Complete and Unabridged © HarperCollins Publishers 1991, 1994, 1998, 2000, 2003, <http://www.thefreedictionary.com/surrogate+mother>

¹⁰ http://www.oxforddictionaries.com/view/entry/m_en_gb0832950#m_en_gb0832950

education or to set up a business for her unemployed, drunkard husband. The need for money is often felt so deeply that childless couples often negotiate a better price as a result of the competition. There is a growing demand for fair-skinned, educated young women to become surrogate mothers for foreign couples. According to the Economist, fertility clinics pay surrogate mothers between \$4,500 and \$5,000 for carrying a pregnancy, and charge their clients - many of whom come from outside the country - about twice that. The need to protect the interest of the surrogate mother is evident in this situation.

Most women who go for surrogacy insist on anonymity as a result of the social stigma that surrounds surrogacy. Some men, particularly the husbands of surrogate mothers, react to 'encroachment' on their rights. The husbands of surrogates sometimes have problems with their wives' 'occupation'. They feel their rights are being violated and, although initially agreeing to the responsibility, they often change their attitude after they take on their new role. In one particular case the surrogate mother's fiancée left her for another woman, because the husband would not lay eyes on her anymore after she was inseminated. If one digs deeper, the surrogates begin to reveal the trauma and turmoil they experienced before plunging into what some of them call the "last decent resort" to earn money. Even doctors in India are divided on this issue. There are those who feel that adoption is the best option for couples unable to conceive. However, most IVF doctors recommend surrogacy with stringent guidelines.

Surrogacy turns a normal biological function of a woman's body into a commercial contract. Surrogate services are advertised, surrogates are recruited and operating agencies make large profits. The commercialization of surrogacy raises fears of a black market and baby-selling, breeding farms, turning impoverished women into baby producers and the possibility of selective breeding at a price. Surrogacy degrades a pregnancy to a service and a baby to a product. Experience shows that like any other commercial dealing the 'customer' lays down his/her conditions before purchasing the goods.

The surrogate may be forced to terminate the pregnancy if so desired by the contracting couple and she will not be able to terminate it if it is against the desire of the couple. She has difficulty in keeping her own baby. There have been instances where the contracting individual has specified the sex of the baby as well, refused to take the baby if it is not normal, and filed a suit against the surrogate saying she had broken the contract.

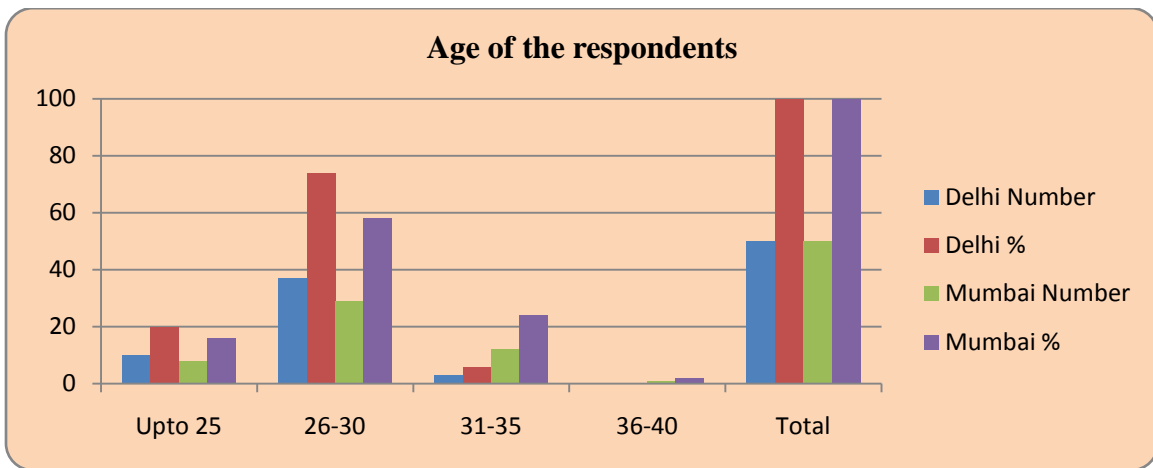
The supposed benefits of surrogacy are created by a capitalist patriarchal society. It is assumed that there is an equal exchange – money paid for the service rendered. In reality the contract between the parties to surrogacy would not exist if the parties were equal. The woman must give more than an egg to gestate a child – an important gender difference. Within this framework the contract is always biased in favor of the financially secure male. Therefore, the freedom of the surrogate mother is an illusion. The arbitration rights hide central social and class issues, which make surrogacy contracts possible. In addition, bio-ethicists are concerned that Indian surrogates are badly paid, and are working as surrogates in a country with a comparatively high maternal mortality rate.

Most of the surrogate mothers we interviewed were not willing to answer questions on how they felt after relinquishing the child. However, field level observation indicates that the surrogate mothers feel attached to the babies even though they were not biologically their own.

3.2 Demographic and socio-economic background

The present section deals with the age, religion, educational status, employment scenario, etc of the surrogate mothers to depict a clear picture of the socio-economic background of the studied participants.

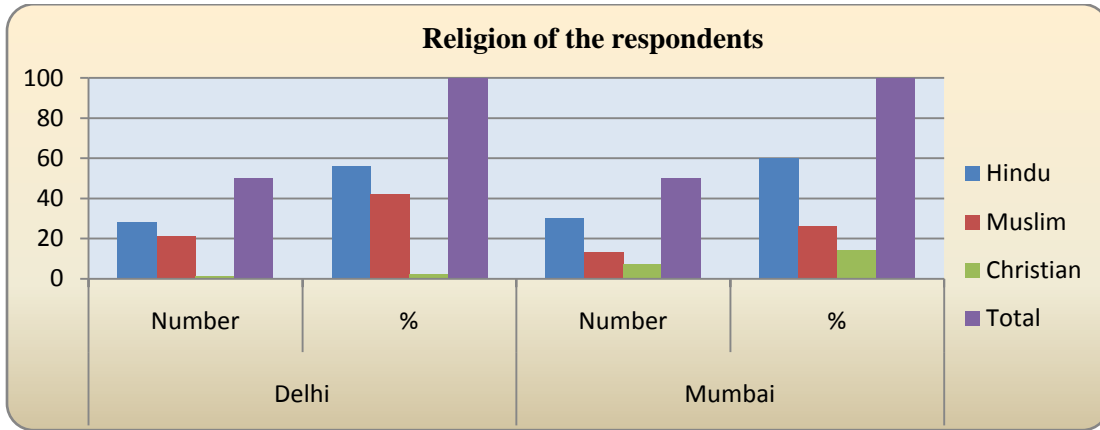
Graph 3.1



Field investigations conducted in Delhi and Mumbai show that majority (66%) of surrogate mothers were between the age group of 26 years to 30 years. In Delhi, 74% of the respondent surrogate mothers fell in this age bracket. In Mumbai, the percentage of surrogate mothers who

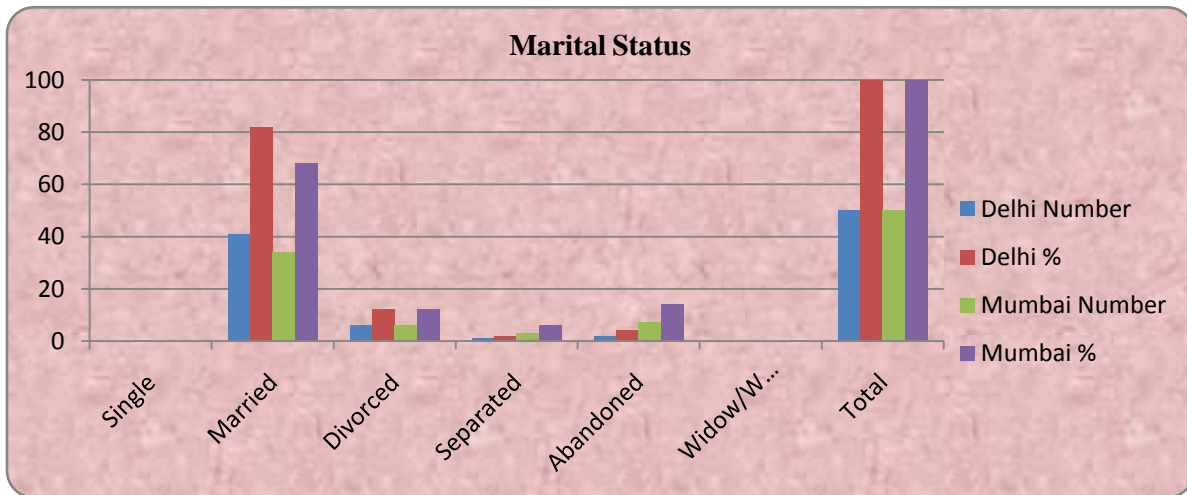
belongs to this age group is 58%. In Delhi, 20% of total respondent surrogate mothers were below 25 years of age, and only 6% were somewhere between the age group of 31 years to 35 years. Whereas in Mumbai, 24% of respondents belonged to the age group of 31years to 35 years, and 16% respondents were less than 25 years of age. Hence, there is a preference for surrogate mothers below 30 years of age as the success rate of surrogate pregnancy is considered higher within lower age group.

Graph 3.2



Majority of surrogate mothers, both in Delhi (56%) and Mumbai (60%), belonged to Hindu religion. However, 42% out of the total respondents were followers of Islam in Delhi, as compared to 26% in Mumbai. There were very few Christians (2% in Delhi and 14% in Mumbai).

Graph 3.3

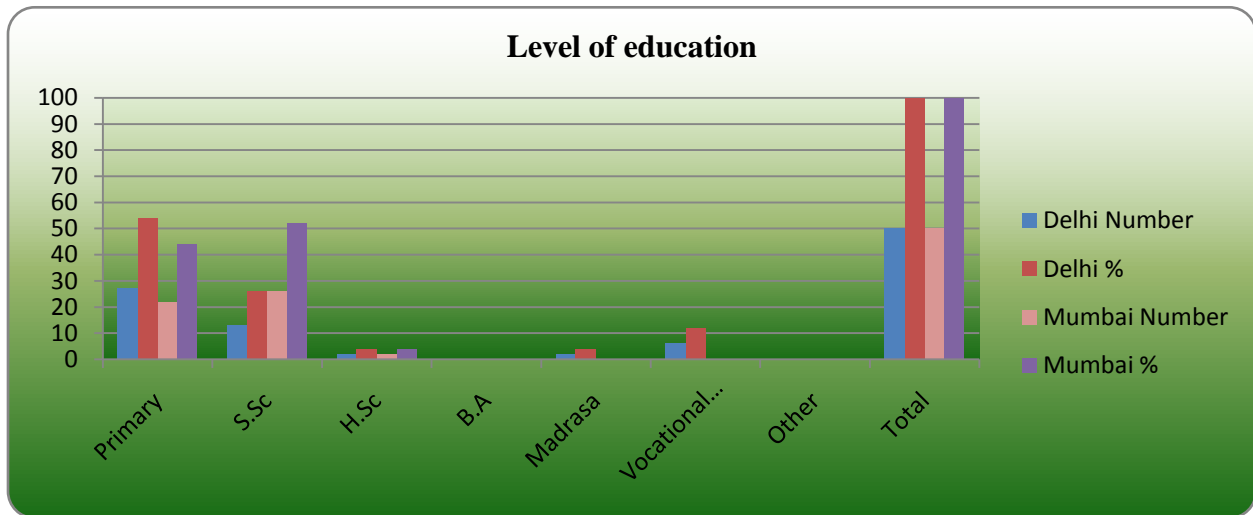


Majority (82% of the respondents in Delhi and 69% in Mumbai) of surrogate mothers in both the study areas were married. 12% respondents in each city were divorced. In Mumbai, 14% of the

respondents were abandoned and 6% were separated. Whereas in Delhi, percentages are 4% (abandoned) and 2% (separated). All the surrogate mothers have children they have to look after, either through casual employments or without any sustainable source of income. Particularly in Mumbai, a larger percentage of the respondent women (14%) were found to be abandoned by their husbands for other woman. During field investigation it was found that the fear of abandonment among married surrogate mothers also acts as a driving force to enter into surrogacy arrangements since their husbands found this arrangements as the easiest ways to earn quick money beyond their earning capability either to set up a business, repayment of a loan amount or simply to enjoy life at the cost of the health risk that their wives are subjected to unnecessarily.

The research team came across a case in Mumbai in which the surrogate mother had filed a case to fight for the custody of her child with the money she would get out of it. Hence, there is a direct link between the marital status of respondents and the surrogacy decision.

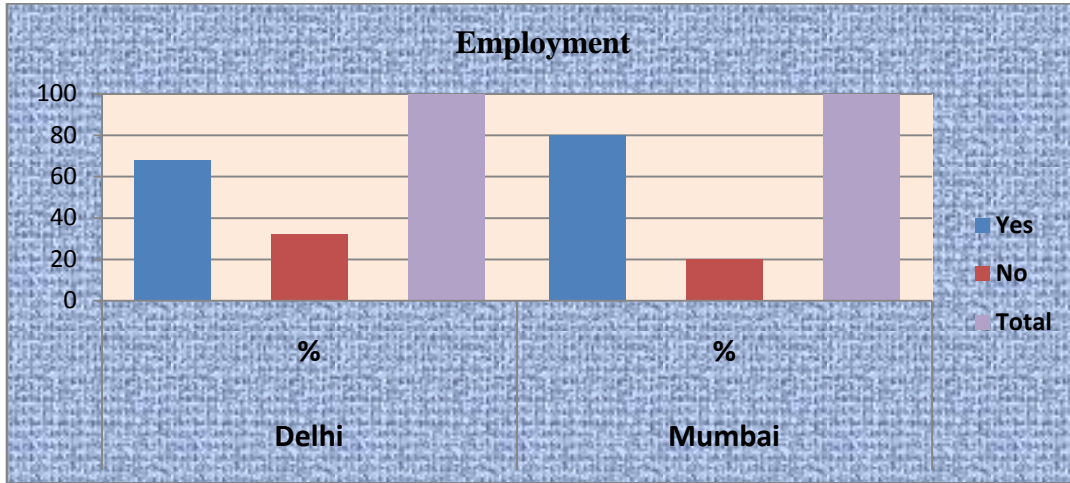
Graph 3.4



Almost half of the total respondents in both the study areas were educated up to primary level (54% respondents in Delhi and 44% respondents in Mumbai). 52% of the respondents had completed Senior Secondary level of education in Mumbai, and in Delhi this percentage was 26%. In Delhi, 12% of the respondents had some sort of vocational qualification e.g. tailoring or embroidery. Almost all the respondents who had completed Senior Secondary level of education

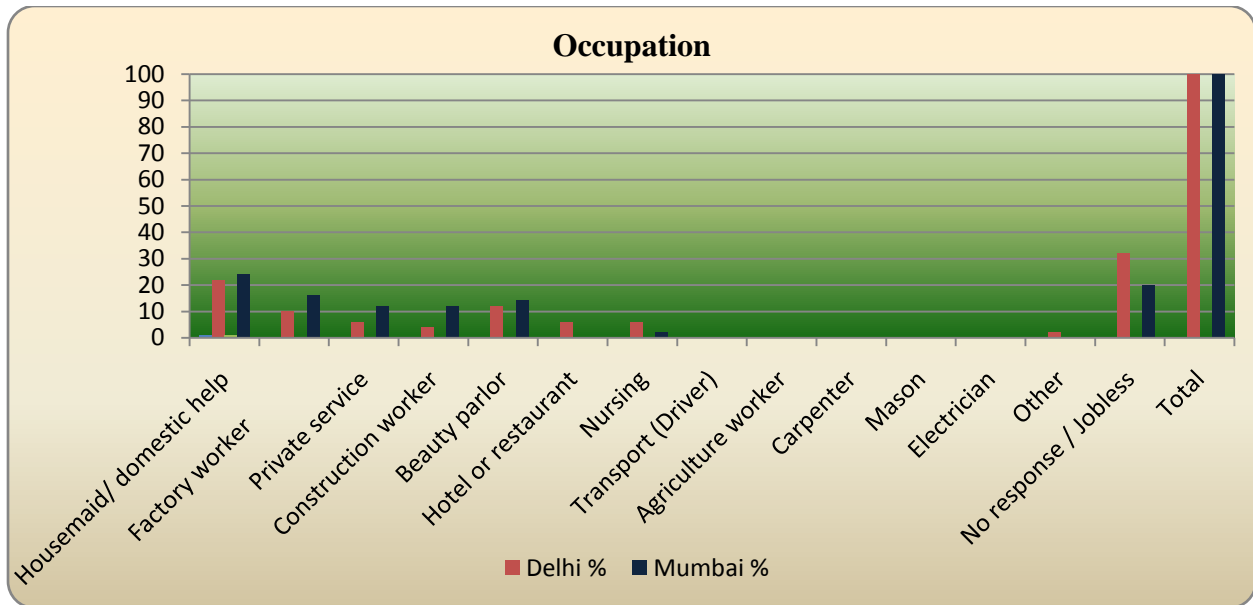
and beyond were engaged in wage employment, although those were either temporary or casual in nature where future financial security is not ensured.

Graph 3.5



In both the study areas majority of the respondents were employed (68% in Delhi and 80% in Mumbai).

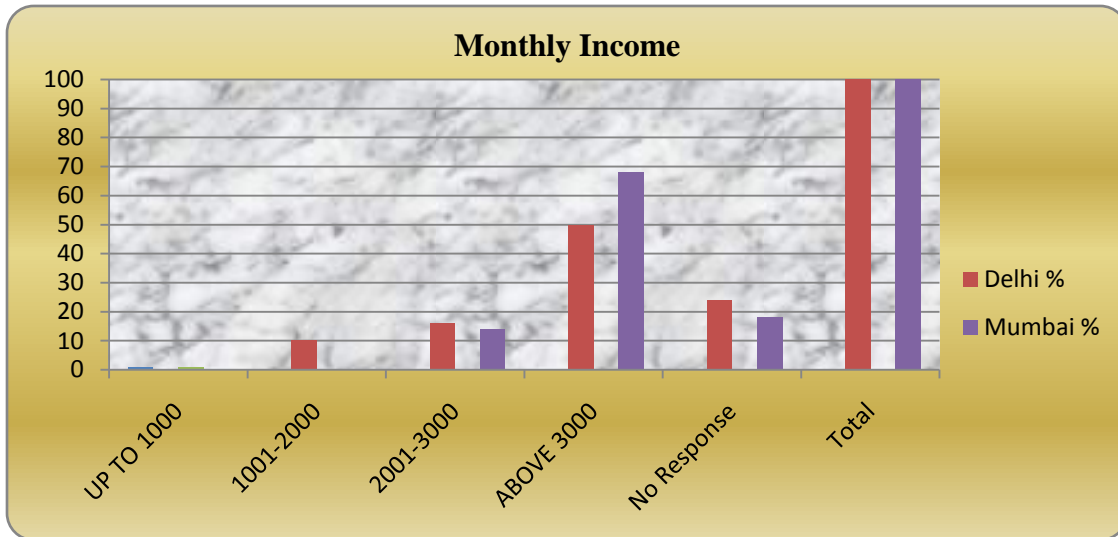
Graph 3.6



Many of the respondents, who were employed, work as housemaids or domestic help, in both Delhi and Mumbai (22% and 24% respectively). 16% in Mumbai and 12% in Delhi were factory workers. In Mumbai 6% each of total respondents were involved in private service or construction work. In Delhi the percentage is 6% and 4% respectively. In Delhi, 6% of

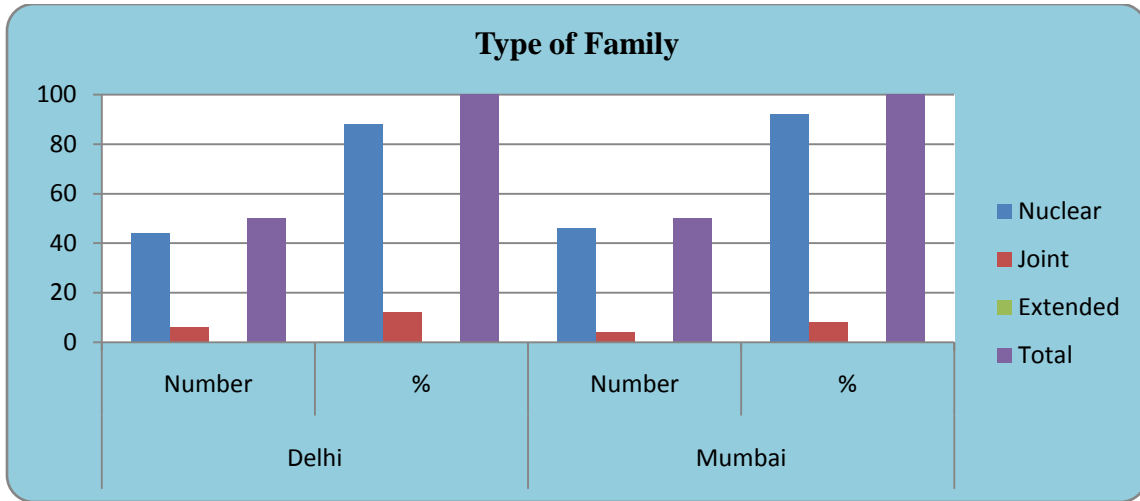
respondent surrogate mothers had 'Nursing' as a profession before entering surrogacy arrangements, while for Mumbai it was 2%. In Mumbai 14% and in Delhi 12% of the respondents worked in beauty parlors before they entered into surrogacy arrangements. A considerable percentage, both in Delhi (32%) and in Mumbai (20%), said that they were jobless.

Graph 3.7



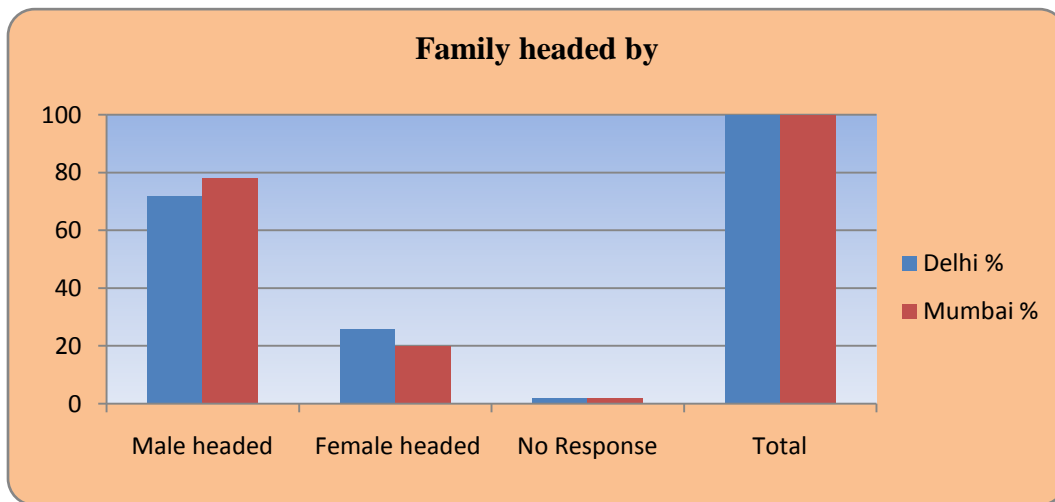
50% of the respondents in Delhi and 68% in Mumbai earned more than Rs. 3000/- per month. 16% of respondents in Delhi and 14% in Mumbai fall under the income category of Rs.2001-3000/- per month. Interview with surrogate mothers during field investigation revealed that though they were in wage employment and were supporting their family financially, rising cost of living, especially in a metro, accompanied with job insecurity and common belief that they would never accumulate the amount of money that surrogacy arrangement could provide, lured them into taking up the job of surrogate mothers, unaware of the health risks involved.

Graph 3.8



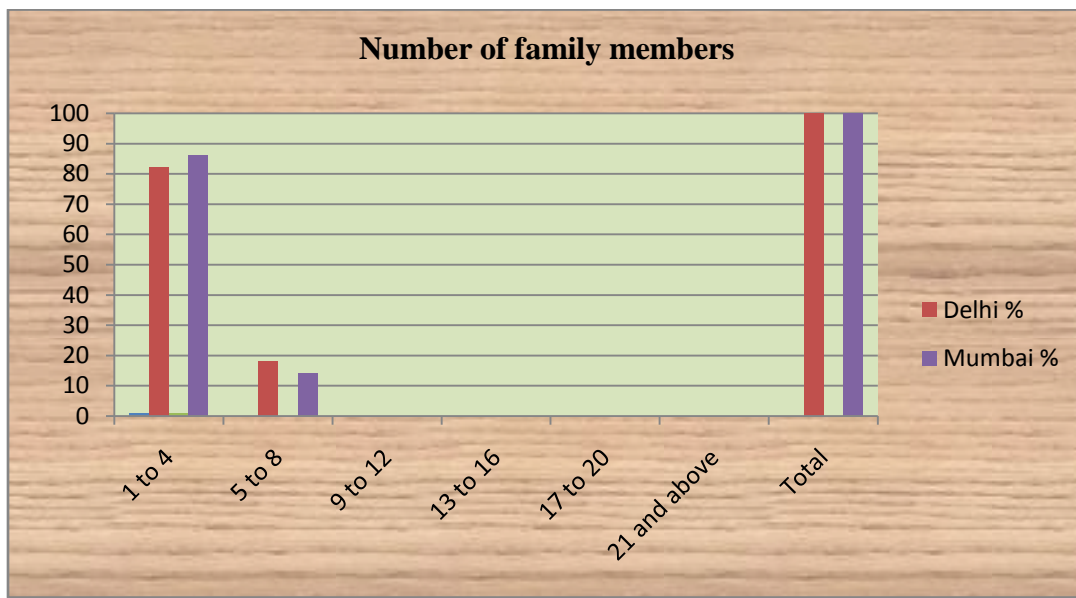
Out of the total number of respondents, 88% surrogate mothers in Delhi and 92% in Mumbai came from nuclear family structure. However, 12% of the respondents in Delhi and 8% in Mumbai were from the joint family structure. It has been found that nuclear family structure acts as a complementary factor for the poverty-stricken couple who take the decision to enter surrogacy arrangements, as they can easily hide this fact from their extended family members, most of the time living in another state of India. This also leads to semi-informed decisions (at times because of the agent whose sole interest is to get his/her commission) in the absence of discussions with family elders because of the fear of social stigma. In joint families, there were either dependant widowed mother-in-laws or unmarried brother/sister-in-laws who were not consulted in the decision-making.

Graph 3.9



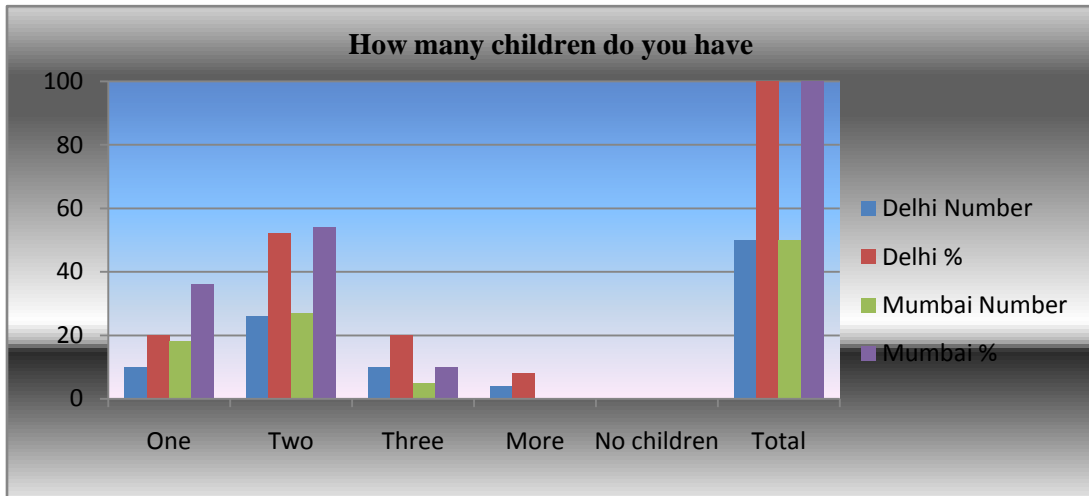
Most of the surrogate mothers in Delhi (72%) and Mumbai (78%) belonged to male headed households. This fact reveals that women become surrogate mothers with the consent/approval of their husbands, or they are a driving force behind the decision. The reasons behind the decision are many- to support the husband’s failing business or to set up a new one; to repay a pending loan that the husband had taken; to compensate the meager, insufficient income that the husband earns (which falls short if children fall ill or if half of it is spent by the husband on liquor); to construct a asbestos roof over the *kutch* slum house that they are living in; or to support the family.

Graph 3.10



84% of the respondents had one to four family members, both in Delhi and Mumbai. 18% of the respondent families in Delhi and 14% in Mumbai had five to eight family members. Among these family members, though the number of in-laws were very less, the families with more than two children were greater. That’s why family maintenance and education of children became a compelling factor in the absence of other employment avenues for mothers to enter surrogacy arrangements.

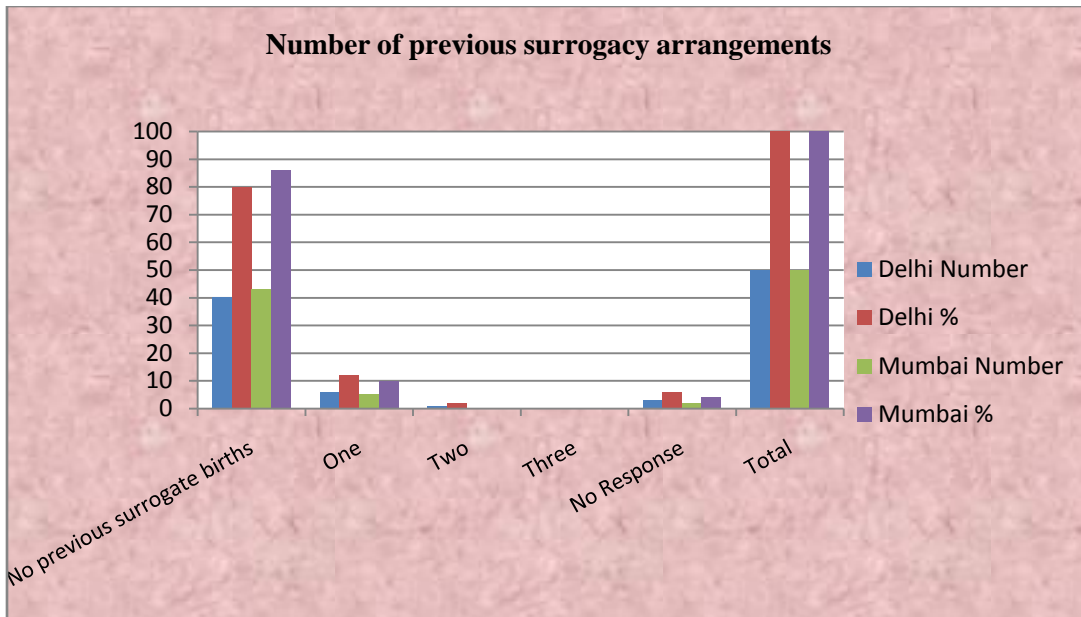
Graph 3.11



It should be noticed that all of the surrogate mothers already have children of their own. This was a prerequisite for infertility physicians/clinics/hospitals engaged in surrogacy business as it acted as a proof of fertility of the potential surrogate mothers. The draft ART bill of 2010 also lays down this conditionality. However, further probe is needed on this issue as news and reports of young girls joining this arrangement in the moment of economic downturn is also being heard. 53% of the respondents have two children. In Delhi, 52% of them have two children, while in Mumbai the percentage is 54%. 20% in Delhi and 36% in Mumbai 20% and 36% had one child of their own. Respondents, who had one-child family through C-section, were ignorant that after a delivery through surrogacy arrangement (in which most of the time the child is delivered through C-section) they will not be in a condition to have another child of their own if they wished to. This issue needs to be thoroughly addressed in the ART draft bill of 2010.

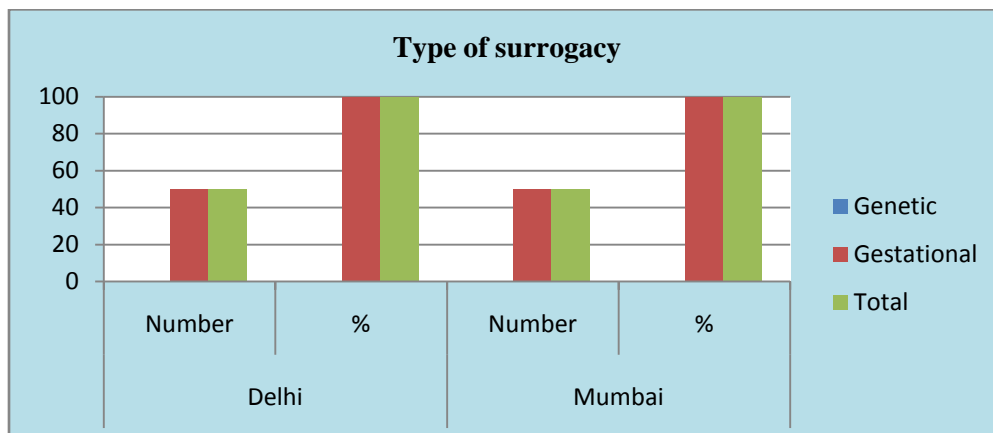
As it is depicted in the graph below, 83% of the respondents from both the cities of Delhi and Mumbai have experienced surrogacy first time. In Delhi, 80% of the respondents said that it's their first experience with surrogacy. In Mumbai, the percentage of first time surrogate mothers is 86%. This shows that many surrogate mothers have not entered the surrogacy arrangements happily.

Graph 3.12



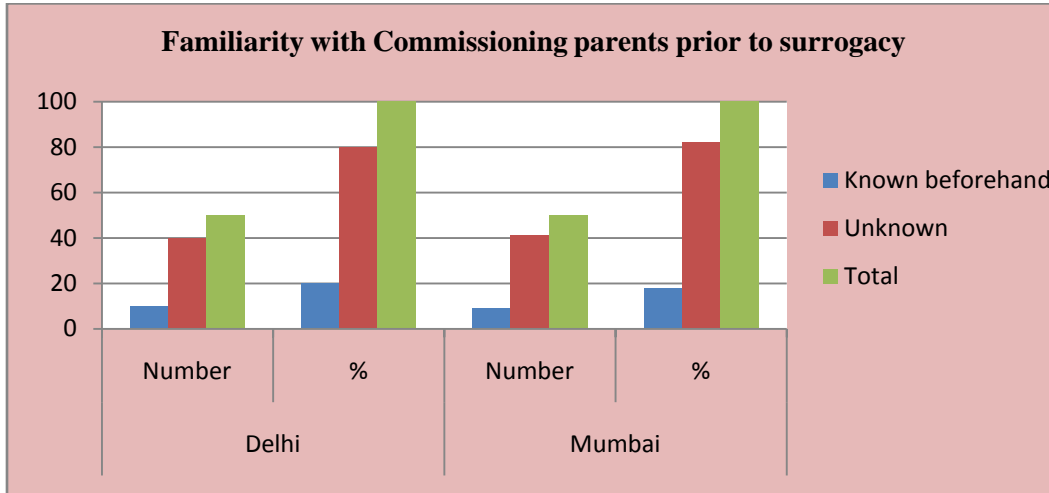
Besides, they were not very satisfied with the way they had been treated during the whole procedure. That's why they did not come back for the second time. However, 12% of respondents in Delhi said that they had experienced this once before also. In Mumbai, 10% replied the same. Many a times, this was due to continuing economic compulsion on the one hand and financial lure from husband's side on the other forced them to come back again. However, the research team came across one case in Mumbai where the surrogate mother was pregnant with the second surrogate child for the same NRI Sikh couple as they had gifted her nicely after the first surrogate child and also developed a bond. The particular commissioning parent wanted the surrogate mother to bear their second surrogate child as well. But it is certain that these cases are rare.

Graph 3.13



All the respondents from both the project areas said that the type of surrogacy in which they were involved in was gestational surrogacy.

Graph 3.14

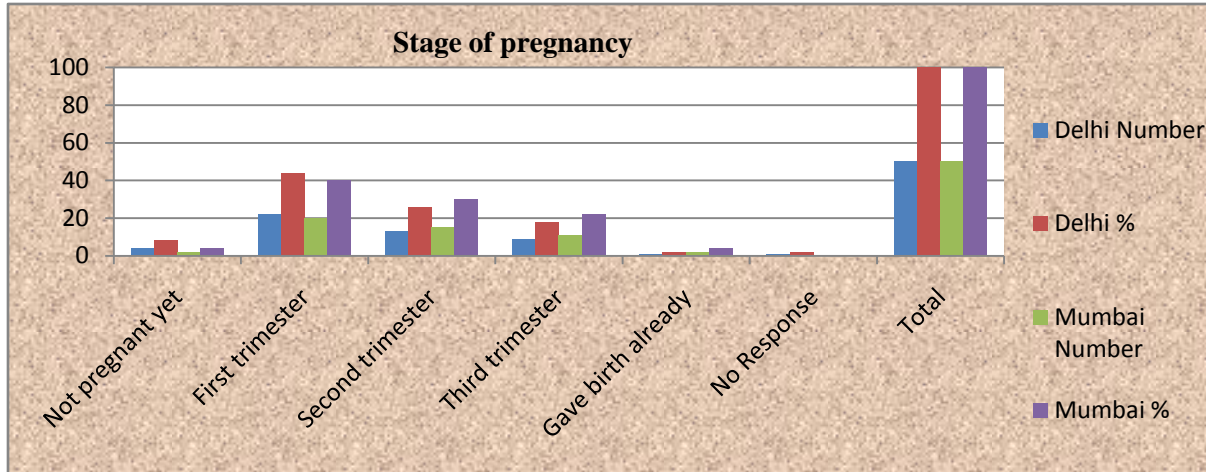


The research depicts that majority (81%) of surrogate mothers (80% in Delhi and 82% in Mumbai) of surrogate mothers didn't know the commissioning parents prior to surrogacy arrangement. This may be due to the fact that primarily it is the doctors/clinics who decide which surrogate mother will be assigned to which commissioning parents, unless the commissioning parents have zeroed down on a particular surrogate mother. Secondly, the commissioning parents had usually come to India to sign the contract when the pregnancy was confirmed and all abnormalities had been ruled out by the doctors dealing with the case, which meant they met the surrogate mother in the second trimester.

It should be noticed that '*knowing*' the commissioning parents does not mean being familiar or being friends with, etc. but, just knowing them by face and name, as language is also a communication barrier between the surrogate mothers and the commissioning parents. In addition, the doctors or their subordinates were always around, who seemed to be a barrier for one-to-one communication between the two parties in the surrogacy arrangement. Since no one knows which fertilized egg will match which of the potential surrogate mother's womb till the end of the first two months when the pregnancy is confirmed and the commissioning parents are asked to come to India to sign the contract, it is difficult for the surrogate mothers to meet or know the intended parents beforehand. In fact, during the field visits and after speaking to both

the surrogate mothers and the commissioning parents, it was found out that in majority of cases, both the parties get to know each other during the signing of contract.

Graph 3.15



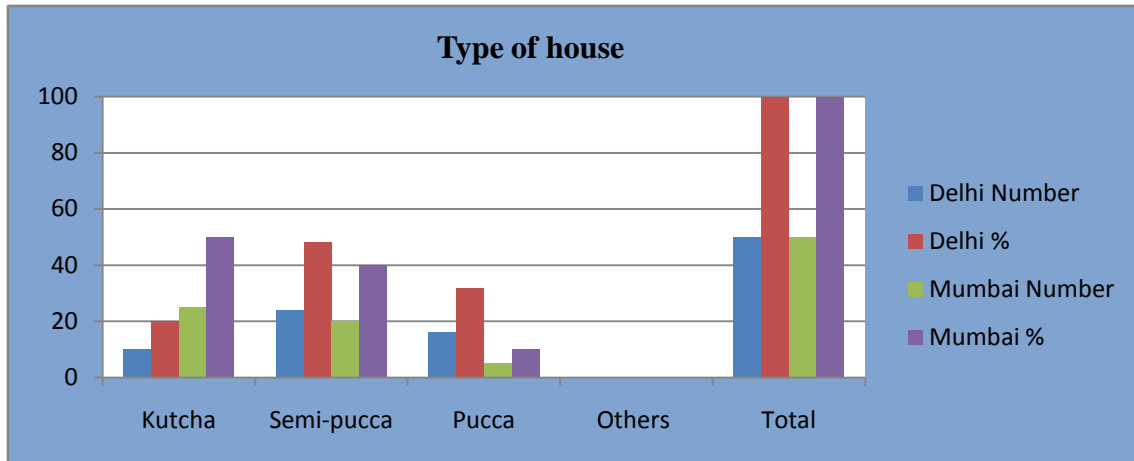
Only few of the respondent surrogate mothers (20% in Delhi and 18% in Mumbai) said that they already knew the commissioning parents beforehand. That may be through ‘skype’, which is catching up as a fancy way for commissioning parents to watch the pregnant belly on a monthly basis, making them feel connected with their unborn child.

Most of the interviewed surrogate mothers were already pregnant at the time of interview, but they were in different stages of pregnancy. 44% in Delhi and 40% in Mumbai were in their first trimester. 26% in Delhi and 30% in Mumbai were in the second trimester. 18% in Delhi and 22% in Mumbai were in their third trimester of pregnancy. The research team interviewed one respondent in Delhi and two respondents in Mumbai who had already given birth.

3.2.1 Housing and other facilities

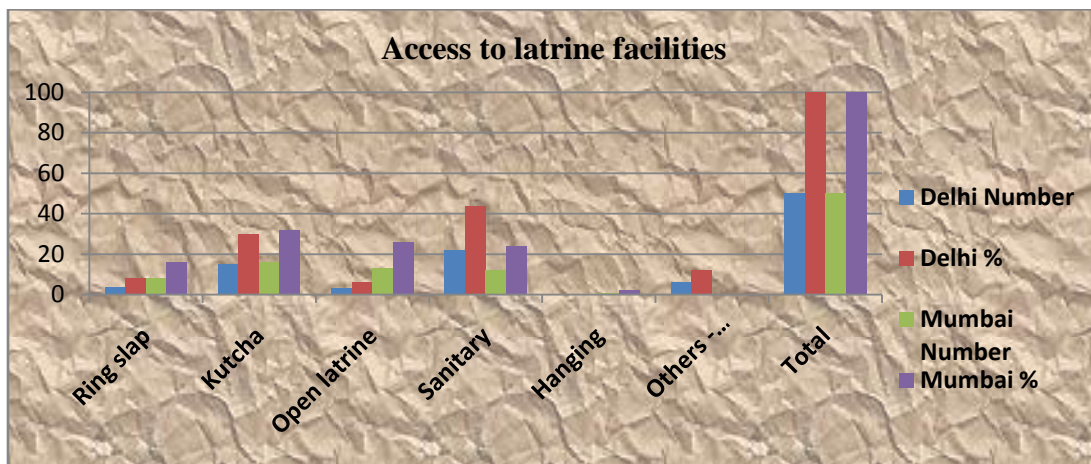
To understand the socio-economic profile of the surrogate mothers and to locate the triggering factors that compelled them to undergo surrogacy arrangements, we administered a set of questions which are analysed below.

Graph 3.16



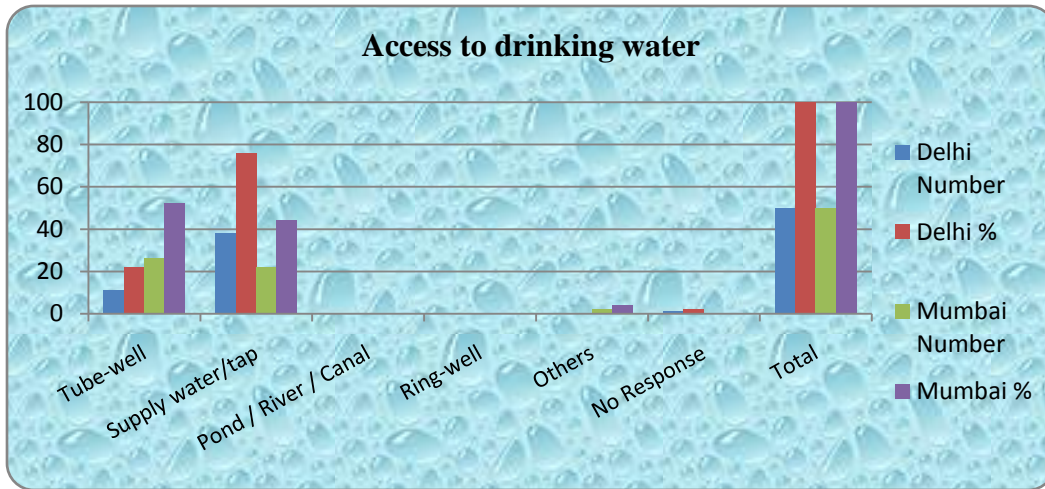
In both the study areas, majority (93%) of the respondent surrogate mothers were staying in rented accommodations (96% of the respondents in Delhi and 90% in Mumbai). However, 4% of the respondents in Delhi and 10% in Mumbai were staying in their own houses. As most the surrogate mothers came from the economically disadvantaged sections of the society, which constitutes a large portion of inter-state migrant labor force, they often live in slum clusters of metropolitan cities where rent is cheaper. Though there were a slightly higher percentage of respondents in Mumbai who were living in their own houses, in most of the cases these houses were *Kutcha* or semi-pucca houses constructed on unauthorized localities or sub-urban areas. While 20% of the respondents in Delhi and 50% of respondents in Mumbai were staying in *Kutcha* houses, 48% of the total number of respondents of Delhi and 40% of Mumbai stayed in *Semi-pucca* houses. 32% of the respondents in Delhi and 10% in Mumbai stayed in *Pucca* houses.

Graph 3.17



While living in slum clusters, the respondent surrogate mothers had to compromise on basic amenities like toilet facilities or safe drinking water. In Delhi, 44% of the respondents had sanitary latrines; while in Mumbai it was 24%. 30% respondents from Delhi and 32% respondents from Mumbai had *Kutcha* latrines. In Mumbai, 26% of the respondents had used open latrine.

Graph 3.18



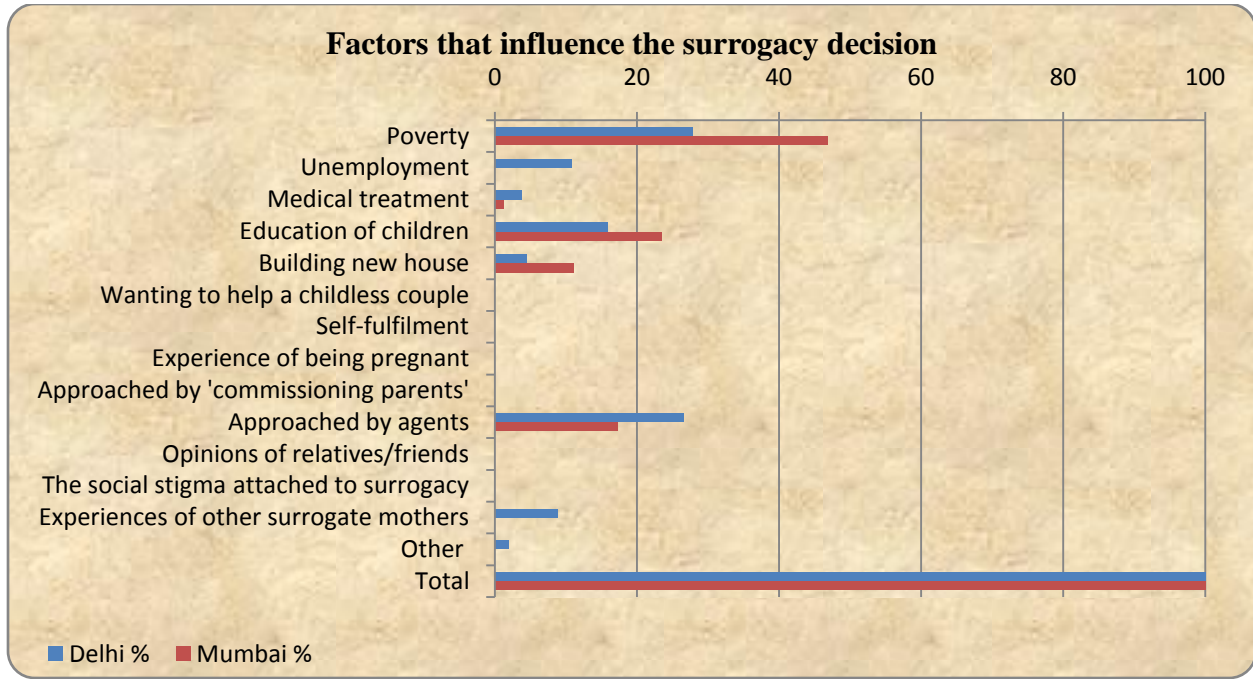
As shown in the graph above, 76% of the respondents in Delhi and 44% in Mumbai had access to supply water. 52% of total respondents in Mumbai and 22% in Delhi fetched drinking water from the tube well.

Almost all the surrogate mothers replied that they had access to electricity (90% in Delhi and 100% in Mumbai).

3.3 The surrogacy decision

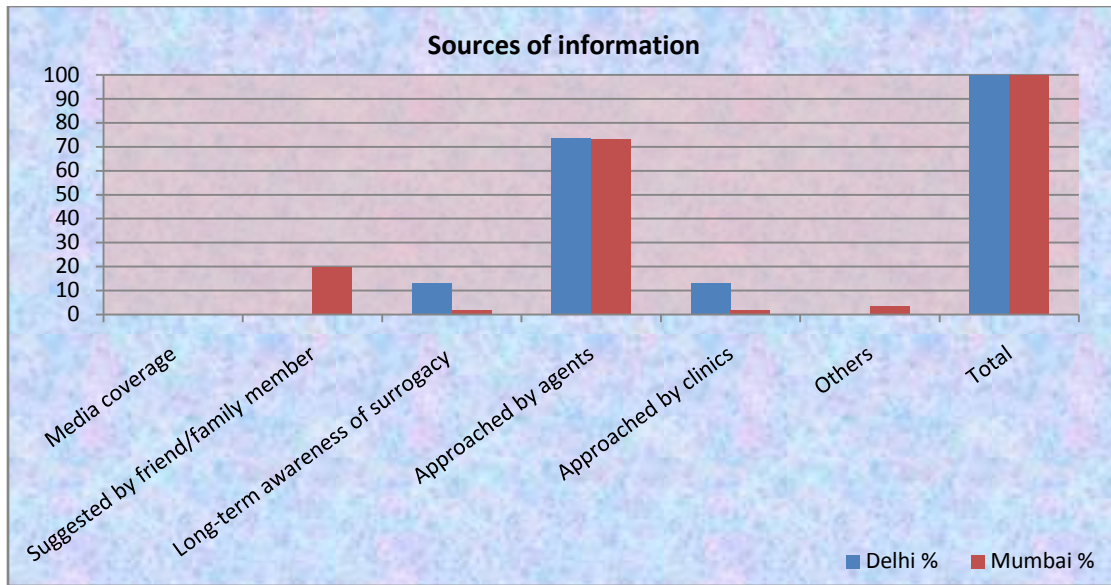
This section outlines the surrogacy decision-making process. It should be mentioned that surrogacy is looked upon as a stigma and a taboo, hence, to take a life-changing decision like surrogacy is quite difficult. There are some triggering factors including poverty, unemployment and education of the children, which compel women to become surrogate mothers. Have the two state governments taken steps in view of surrogacy cases taking place?

Graph 3.19



The graph above depicts that 27.85% of the respondents in Delhi and 46.91% in Mumbai stated that it is poverty that had driven them to take the decision to enter into a surrogacy arrangement. However, 15.82% of the surrogate mothers in Delhi, and 23.46% of them in Mumbai, stated that education of their children had been another driving factor to opt for becoming a surrogate mother. 26.58% of the respondents in Delhi and 17.28 in Mumbai had been approached by the agencies or clinics to become surrogate mothers. To sum up, poverty, approach by agents, unemployment and education of children stand out to be major compelling factors for surrogate mothers to enter into surrogacy arrangements. When we compare Delhi and Mumbai, while poverty, unemployment and approach by agents stand out as important factors for Delhi respondents; poverty, approach by agents, education of children and repair of existing house/building/new houses remain priorities for respondents of Mumbai to take surrogacy decision.

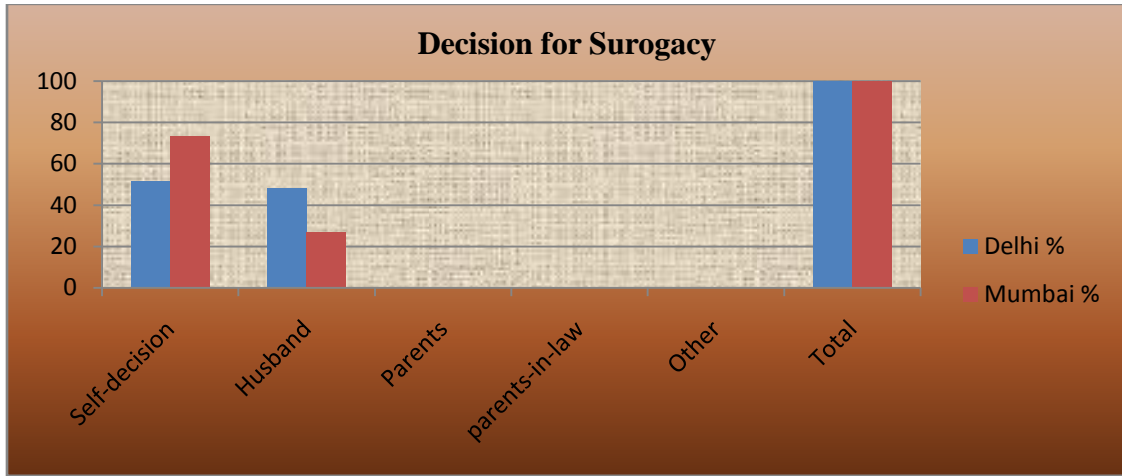
Graph 3.20



The major source of information, in both the metros, for surrogate mothers about the surrogacy arrangements was by the agents, employed at the field level either by the surrogacy agencies or IVF clinics/hospitals, who lure them into this arrangement by showing them the ‘money’ that they can earn from it by simply being pregnant and relinquishing the child within a period of 9 months, during which the clinic and the commissioning parents will bear the whole cost of the family of the surrogate mother. 73.77% of surrogate mothers in Delhi and 73.21% of them in Mumbai were approached by the agents. In Mumbai, 19.64% of total respondents were suggested by their family and friends about surrogacy. Long-term awareness of surrogacy (13.11%) and approach by clinic officials (13.11%) were other sources of information for respondents in Delhi. One major observation made by the research team during field visits was that surrogate mothers were very articulately chosen by the agents as they themselves lived in particular urban clusters for some time and had observed who are the needy and poorest of poor of the section of the community with proven fertility (more than one child) record and then target the woman by gaining her confidence as a sympathizer. This makes them easy prey as the potential surrogate mothers never doubt the intentions of agents. The agents always paint a rosy picture in front of the potential surrogate mothers who, most of the time, are semi-literate, hardly able to sign their own names. After handing her over to the clinic, the agents receive a hefty sum as the prize money. We often found slum areas from which many surrogate mothers would be

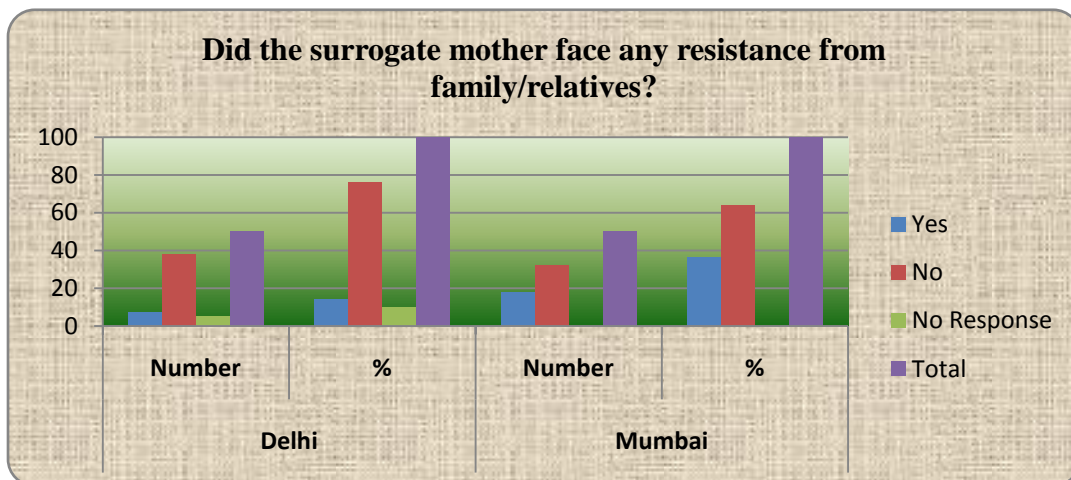
employed under the banner of a particular clinic/centre/hospital or doctor.

Graph 3.21



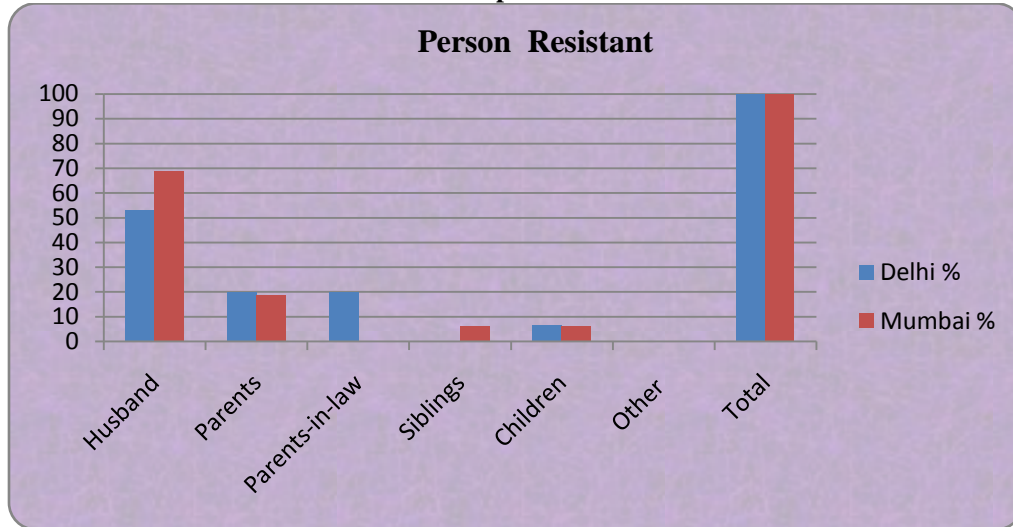
Since the matter is looked at as a social stigma and it is kept within the four wall of the house, the family member consulted most often of is the husband. We have already observed in this research that the majority of the surrogate mothers come from nuclear families. Hence, there is no need of sharing the decisions related to surrogacy with extended family members. Though the respondents told us that the decision to become a surrogate mother was taken by themselves (51.76% of respondents in Delhi and 73.02% in of them Mumbai), we found that it was the husband (48.24% of respondents in Delhi and 26.98 of them in Mumbai) who emotionally pressurized the wife to undergo surrogacy in order to buy a house (as most of them live in rented *chawls*), or to set up a garage, or to start a business, or even to pay bribe to come out clean in a criminal case, or simply for family maintenance.

Graph 3.22



Some of the surrogate mothers (36% in Mumbai and 14% in Delhi) stated that they faced resistance from family and relatives; 76% in Delhi and 64% of the respondents in Mumbai said that they faced no resistance from their family and relatives.

Graph 3.23



For those respondents who said that they faced resistance from family and friends, the resistance was often from the side of the husband (53.33% of the respondents in Delhi and 68.75% of the respondents in Mumbai), or from parents (20% of respondents in Delhi and 18.75% of respondents in Mumbai), from in-laws (20% of respondents in Delhi) or children (6.67% of respondents in Delhi and 6.25 of respondents in Mumbai). It is interesting to note that husbands opposed the decision to enter surrogacy at the first instance, even if the money for maintenance of family is a big question. But, after they came to know that at the end of 9 months their wives are going to get Rs. 2.5-3 lakhs, they readily agreed for surrogacy, as if now their bodies are not being misused for this.

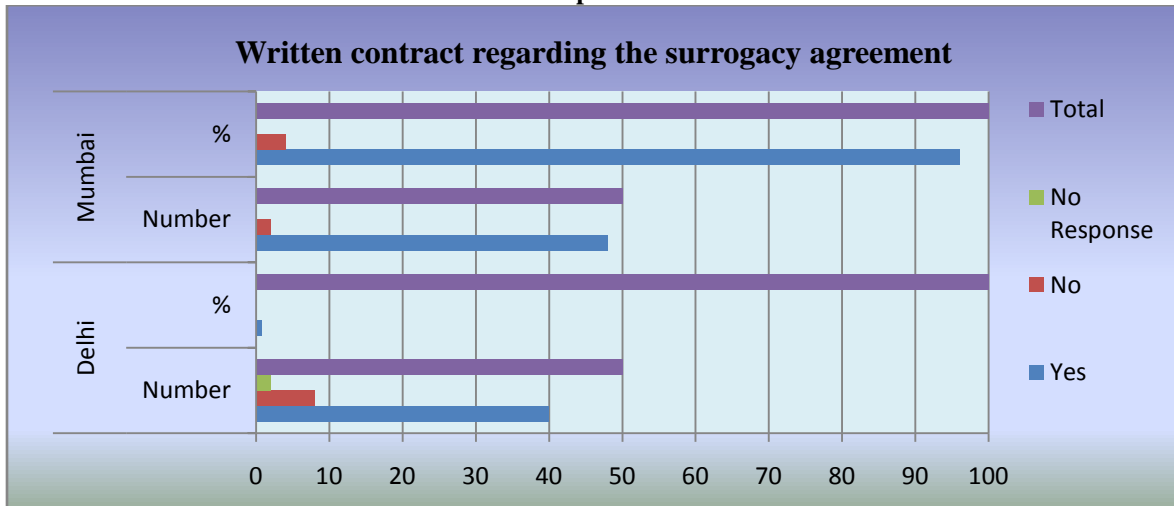
3.4 The surrogacy birthing arrangement

The most crucial aspect of the whole surrogacy arrangement is the birthing arrangements. It includes the agreement of commissioning parents with the clinic/doctor/agency and the agreement with the surrogate mother to relinquish the child, the monetary compensation for the

surrogate mother, the health check-up to ascertain the well-being of the fetus, etc. The present section deals with these crucial details as revealed during field study of Delhi and Mumbai.

A majority of surrogate mothers (80% of the respondents in Delhi and 96% in Mumbai) stated that surrogacy agreement between all the involved parties took place in the form of a written contract. The rest of the respondents were waiting for the contract to be signed by both the parties (the surrogate mother and the commissioning parents), as the clinics/doctors normally prefer to prepare and sign the agreement when the pregnancy is confirmed by the end of the first trimester till the middle of the 4th-5th months of pregnancy. Further, they (the clinics/agencies/doctors) prepare the document and inform the commissioning parents to come to India to sign the document. More than 85% of the contracts were found to be signed around the second trimester of the pregnancy as it takes one to two months more for the commissioning parents to arrange their visit to India after being informed about the confirmation of pregnancy of the surrogate mother by the clinic/infertility physician. In some clinics/agencies, the contract is first signed by the surrogate mother and her husband and then sent either by e-mail or post to the Commissioning parents to be signed by them, who then sent a copy back to the clinic/doctor/agency dealing with the surrogacy arrangement.

Graph 3.24



However, there are many questions which remained unanswered, like, what if the pregnancy is not continued beyond two months? What if the pregnancy has to be aborted due to the abnormality in the foetus around the end of first trimester, when the contract is still not signed by

both the parties? Is it in line with the MTP Act of 1971? When the doctors and people in the clinics were asked these questions, they did not respond verbally, though we noticed uncomfortable body gestures. The delay in signing the contract puts the surrogate mother at the mercy of the clinic, doctor and the commissioning parents. In fact, the research team came across a case in Delhi which was being dealt by a renowned IVF practitioner. The surrogate mother's two and half month old pregnancy had been forcibly aborted as the fetus was found to be abnormal by the doctor. When she objected to it, the doctor gave her Rs. 12,000/- for the whole procedure, including the blood loss and mental trauma that she suffered, and scared her away from the surrogacy centre. When this decision of the surrogacy centre was criticized by fellow surrogate mothers of the same centre who were more than 4 months pregnant, they were threatened by the doctor and the centre to keep their mouth shut.

Another finding which came to light, and had been reported by the Times of India around a year ago, was that of 'twiblings', whereby two to three surrogate mothers had been impregnated for the same commissioning parents, without their knowledge. This had been done to ensure high success rate. In case the two/three surrogate mothers became pregnant, the surrogacy pregnancies would continue if the commissioning parents wanted to continue with the pregnancies. If not, the healthiest pregnancy would be allowed to continue and the other pregnancies would have to be terminated by taking abortion pills given by the doctor/clinic/centre, about which the surrogate mothers would have no clue and she would simply think that she had a spontaneous abortion. The clinic/doctor/centre simply would wash off their hands and would not pay anything to the surrogate mother.

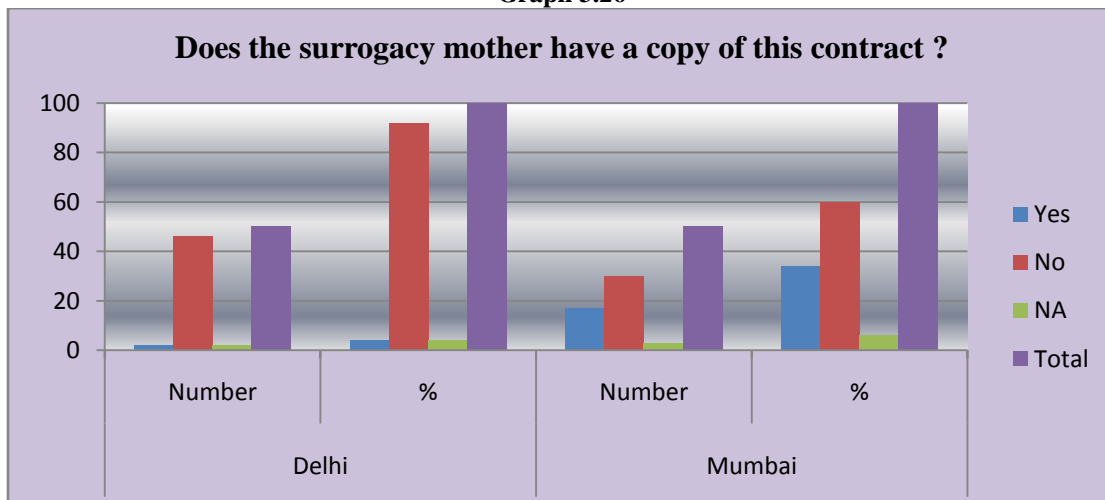
The nature of contract for most of the surrogate mothers is a bond paper on which the agreement would take place (70% of the respondents in Delhi and 72% in Mumbai). 14% of the respondents in Delhi and 10% in Mumbai said that the contract was signed on the paper prepared by the agents.

Graph 3.25



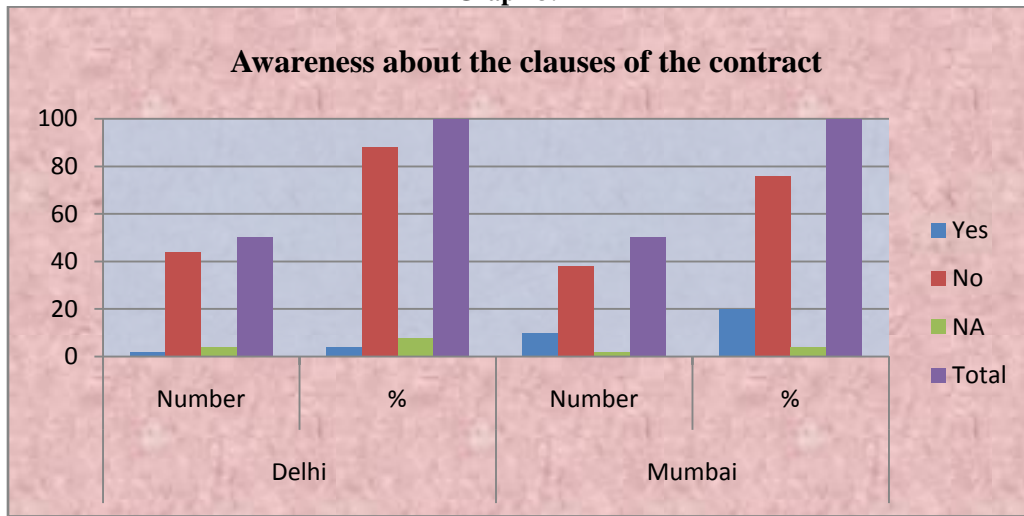
Since the surrogate mothers are unable to read or write, she and her husband are told about the contract by the hospital/clinic authorities in a suitable language and easy terms, which the surrogate mother cannot verify by any means. She has to sign the agreement as she would be already 4 months pregnant and being poor has great financial expectations which are often exaggerated by the hospital/clinic authorities/doctors. The surrogate mothers were ‘brain-washed’ into believing that they would be getting huge sum of money at the end of the road. Hence, there is a need for legal provisions relating to surrogacy arrangements. It should be mentioned that due to the absence of such a law the surrogate mother suffers the most as she is exploited not only physically, but also emotionally.

Graph 3.26



The research findings revealed that the majority of the surrogate mothers had not received any copy of the contract. The clinics did not leave a copy of the agreement with the surrogate mother, who is a signing party in the agreement, to have any evidence either of her pregnancy or the surrogacy arrangement. 92% of the respondents in Delhi and 60% in Mumbai said that did not have a copy of the contract. Surprisingly, only two surrogate mothers in Mumbai stated that they had a copy of the contract.

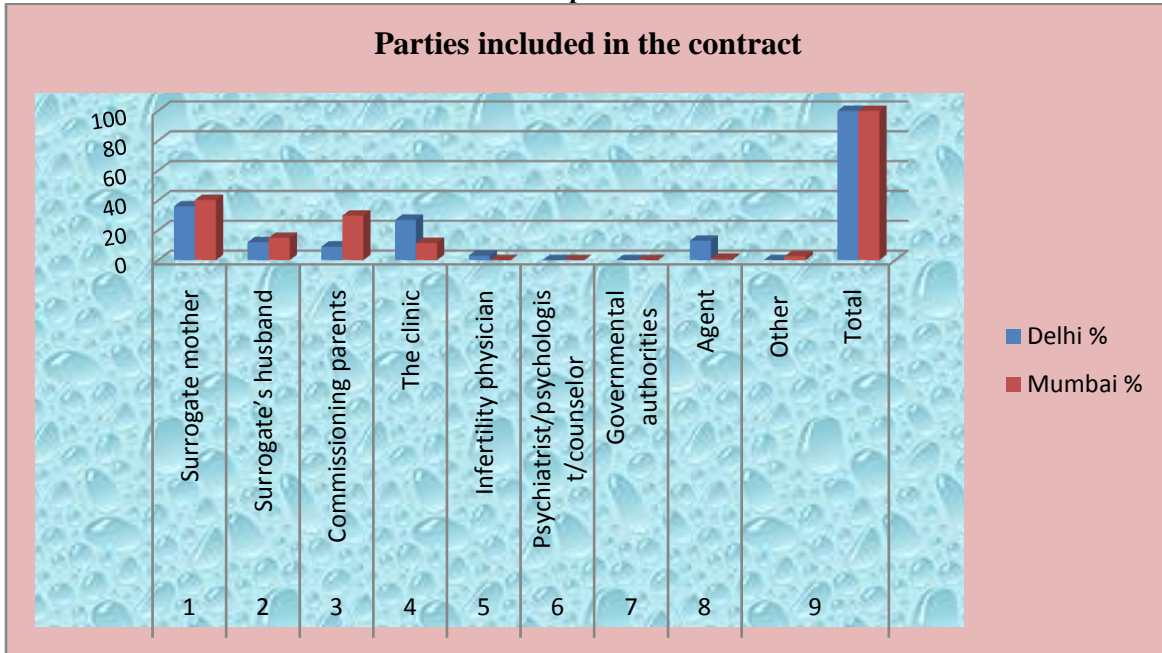
Graph 3.27



Out of the total number of respondents, 88% in Delhi and 76% in Mumbai stated that they were not aware of the clauses of the contract. 20% of the respondents in Mumbai and 4% in Delhi said that they were fully aware of the clauses of the contract. However, when the research team questioned the respondent surrogate mothers about certain clauses of the agreement, they could not answer. On cross reference to this, the agencies/hospital/clinic authorities responsible for giving the information to the surrogate mothers stated that the expecting surrogate mothers might not have ‘remembered’ the clauses which were orally explained to them during counseling procedure as they are semi-literate and might have ‘forgotten’ what had been ‘told’ to them during the process of signing the agreement. First of all, it leaves a wide scope for the agencies/hospitals/clinics/doctors to avoid telling the surrogate mothers unpleasant things, which in future can be used against her interest. Secondly, since the surrogate mother is already four-five months pregnant at the time of signing of contract, she has no option left other than to sign the contract and agree to whatever has been orally ‘explained’ to her by the hospitals/clinics/doctors. Since the surrogate mother is the most vulnerable among all the parties

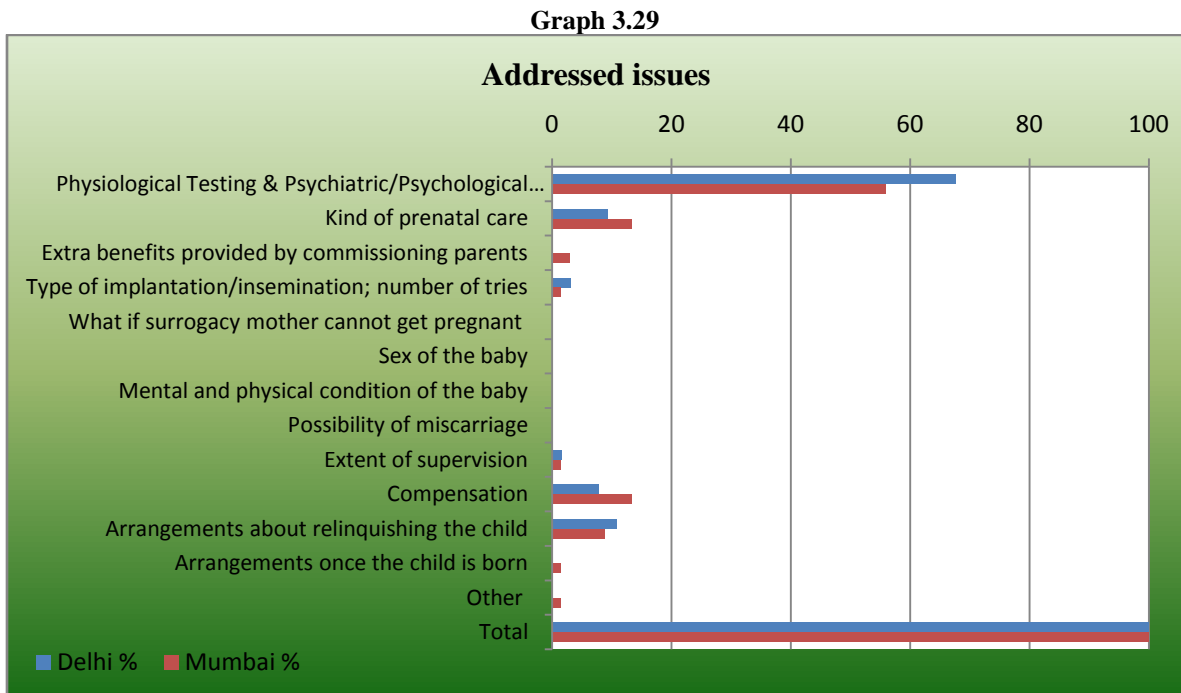
involved, she neither has bargaining capacity nor the power to withdraw in case the arrangement goes against her interest.

Graph 3.28



In almost all the cases the contract includes the surrogate mother (36% of the total respondents in Delhi and 40.35% in Mumbai), the surrogate’s husband (12% of total the respondents in Delhi and 14.91% in Mumbai) and the commissioning parents (45% of the respondents in Delhi and 41.22% in Mumbai). According to this graph, nowhere are the governments authorities a part of the contract/agreement, and in very few cases the clinics or agents (27% clinics in Delhi and 11.40% clinics in Mumbai; 13% agents in Delhi and 0.88% agents in Mumbai) are a part of the contract. Hence, the Delhi clinics and agents seemed to be more involved in signing the contract. Under the ‘other’ category, we found two witnesses signing the contract in Mumbai. These two witnesses could have been the doctor’s spouse, who is the co-owner of the clinic/hospital; parents of the doctor, who herself is a practicing doctor; mid-wives with prior record of being surrogate mothers themselves; nurses/caretakers, etc. Thus, the surrogate mother, her husband, commissioning parents, the doctor, agents and the witnesses were found to be the main signatory.

As it was discussed earlier, in 50% to 60% of the cases the surrogate mothers and their husbands were illiterate or with only primary education which leaves no chances for them to understand the medical jargons or complicated procedures. This might affect the health and well being of the surrogate mother. The clinics often avoid signing written agreements/contracts which can hold them accountable in the future. Moreover, the clinics did not even leave a copy of the agreement with the surrogate mother, who is a signing party in the agreement, so that she has no evidence of her pregnancy or the surrogacy arrangement. This leaves wide scope for exploitation of surrogate mother by the clinic/agency/doctor.



The primary issues in the contract include the Physiological Testing & Psychiatric/Psychological Evaluation and the release of the results (67.69% of the respondents in Delhi and 55.88% of respondents in Mumbai); and the arrangement of relinquishing the baby after birth (10.77% of the respondents in Delhi and 8.82% in Mumbai). Very few contracts have provisions for any extra benefits to be provided by the commissioning parents to the surrogate mother. Furthermore, there is no mention about the payment of the surrogate mother in case twins are born, which happens in 75% of the cases, as shared by the surrogate mothers.

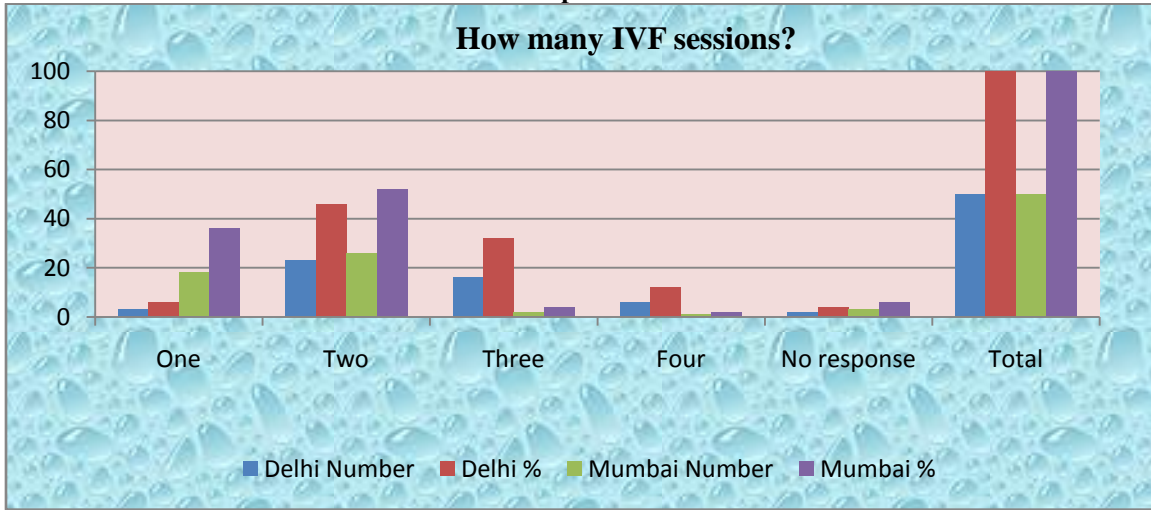
The nature of the contract is also questionable since the ICMR guidelines are silent on the issue. Though the research team tried hard to contact the lawyers associated with different surrogacy

clinics in both the metropolitans, and whose names have been proudly displayed by many clinics/agencies/centre at their entrance door, none of them showed the courage to participate in the research study. However, some of the infertility physicians mentioned, upon further enquiry, that the contract is based on Indian Contract Act. Is it (surrogacy arrangement and the surrogate mother) a labor employment for 9 months that is based on Indian Contract Act? This seriously needs to be looked at.

Sno	Issues addressed in the contract	Delhi	Mumbai
		%	%
1	Physiological Testing & Psychiatric/Psychological Evaluation and the release of the results	67.69	55.88
2	Kind of prenatal care	9.23	13.24
3	Extra benefits provided by commissioning parents	0.00	2.94
4	Type of implantation/insemination; number of tries	3.08	1.47
5	What if surrogate mother cannot get pregnant	0.00	0.00
6	Sex of the baby	0.00	0.00
7	Mental and physical condition of the baby	0.00	0.00
8	Possibility of miscarriage	0.00	0.00
9	Extent of supervision	1.54	1.47
10	Compensation	7.69	13.24
11	Arrangements about relinquishing the child	10.77	8.82
12	Arrangements once the child is born	0.00	1.47
13	Other	0.00	1.47
	Total	100.00	100.00

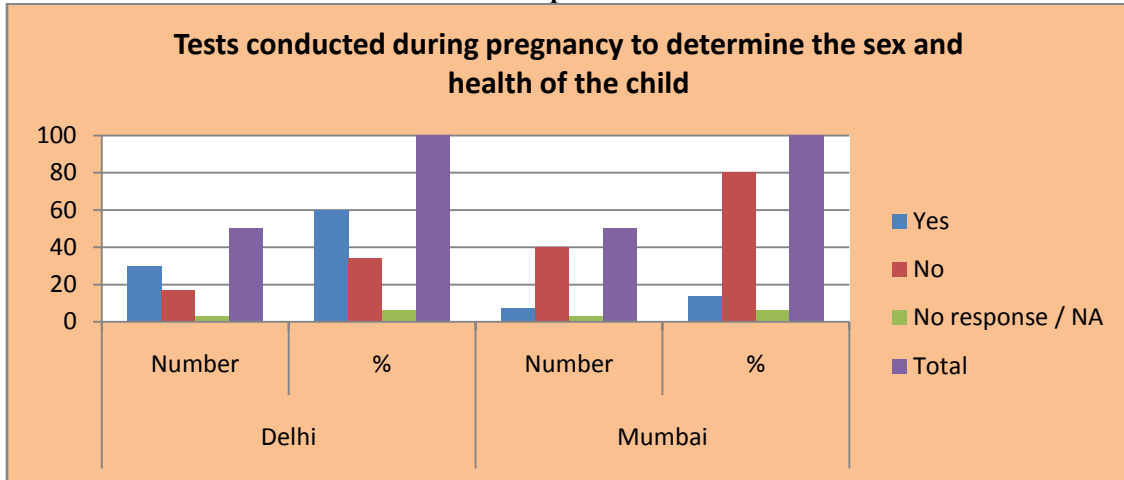
Moreover, though the respondents and the hospital/clinic authorities answered that there was a mention of the number of times the surrogate mother could undergo surrogacy, there was absolutely no mention of how many times she could undergo IVF sessions. Though the ICMR guidelines mentioned that a woman can undergo surrogacy three times in her life time, excluding her own child births, it is silent on the aspect of twins (as seemed to be gaining popularity among Commissioning parents), whether born each time would be considered as one-time surrogacy arrangement/birth? Then, three times mean, if we take twins each time, nine live births; in addition to her own two children, it comes 11 children per surrogate mother. In this case, are we promoting safe and healthy motherhood for surrogate mothers in a country where the Maternal Mortality Rate (MMR) is high?

Graph 3.30



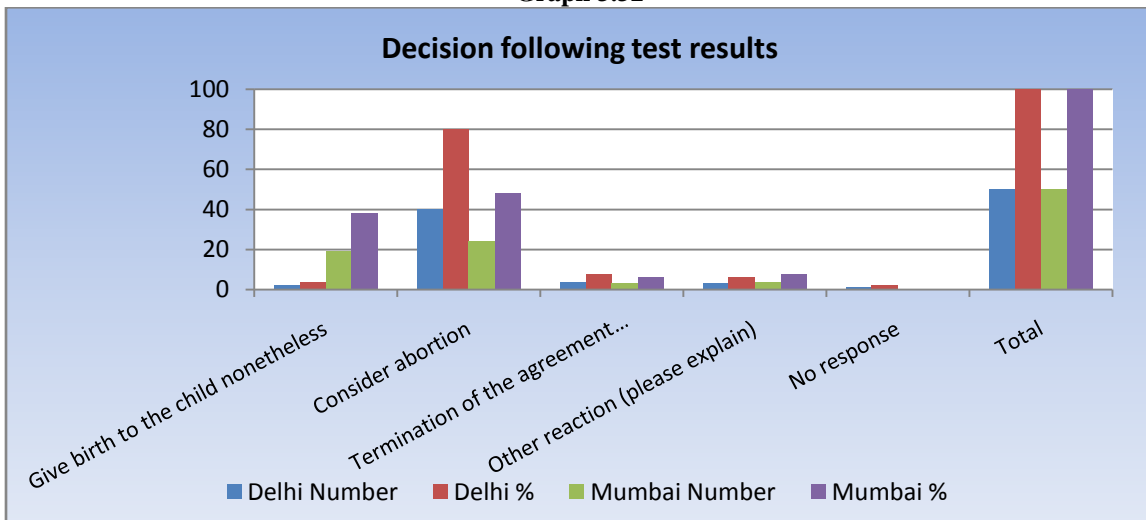
The ICMR guidelines suggest a maximum of three IVF sessions for a surrogate mother to become pregnant for a particular Commissioning parent. But, under the cover, violations take place as the surrogate mothers who are at the receiving end don't understand the medical procedures their bodies have been subjected to. 46% of the respondent surrogate mothers replied that maximum number of IVF sessions in Delhi was two times and in Mumbai 52% of the respondents said that they had experienced IVF sessions two times. 32% of the respondents in Delhi and 4% in Mumbai had been subjected to three IVF sessions. However, there was an overlap between IVF sessions and embryo transfer as the surrogate mothers were not in a position to differentiate between the two, and the research team had no other option but to rely on the statements of the two stakeholders i.e. the surrogate mothers and the doctor/agency, where the later always stood corrected as per by the ICMR guidelines. Further probe is, therefore, needed on this issue.

Graph 3.31



Out of the total number of respondents, 80% in Mumbai said that they did not undergo any test during pregnancy to determine sex of the child. But, 60% of the respondents in Delhi stated that there had been tests to rule out any abnormalities regarding the health of the child during their pregnancies. However, it is interesting to note that though Commissioning parents are desperate to have a child, preference for a male child still exists, which remains unsaid and is more among the NRI couples. There was absolutely no documentary proof of this, since sex selection is banned in India. But field level observations established this fact. It may be probed further.

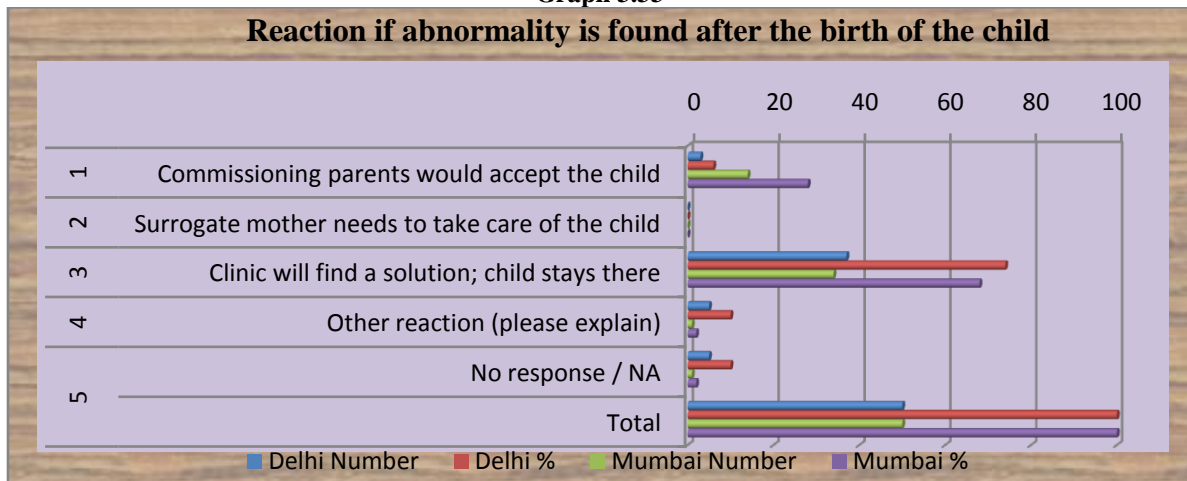
Graph 3.32



In Delhi, 80% of the respondents said that abortion of the pregnancy would be considered if the test done for the health of the child shows undesirable results, such as a foetus with an

abnormality/Down Syndrome, etc., diagnosed by ultrasound and Colour Doppler tests. While in Mumbai 48% of the respondents had replied so, 38% of the respondents said that they would give birth to the child nonetheless. Moreover, it has been found during interviews that in case of an abnormality in the foetus the decision regarding the continuation of pregnancy are rarely taken jointly by all the three concerned parties (the surrogate mother, the commissioning parents and the clinics). Since these decisions are normally taken by the doctor or the agency concerned, the surrogate mother has no say in it. The consideration of the surrogate mother to give birth nevertheless would not stand any ground. 6% of the respondents in Delhi and 8% of the respondents in Mumbai had expressed this anticipation under the ‘other’ category. We have already discussed a case study of Delhi about how a pregnancy had been forcibly aborted by a reputed surrogacy centre due to adverse test results. There are many such instances as the prime concern of surrogacy clinics/agencies is not the emotions of a surrogate mother but the interest of the Commissioning parents, who will not accept a deformed child, and the money at the end of the road which if the child was healthy would have come to these agencies/centres/doctors.

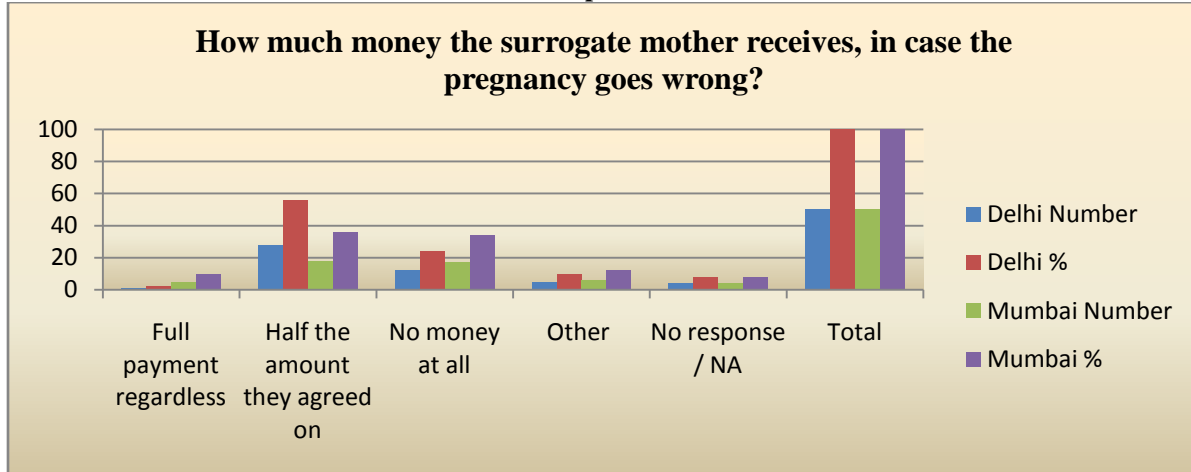
Graph 3.33



Majority (71%) of the respondents stated that the child, if born with deformity, will remain in the clinic/centre/agency and they will find a solution as what would be the next step. 74% of the respondents in Delhi and 68% of the respondents in Mumbai spoke about the same option. However, 6% of the respondents in Delhi and 26% in Mumbai also said that the Commissioning parents would accept the child even if it had some deformity. Although this expression was completely hypothetical, yet, it reflects the thought of surrogate mothers who realizes the

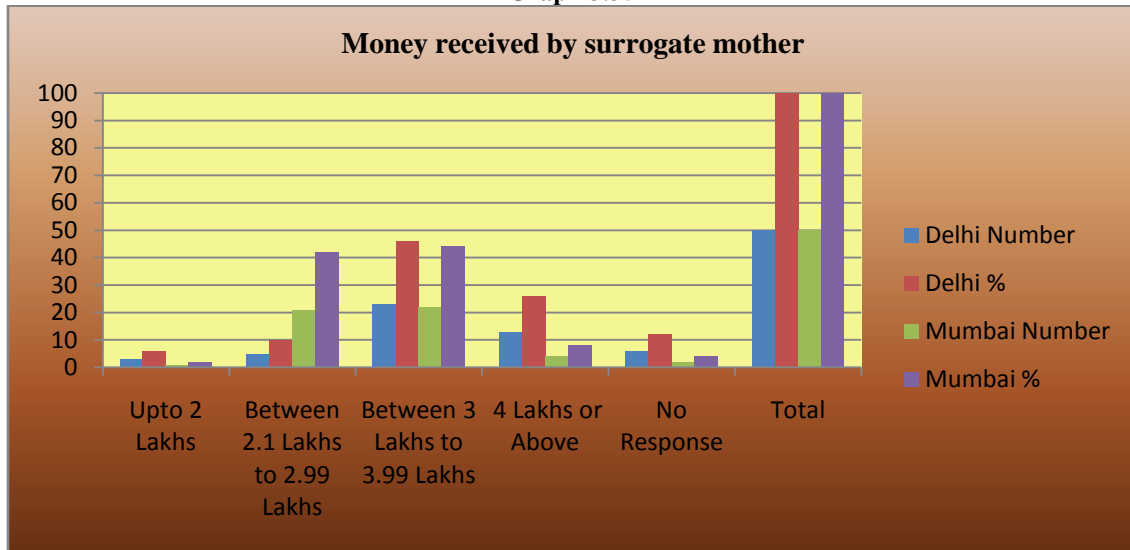
desperation of the Commissioning parents. Even some of the surrogate mothers were willing to accept the child if the commissioning parents or the clinics/doctors refused to take care of the child, irrespective of the fact that they had their own children and had poverty to fight with. This reflects the emotional bondage between the fetus and the surrogate mother.

Graph 3.34



The clinic/hospital authorities claimed that in case the commissioning parents refused to accept the child or the pregnancy was aborted due to some reason, the surrogate mother was often paid half of the amount what she was supposed to get under normal circumstances (56% of the respondents in Delhi and 36% in Mumbai). 24% of the respondents in Delhi and 34% in Mumbai said that they would not receive any money if the pregnancy goes wrong. However, in both the study areas the respondents were not certain about the payment and repeatedly mentioned that the chances of abnormality in the foetus were ruled out before the first trimester and before the signing of the agreement with the Commissioning parents. The clinics/agencies/doctors also echoed the same statement. It was found out, on further probing, that the surrogate mother receives one-fourth of the total promised money, in few clinics/centers/agencies. All agencies/clinics/centers do not pay even that amount if the pregnancy goes wrong.

Graph 3.35



Regarding one of the most crucial factors i.e. payment received by the surrogate mothers under the surrogacy agreement/contract, 46% of the respondents in Delhi and 44% in Mumbai stated that they received 3 to 3.99 lakhs for being a surrogate mother. 42% of the respondents in Mumbai mentioned that they received payment between 2.1 to 2.99 lakhs. In Delhi, 26% of the respondents said that they received 4 lakhs or more for this arrangement.

It should be mentioned here that there are certain doubts regarding the payment to the surrogate mothers. The doubts pertain to the incoherence between the amount quoted by the clinic/ hospital authorities, the commissioning parents who are actually paying and the surrogate mothers who are at the receiving end. The payments to the surrogate mothers were arbitrarily decided by the infertility physician of the clinic/hospital in all cases. It was found that these clinics/physicians also blame each other for the rise in amount paid to the surrogate mothers.

Similarly, there was no clarity about the payment in cases where the surrogate mothers were pregnant with twins. The normal practice was that when the doctors found out about twin pregnancy of the surrogate mother, they consulted the commissioning parents, who in most cases were happy to be parents of twins and wanted to continue with the pregnancy. The deal was then forwarded to the surrogate mother, after four to five months of pregnancy, when she was not in a favorable situation to bargain with the infertility physician for extra payment for the second

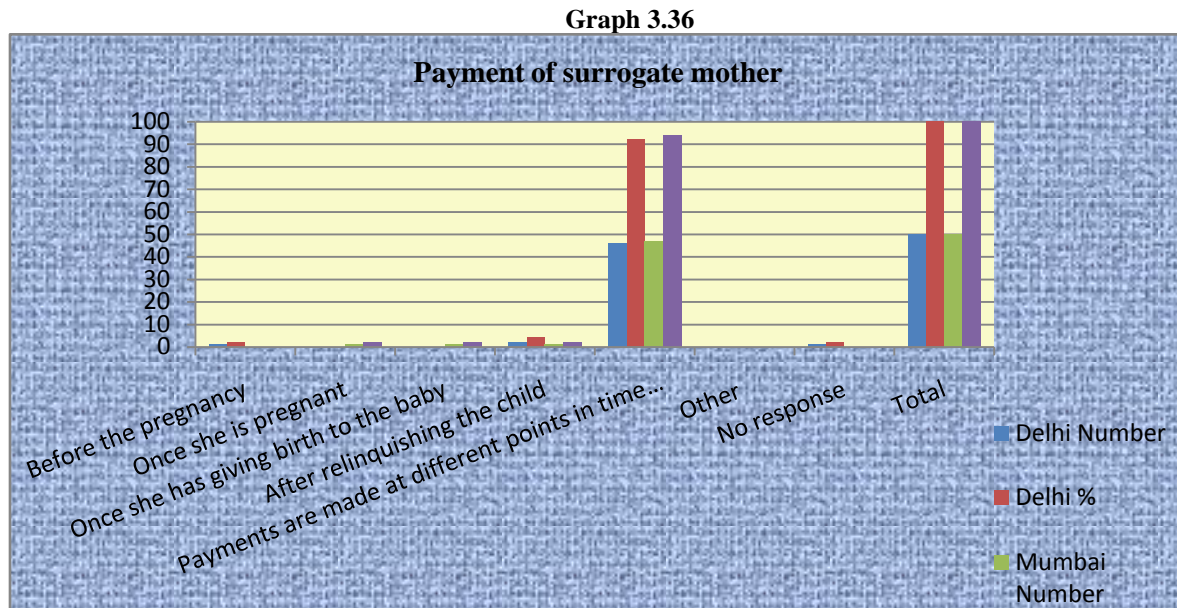
child. While logically the payment should be doubled for twin children; in this case she was paid just 1 lakh to 1.5 lakh more. Hence, it was not a major gain for the surrogate mother. While commercialization of surrogacy is encouraged by IVF clinics/medical tourism agencies and doctors associated with it, it is often found that they are the ones who walk out with the maximum benefits in monetary terms rather than the surrogate mother.

Sno	Money Received by surrogate mother	Delhi		Mumbai	
		Number	%	Number	%
1	Upto 2 Lakhs	3	6.00	1	2.00
2	Between 2.1 Lakhs to 2.99 Lakhs	5	10.00	21	42.00
3	Between 3 Lakhs to 3.99 Lakhs	23	46.00	22	44.00
4	4 Lakhs or Above	13	26.00	4	8.00
5	No Response	6	12.00	2	4.00
	Total	50	100.00	50	100.00

Though the hospital authorities in all study areas claimed that they had significantly changed the life style of the poor surrogate mother by paying her the compensation, which she could use for buying a new house or paying for her children’s higher education or adding money for their daughter’s marriage, etc. which has already discussed under *section 3.3*, in reality, the research team could not find any significant change in the lives of surrogate mothers in any of the study areas. Of course they got some monetary benefit with which their children could now have two square meals for some days, and they could attach a plastic sheet as the roof to their hatchment, but that was it. A single ‘Janta’ house in any of the study areas would cost more than what the surrogate mothers got paid as compensation for surrogacy. The entry-level fees to any higher education institution were almost equal to what the surrogate mother was getting paid as compensation. Similarly, it is needless to say that the wedding expenses and dowry was more than the amount paid to surrogate mothers. Therefore, it is time to rethink if the surrogacy arrangement is really benefiting the surrogate mothers.

Another issue that needs to be highlighted is whether the payment received by the surrogate mother actually improves the socio-economic status of her family. It was found out during the study that during the surrogacy process while the surrogate mothers were in shelter homes, the payment made to them, either in installments or the entire amount in one go, was coaxed out of

them by their husbands. They spent it on alcohol or used it to set up a business, which in most cases did not take off, or gave as payment for a criminal offence committed by them for which their wives had to endure the pain of surrogacy. Thus, when the surrogate mothers got back to their house from the shelter home, they had little money left to take care of their children and themselves.

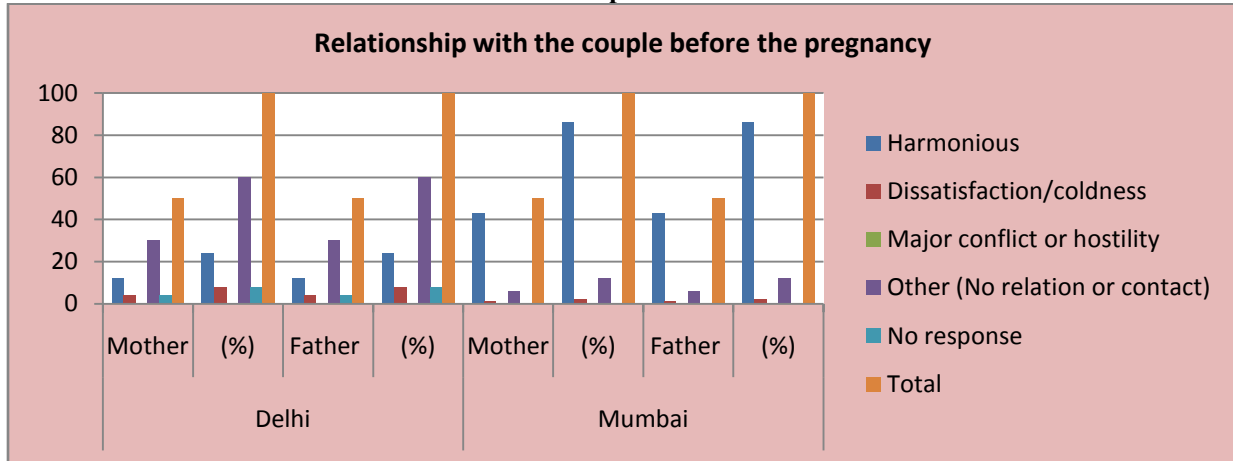


Majority (93%) of the respondents mentioned that they received payments at different phases of pregnancy in installments. 4% respondents in Delhi and 2% in Mumbai said that money was received after relinquishing the child. Being semi-literate surrogate mothers are not able to properly count or keep a tab on payments made in installments. Therefore, they completely rely on the clinic/doctors/agencies who often cheat them of fair payment.

3.5 Experiences before and during the pregnancy

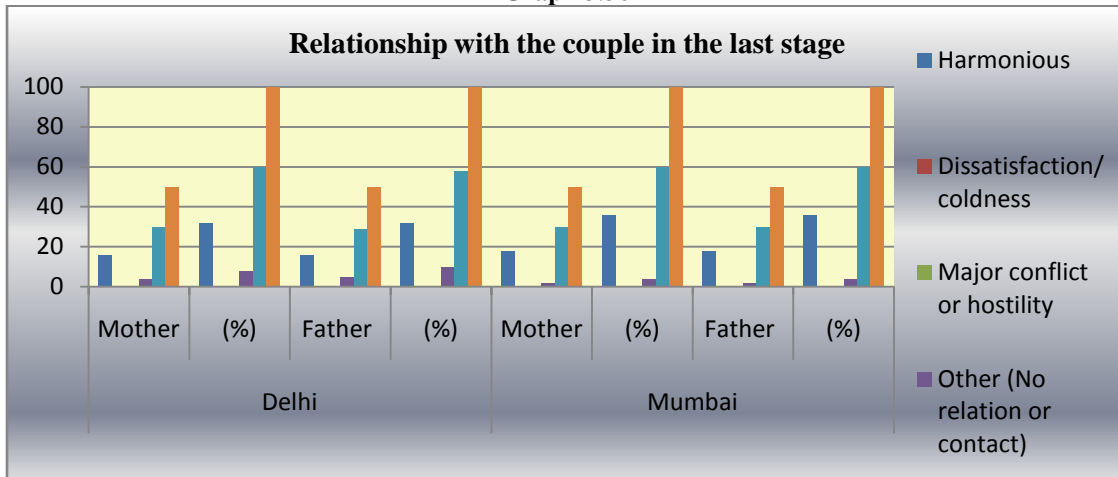
A lot of emphasis needs to be given to the experience of the surrogate mothers, which includes a number of things, like, their relationship with the Commissioning Parents, their place of stay, relationship with their husbands before and during pregnancy, management of their home and children in their ‘absence’, emotions felt during pregnancy for the baby, etc. The present section deals with such critical issues to weigh the pros and cons of surrogacy arrangement.

Graph 3.37



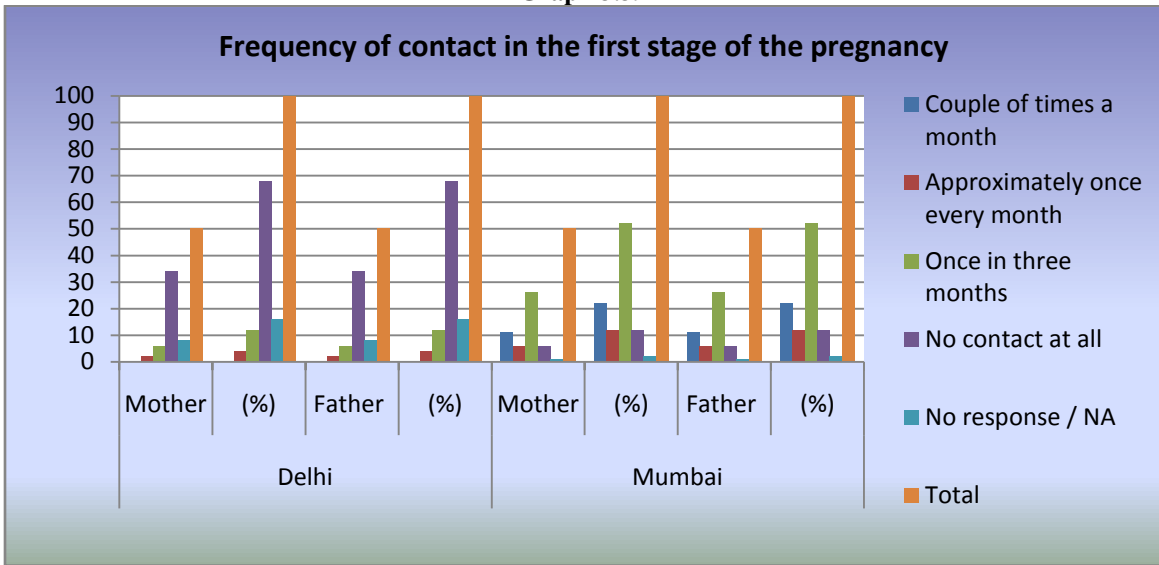
Out of the total number of respondents, 60% said that they didn't have any relationship with the commissioning couples. In Mumbai 86% of them said that they shared harmonious relations with the commission couples. The same kind of response was recorded by the research team when they were asked to respond about their relations with the commissioning couples in the first stage of pregnancy. During the field visits, the research team observed that the surrogate mothers hardly got a chance to know about the Commissioning parents during the first trimester of the pregnancy as the latter were approached once the first trimester was successfully over and the pregnancy was confirmed by the hospital authorities. Thus, by the end of the first trimester the commissioning parents were informed, who then visited India to sign the agreement. In most cases this was the first time the surrogate mother got to meet the commissioning parents. However, this perception of being in touch with the Commissioning mother comes from the narration of the hospital authorities/doctors who conveys the surrogate mother about the concerns of the Commissioning mother regarding the pregnancy and her well-being.

Graph 3.38



As the pregnancy period advanced to its completion, the relationship between the surrogate mother and the commissioning parents seemed to take a downturn. Towards the later stage of pregnancy only 36% in Mumbai said that they shared a harmonious relationship with the commissioning couple, and in Delhi, the percentage was 32. This downturn in relationship can be attributed to the stress created for the surrogate mother who lived in shelter home away from her children and family. On the other hand, as the pregnancy proceeded, the commissioning parents develop a sense of insecurity and possessiveness for the surrogate child. They, time and again, expressed their concern regarding the well being of the foetus, which puts further pressure on the surrogate mother. It should not be forgotten here that there was always a communication barrier between the commissioning parents and the surrogate mother in terms of language. The hospital authorities or the doctors were the sole translators and the medium of communication, hence, a lot depended on them as to how they are communicated with both the parties.

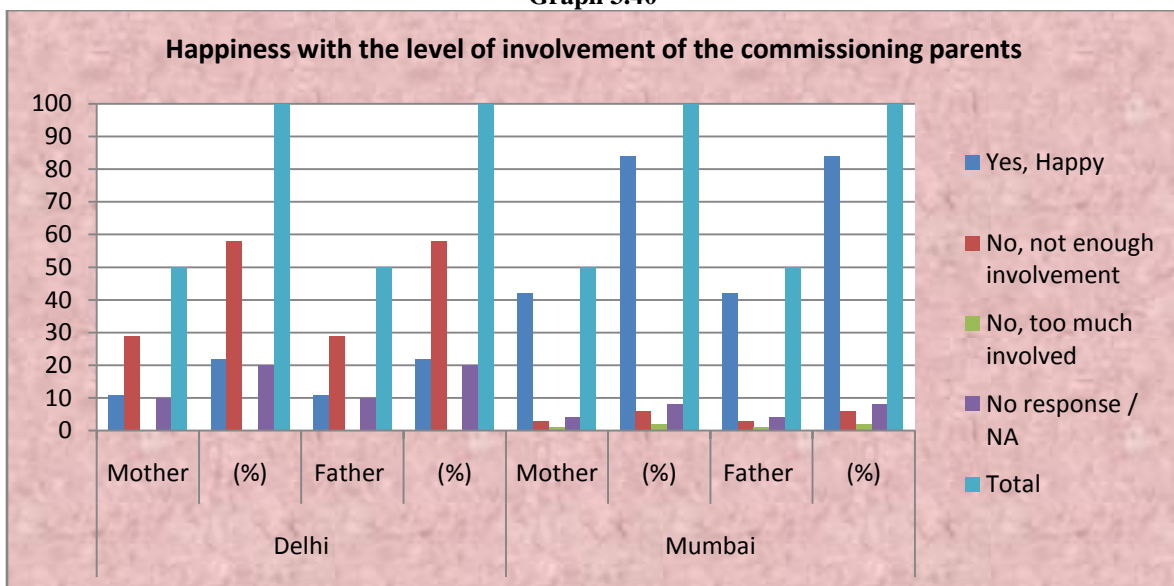
Graph 3.39



According to the above shown graph, 68% of surrogate mothers in Delhi did not have any contact at all with the commissioning couples in the first stage of pregnancy. But in Mumbai the situation was different. 52% of respondents in Mumbai stated that they had met the commissioning parents once in every three months during the first trimester of pregnancy.

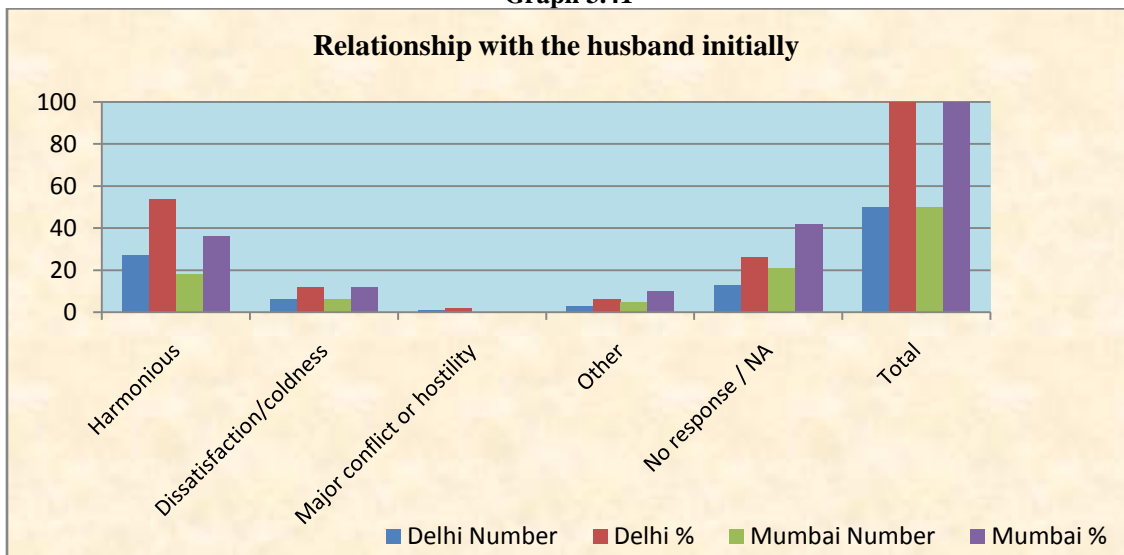
The situation was quite similar in the last stage of pregnancy; the only difference was that in Mumbai 45% of the respondents fell in the 'Not Applicable' category. The reason for this kind of response can be that they were still in the first or second stage of their pregnancy.

Graph 3.40



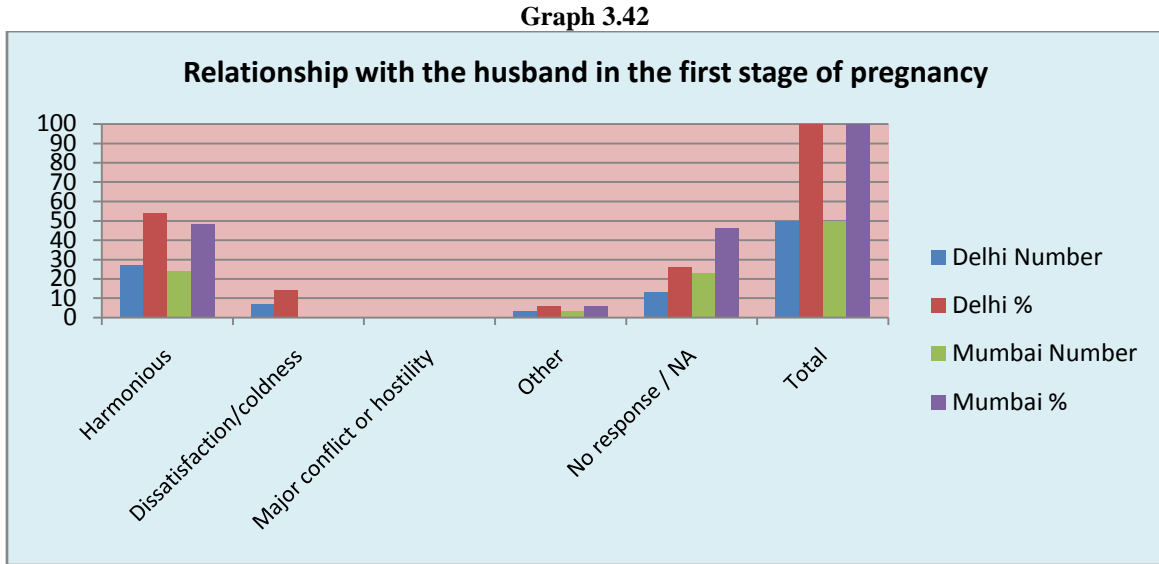
Majority of the surrogate mothers from Mumbai (84%) said that they were happy with the level of involvement of the commissioning parents. But in Delhi the scenario was different from Mumbai, where 58% of the respondents were not happy with the level of involvement of the commissioning parents. The surrogate mothers expected much more involvement of the Commissioning parents with them since they were carrying their (commissioning parent's) child. Here, an incidence cited by one of the surrogacy Doctors in Mumbai may be recalled- a surrogate mother, who got close to the Commissioning parents before her delivery and assessed that they can pay her more than the promised amount, she started blackmailing them by refusing to go to the operation theatre unless the Commissioning parents paid her more money. Because of this incident the Doctor discouraged any direct contact between the surrogate mothers and the commissioning parents before relinquishment of the child. Hence, it can be easily said that the doctors/agencies/clinics stand as barriers between the surrogate mothers and the commissioning parents because of a lot of factors, one of which is the fear that their own financial gain might get overshadowed by the direct linkage between the two major parties in the surrogacy arrangement.

Graph 3.41



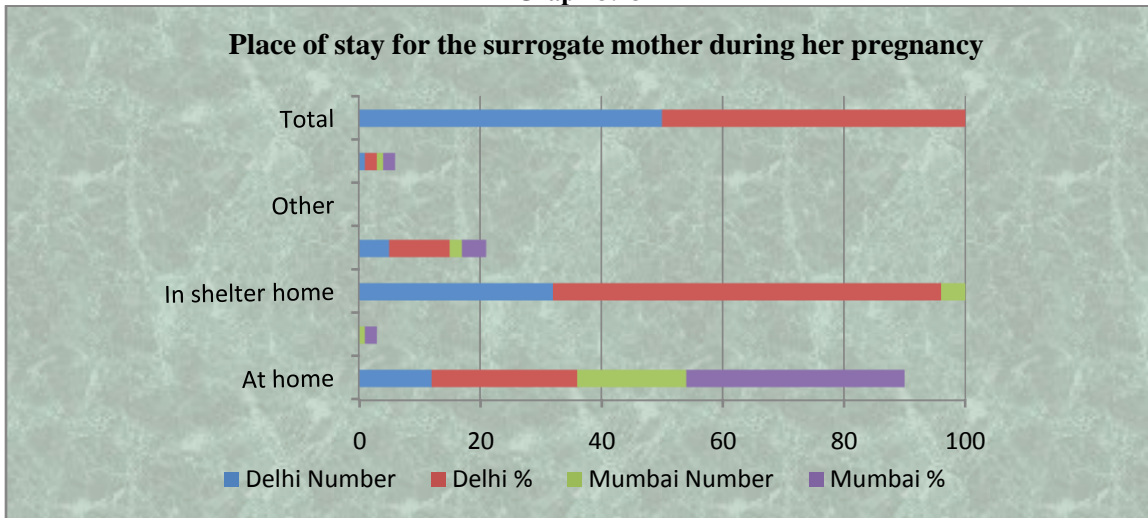
Out of the total number of respondents, 54% in Delhi and 36% in Mumbai stated that they shared a harmonious relationship with their husbands during the initial stage of their pregnancy. 12% from both the study areas said that their relation with their husbands was dissatisfactory or cold. Situation was quiet similar in the first stage of pregnancy, where 54% of respondents in Delhi and 48% of respondents in Mumbai said that they had a harmonious relation with their husband. It is to be noted that majority of respondents in the two metros reported harmonious relationship

with their husbands. The reason for the same may be joint decision of the surrogate mother and her husband to undertake surrogacy or husband’s upper hand in taking the decision. It may be the case that the respondents were not disclosing the bitterness in their marital relationship due to social pressure.



Majority of surrogate mothers from both the study areas (Mumbai 76% and Delhi 56%) didn’t responded to this question. The reason behind this was most of them were in their first or second trimester of pregnancy or even not pregnant. Out of the total number of respondents, 44% in Delhi and 24% in Mumbai said that they shared a harmonious relationship with their husbands. However, it may be noted that husbands (14% of respondent’s husbands in Delhi) were initially resistant and hostile to learn about this arrangement, but when they came to know about the monetary component of the whole arrangements they became supportive. This shows the vested interest the husbands have. There are instances where husbands have used this money to come out clean in case of a criminal offence committed by them.

Graph 3.43



60% of the respondents from both the project locations (64% in Delhi and 56% in Mumbai) stated that they lived in shelter homes. After much probing the research team found out the reasons. First, it was to ensure that the surrogate mothers don't come in physical contact with their husbands, which can increase the risk of them being infected with STDs or even with HIV/AIDS. Second, so the hospitals/clinics can earn good money from the Commissioning parents in the name of providing nutritious food and safe environment for the precious pregnancy.

36% of respondents in Mumbai and 24% of respondents in Delhi said that they stayed at home. Though they stayed with their families, it was often a place away from their original home where nobody knew them. Usually these short-stay homes were arranged by agents in both the cities where the surrogate mothers stayed with their families for 9 months, and after delivery they again relocated, either to their original home towns or to other locations where they would not be recognized as surrogate mothers. The agencies even arranged for a job for their husbands and education of their children in order to ensure that the surrogate mothers do not run away. These arrangements were made as surrogacy is considered a 'social stigma', even though the clinics/doctors are trying their level best to eradicate the stigma attached to it by preaching that in this case the child is born through a 'needle', referring to the embryo transfer procedure. In such localities we found around 5 to 10 surrogate mothers residing in neighborhoods rented accommodations. The clinics/agencies/centers/doctors often placed the role of a 'Watch Dog' to

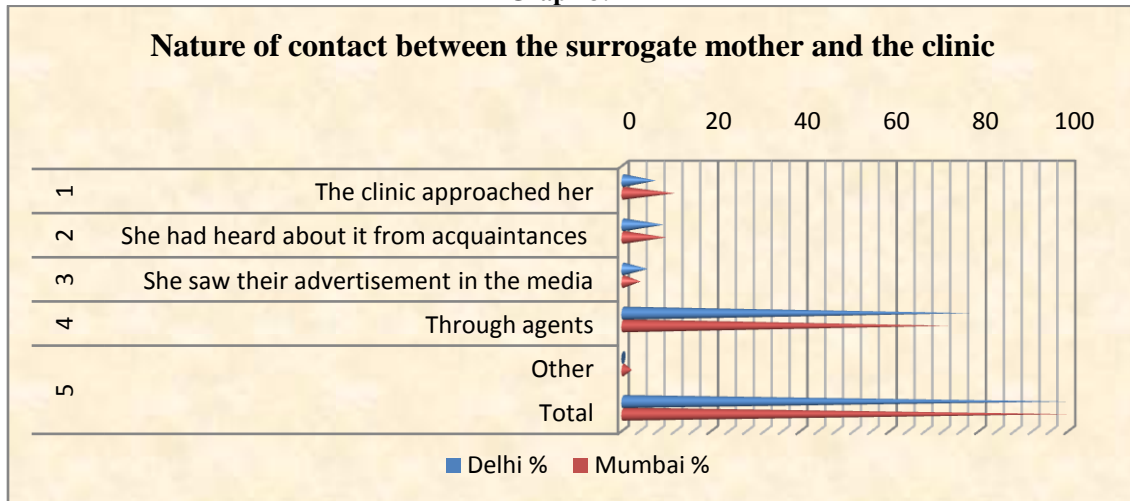
keep a vigil on them to monitor their movement and to ensure that they don't meet any person without the consent of the agency/doctor/clinic/centre. Such people could be former-surrogate-mother-turned-agent or the husband of one of the surrogate mothers, or could be a guard of the surrogacy centre. The research team faced a very hard time convincing surrogate mothers to give interviews secretly as these agencies/clinics/doctors would never allow such an interaction. They tried to show as if they were entertaining a very low number of surrogacy cases and that their major focus was on IVF for normal infertile couples. In reality it was the other way around.

Commissioning parents also wanted that surrogate mothers live in better places so that their day-to-day hardships could be taken care of and they get adequate food and rest. 80% of the respondents in Delhi and 82% in Mumbai replied so.

3.5.1 Role of the Surrogacy Clinic/Agency/Centre

The role of the clinic and the infertility physician is crucial in case of surrogacy. They can act as a pillar of strength and support for both the Commissioning parents and the surrogate mother.

Graph 3.44



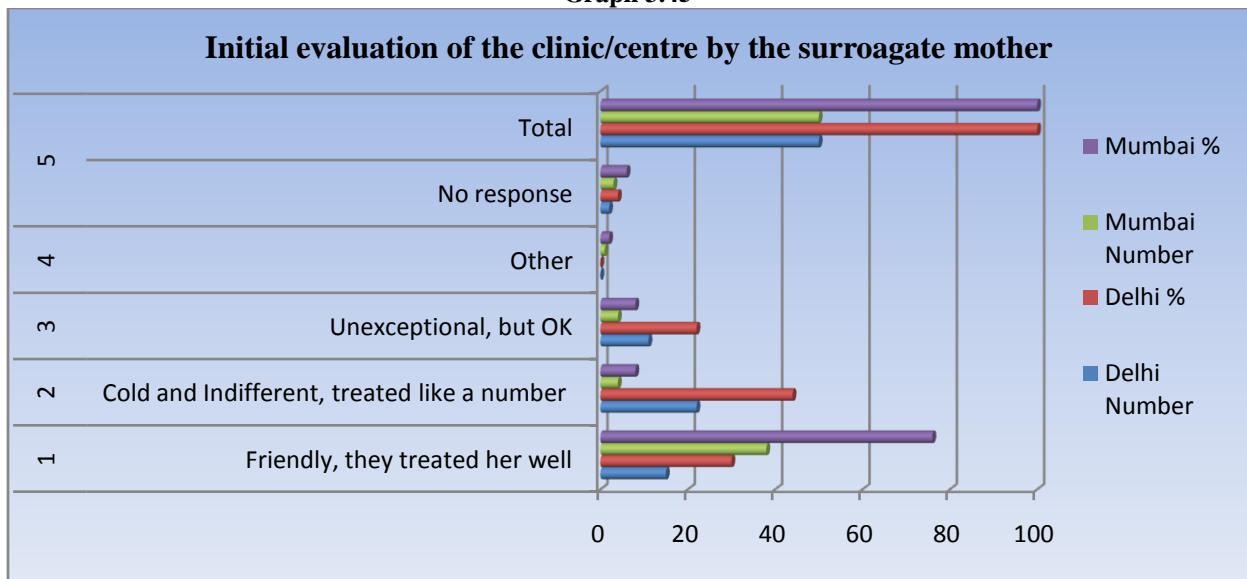
78.18% of the respondents from Delhi and 73.08% of the respondents from Mumbai stated that they had been approached by agents to become surrogate mothers. 9.09% of the respondents from Delhi and 9.62% of the respondents from Mumbai stated that they had heard about surrogacy arrangements from acquaintances, who were none other than agents appointed by surrogacy clinics/centers/agencies to trap economically vulnerable women to become surrogate

mothers. These agents might have been surrogate mothers themselves in the past. They got Rs. 7000/-- Rs. 10,000/- per surrogate mother they arrange for the clinic/centre/agency.

Both the metropolitans had around 12-15 agencies registered under different categories, such as pharmaceutical agencies producing fertility medicines, medical tourism agencies or, simply, placement agencies. Many a times these agencies had their own surrogate shelter homes rented in different sub-urban localities, and consulted the doctors only for the IVF treatment and delivery of the child. They managed the entire process of surrogacy themselves as they had also hired some lawyers to prepare the contract. This way they get the maximum financial benefit out of a surrogacy arrangement. This is in stark contrast to what had been practiced in Anand, Surat and Jamnagar, where the doctor/clinics managed to accrue the maximum financial benefit.

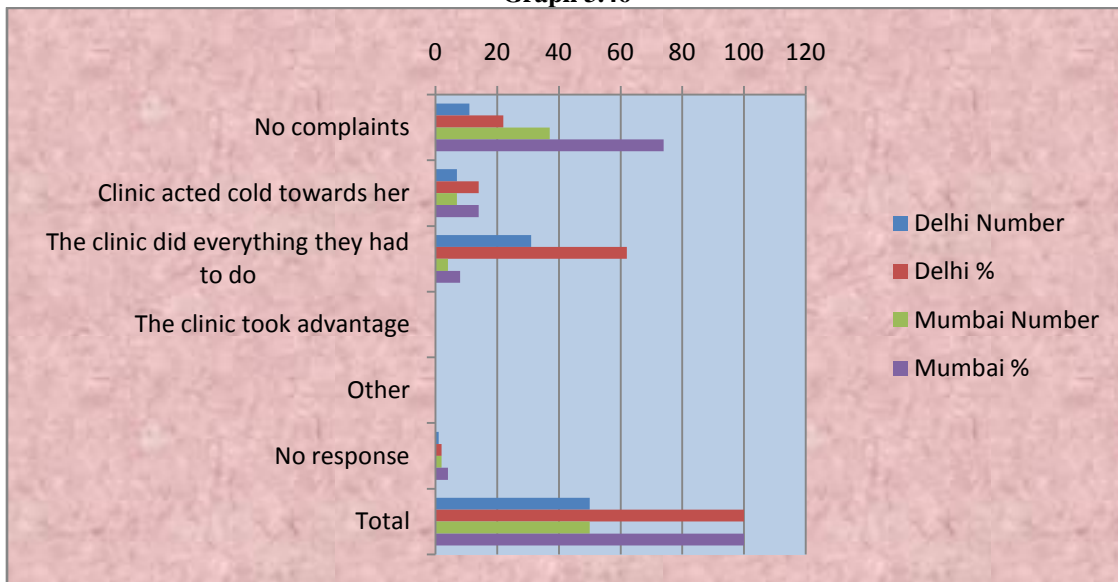
Another important finding that the research team accidentally stumbled upon during the field study was that the doctors/clinics who were conducting surrogacy arrangements were seeking the support of their fraternity so that the practice goes on uninterrupted e.g. Dental clinics, who otherwise have no role in reproductive process, were playing a major role by assisting the surrogacy clinics/centers looking after the well being of the surrogate mothers, including providing them with blood transfusions and other medical details. Are these dental clinics authorised for conducting these activities?

Graph 3.45



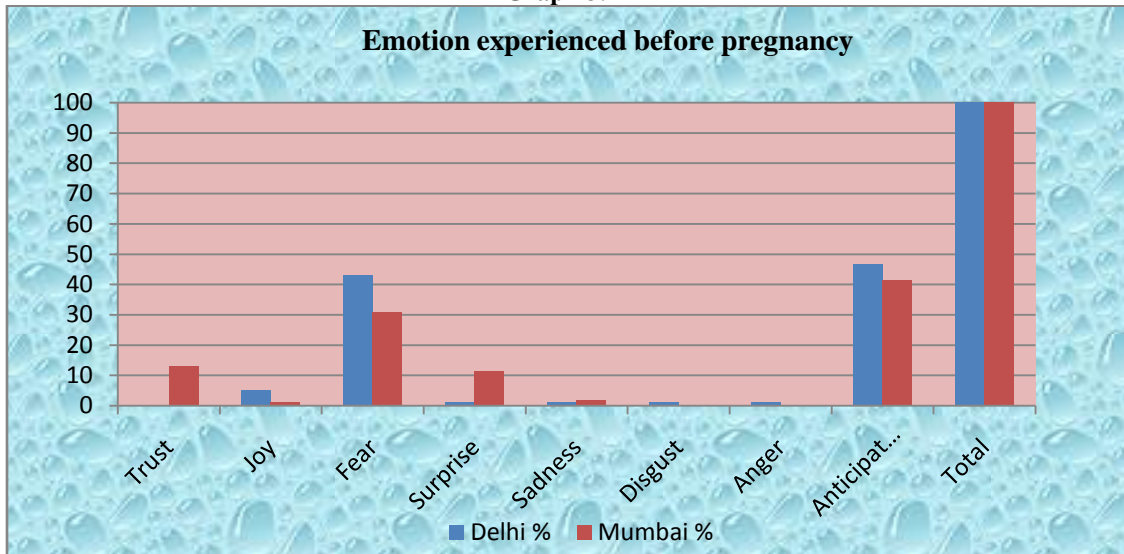
Out of the total number of respondents, 76% in Mumbai said that the clinics/centers were friendly and treated them well. But in Delhi, 44% of the respondents said that the clinics were treating them with coldness. The surrogate mothers were merely ‘money banks’ for these hospitals/ clinics/ doctors as they promised huge returns. So, although they took care of the well-being of the baby, the emotional care of the surrogate mother did not hold any importance for them. Therefore, the surrogate mothers remain deprived of the emotional support which is normally provided to an expecting mother by her family.

Graph 3.46



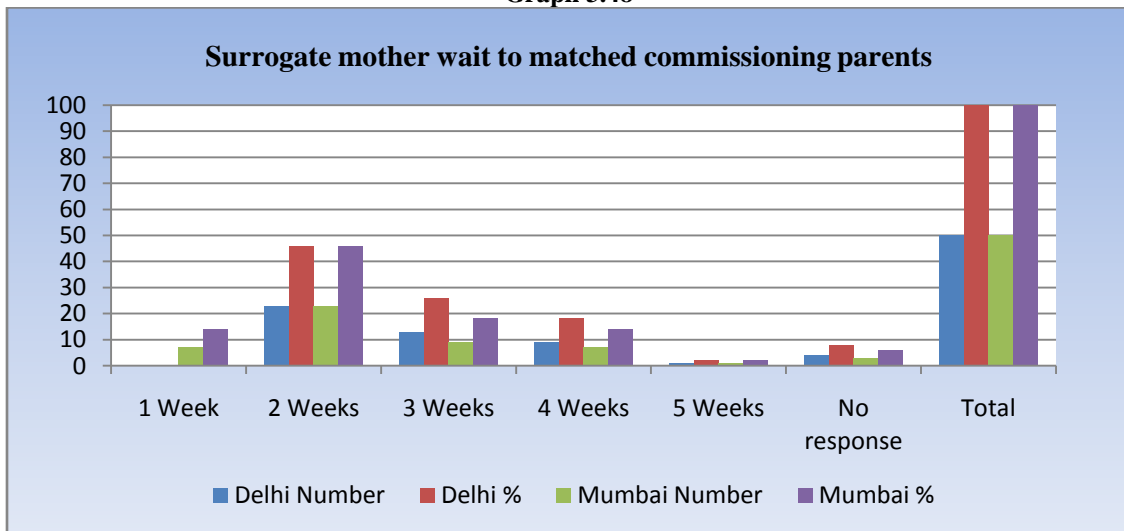
In Mumbai, majority of the respondents (74%) didn't have any complain against the clinic. But in Delhi, 62% of the respondents said that the clinics were cold during the surrogacy process. The respondents who mentioned that the clinics were providing them with good care may have said so because the authorities were around during the interviews and did not leave the respondents alone.

Graph 3.47



Anticipation and fear topped the list of emotions experienced by surrogate mothers before the pregnancy. 47% out of the respondents in Delhi and 41% in Mumbai chose anticipation in response to this question. 43% of the respondents in Delhi and 31% in Mumbai said that they felt fear before their pregnancy. This was because unlike their own pregnancies which happened naturally, an artificial procedure for pregnancy was something they had absolutely no clue about. Also, they knew they had to stay away from their families for 9 months and were unsure about whether or not they would receive the payment.

Graph 3.48



In almost half of the cases (46% of the respondents in both the study areas) surrogate mothers had to wait for 2 weeks to get matched with the commissioning couples. 26% of the respondents

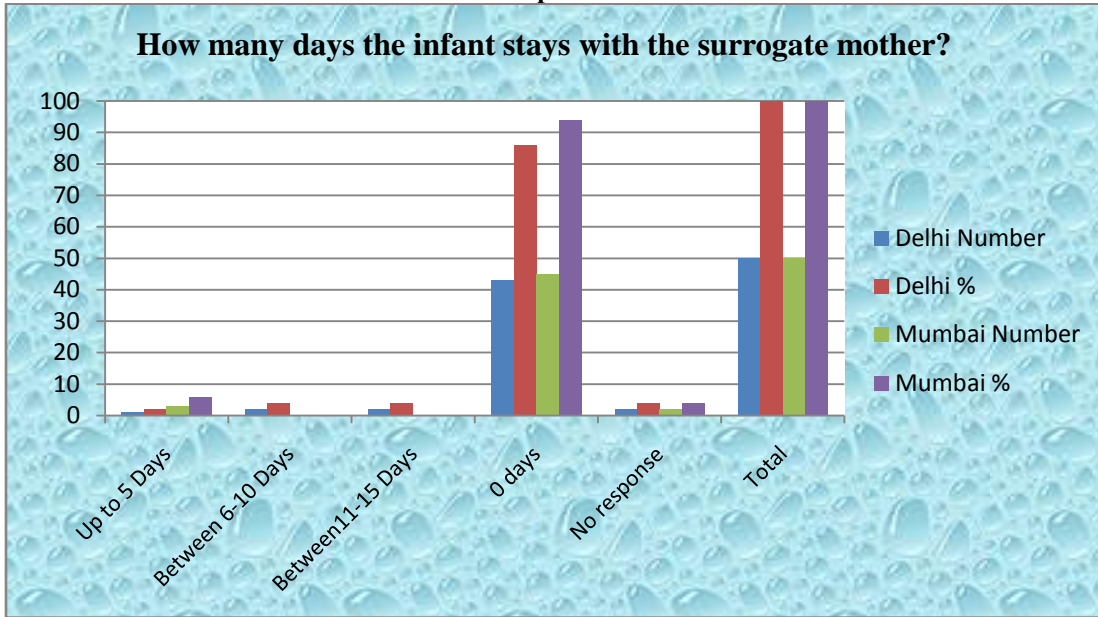
in Delhi replied that they had to wait for 3 weeks for this process; while in Mumbai 18% replied the same. In fact, it is not matching with the commissioning couple, as many a times frozen embryos were found to be flown in with consultation of the doctor and clinic. Moreover, it was the embryo transfer for which the surrogate mother had to wait as several tests were conducted by the clinic/centre/agency to ensure the good health condition of the surrogate mother and then she had to be administered fertility doses to ensure high success rate of being impregnated and the pregnancy is precious.

3.6 After the pregnancy- Relinquishing the child

Relinquishing of the child was the most difficult part in the whole surrogacy arrangement, as in some cases the surrogate mothers got emotionally attached to the child but still had to part with him/her. In majority of the cases, the decision regarding the handing over of the surrogate baby was made by the commissioning parents. In Delhi, 82% of the respondents and in Mumbai 92% of the respondents said that this decision was taken by the concerned surrogacy clinics.

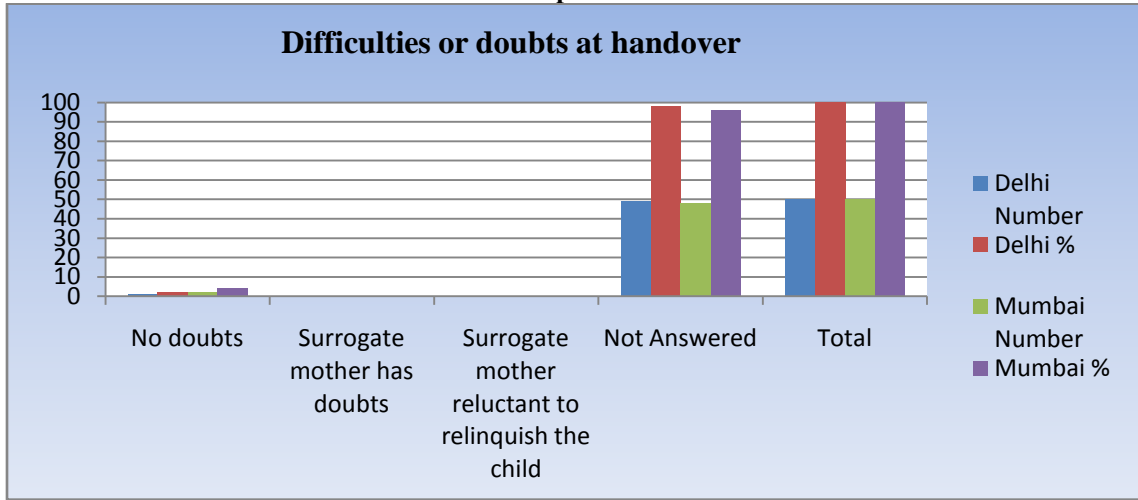
86% of the respondents in Delhi and 94% in Mumbai replied that the baby was immediately handed over to the commissioning parent, which means the baby didn't stay with the surrogate mother at all. Although the clinics/centers/agencies/doctors explained this as a measure to prevent any chance of a bond developing between the surrogate mother and the child, which would then make the relinquishing difficult, it seems inhuman to hand over the child to the commissioning parents immediately after birth who in most cases are first-time parents and thereby have no experience of handling a new-born baby. On the other hand, the baby is also deprived of the mother's milk, thick yellow-colored breast milk known as 'colostrum' which is very rich in nutrients and antibodies necessary for protecting the baby. The research team came across certain unusual practices being followed by some clinics/doctors and commissioning mothers to overcome the guilt. The commissioning mother was being injected with hormonal injections around the seventh month of surrogate pregnancy so that she would be able to express breast milk when the baby is delivered and they had taken care of the baby. Further probe is needed on this.

Graph 3.49



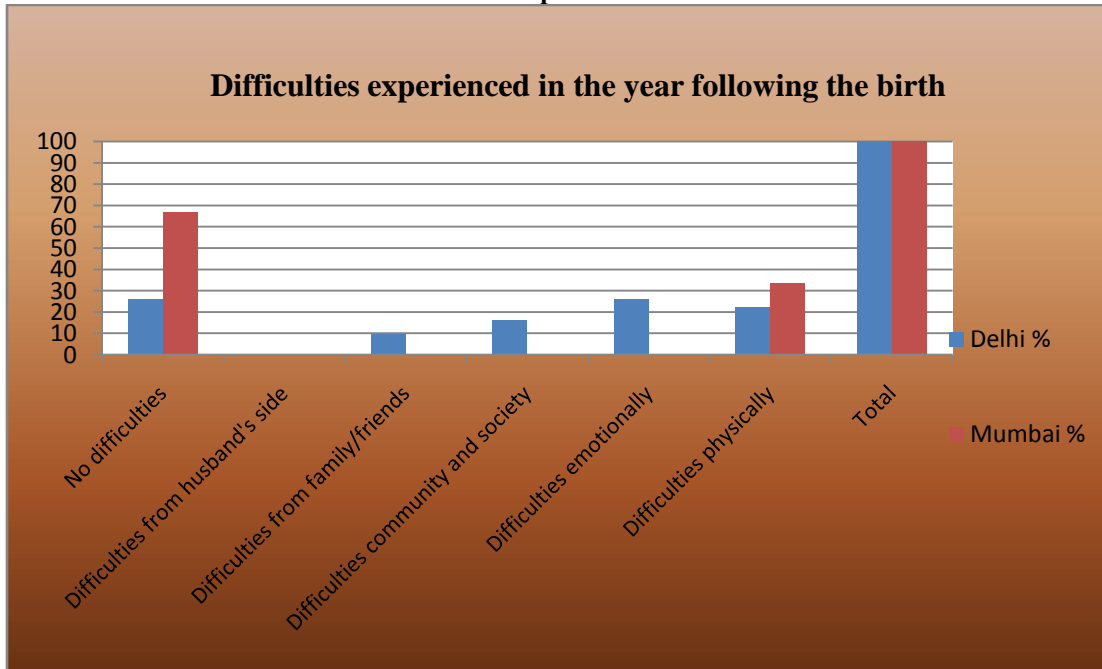
Majority of the surrogate mothers didn't reply to the question 'whether they have any doubt or difficulty to handover the baby'. The major reason behind this was that most of the respondents were in the middle of their pregnancy and this was the most uncomfortable question for which they were not emotionally prepared. It should not be forgotten that though the surrogate mother is not genetically linked to the child, still, it is natural to get emotionally attached to the child reared in her womb. In Delhi, only one respondent answered this question and said that she didn't have any doubt regarding this. In Mumbai two respondents said the same. Though the counselors in clinics/ centers/agencies had prepared the surrogate mothers time and again for relinquishment of the child, as that would be the culmination of the arrangement, and had 'brain washed' them about the child belonging to the commissioning parents genetically, the fear of a bond developing between the surrogate mother and the child left them with no option but to take away the child immediately after the birth. Many surrogate mothers, who had already delivered the surrogate child, expressed their disappointment to the research team since they were not told whether they had given birth to a boy or a girl, nor were they shown the child even once.

Graph 3.50



68% of the respondents in Mumbai said that they did not face any difficulty after the pregnancy, while in Delhi; only 26% of the respondents said the same.

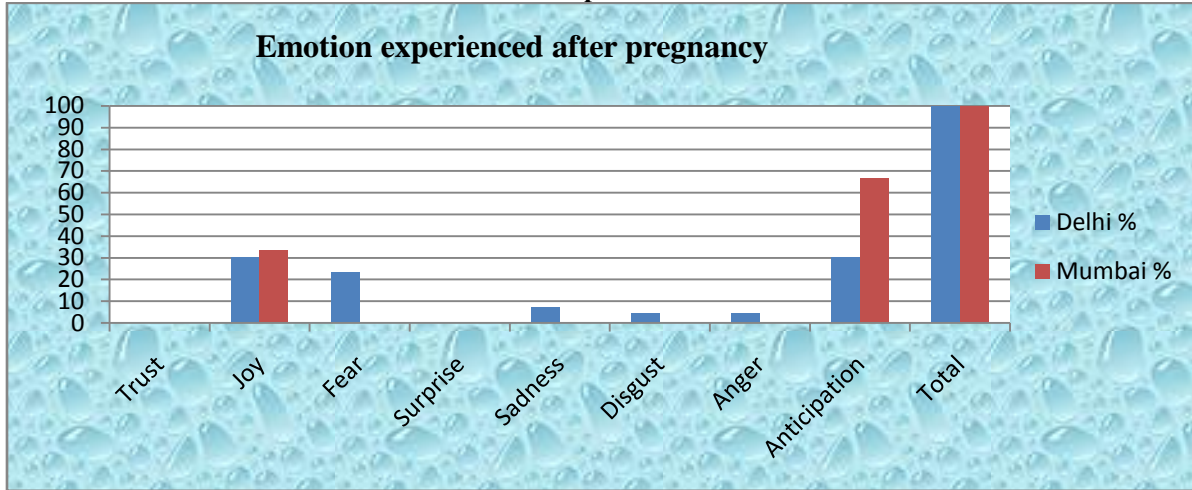
Graph 3.51



68% of the respondents in Mumbai said that they didn't experience any difficulty after giving birth to the child, while in Delhi only 29% of the respondents said the same. 26% of the respondents in Delhi said that they had experienced some emotional difficulties, 23% of the respondents opted for physical difficulties and 16.13% of the respondents opted for community and social difficulties, as they had to relocate after the surrogacy arrangements were over.

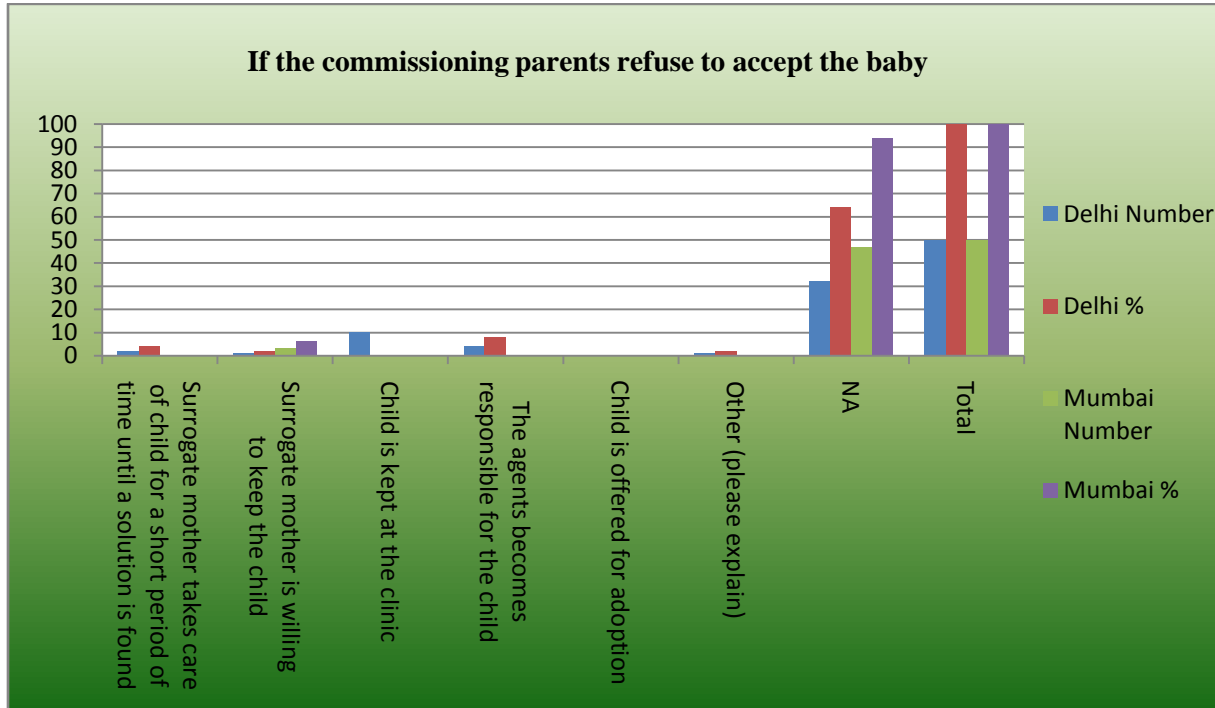
33.33% of the respondents from Mumbai said that they had experienced some physical difficulties. It was observed that though the clinics/ doctors/ centers/ agencies had promised that they would help the surrogate mothers if they faced any physical difficulties for life along with free health check-ups, in reality this was absent. Some of the surrogate mothers reported physical difficulties due to the c-section delivery during the surrogacy arrangement.

Graph 3.52



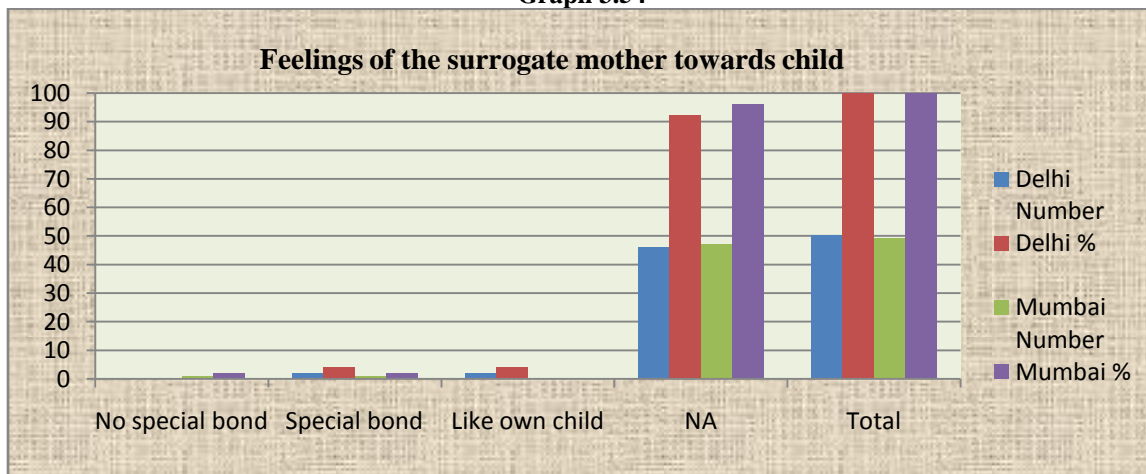
In Delhi, 30.23% of the respondents said that they felt anticipation, and an equal percentage of respondents opted for the feeling of joy. 23.26% of the respondents said that they felt fear after pregnancy. In Mumbai, more than half (68%) of the respondents felt anticipation after pregnancy. 33.33% of the respondents said that they experienced joy after pregnancy. The feeling of joy is natural for two reasons – first, because of the joy of giving birth, second, because now they would be reunited with their own family from whom they were away for 9 months. The feeling of anticipation could be because of doubts about receiving the final payment after relinquishing the child in the absence of any sort of assurance on which they could rely upon.

Graph 3.53



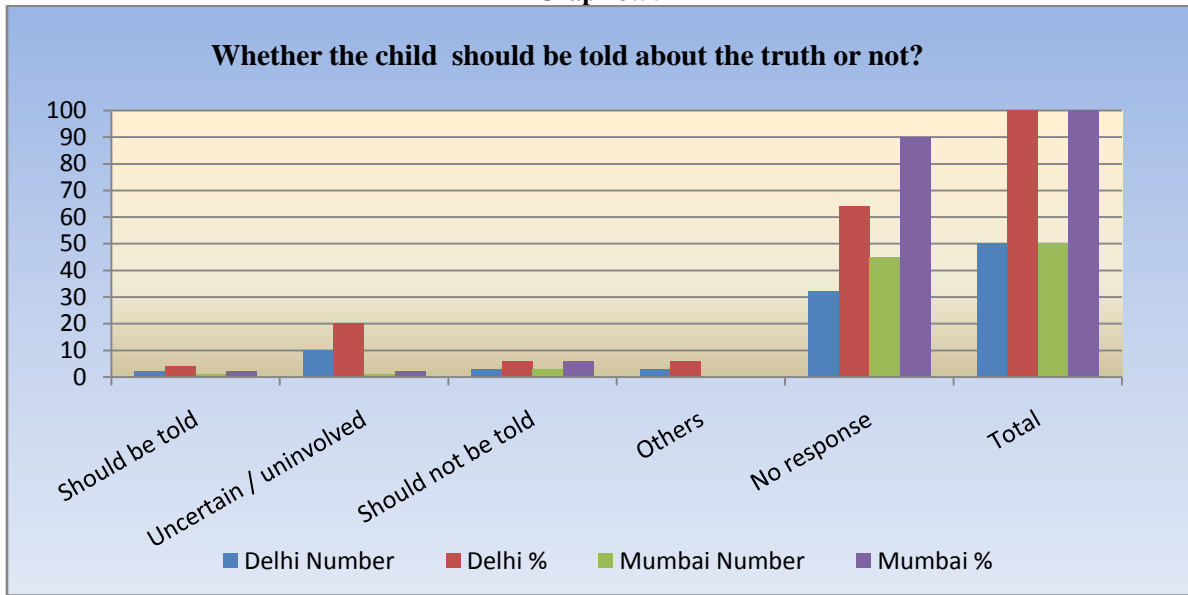
20% of the respondents in Delhi stated that the child would be taken care of by the clinic in case the commissioning parents refused to or were unable to take care it. But majority of the respondents, from both the locations, did not reply to this question as they seemed unwilling to be prepared for such a possibility. However, 4% of the respondents in Delhi replied that they would take care of the child until a solution was reached. This shows the emotional bond between the mother and the child, though a surrogate.

Graph 3.54



4% of the respondents in Delhi said that they felt a special bond with the child and that the child was like their own child, while only 2.04% of the respondents in Mumbai felt so. Majority of the respondents did not answer this question, may be due to the continuous counseling that the clinic’s counselors were providing them, telling them that the child belonged to the commissioning parents.

Graph 3.55

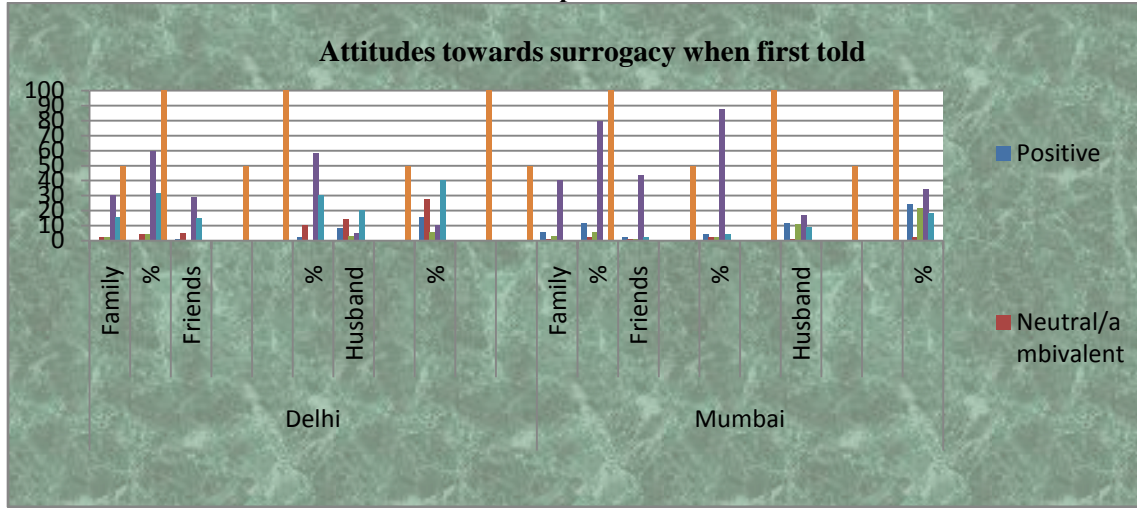


In Delhi, 20% of the respondents felt uncertain about telling the baby about how s/he came into this world. The reasons behind this were, a) Though they wanted the child to know how s/he came into existence, they were not sure whether or not it was acceptable under the contract as they were not very well versed with the clauses of the contract. b) They were not sure whether the commissioning parent would approve of it. c) They were uncertain about whether it would be good for the mental and emotional health of the baby. 6% of the respondents from both Mumbai and Delhi said that the baby should not be told about this. The reason behind this was that since they cared for the baby’s mental health they thought it would create confusion for him/her.

3.7 Consequences of surrogacy for the surrogate mother and her family

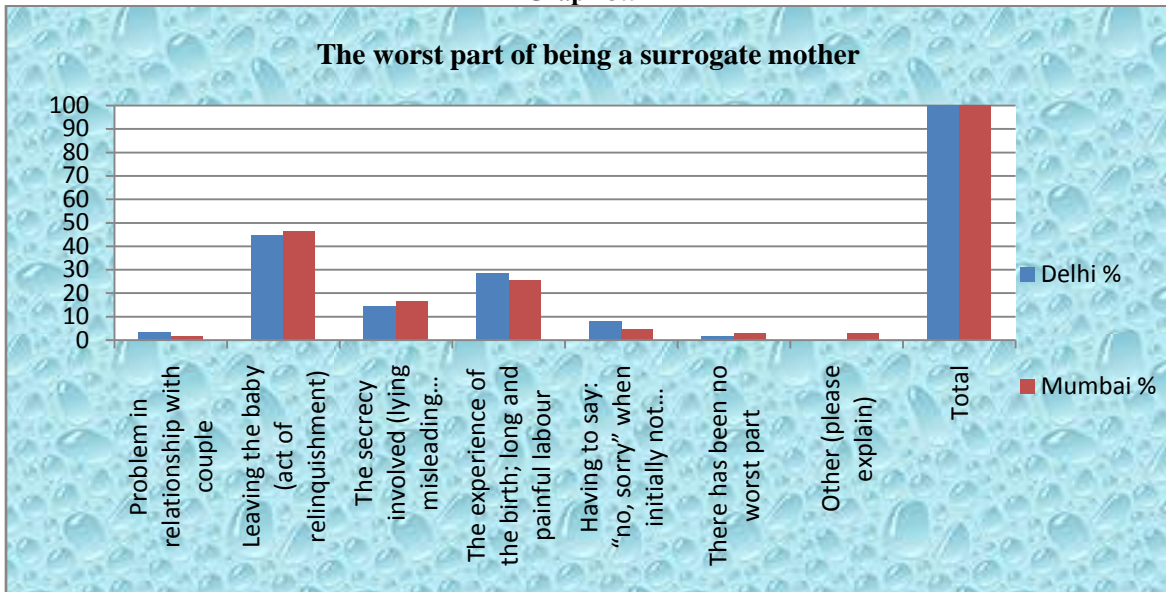
The attitude of family and friends, especially the husbands (16% in Delhi and 24% in Mumbai) of the surrogate mothers, remained positive when first told about surrogacy. In Delhi, 28% of the husbands of the surrogate mothers felt ambivalent. But in Mumbai only 2% of husbands felt so. Many of the respondents did not want to disclose much information when asked this question.

Graph 3.56



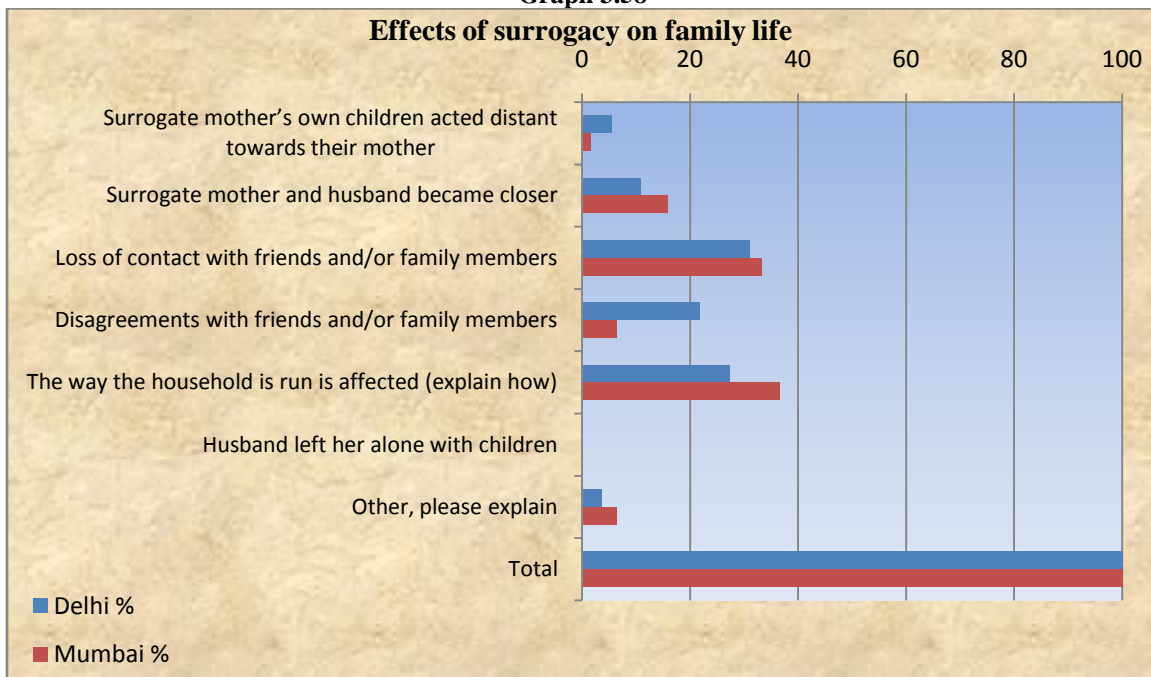
In Mumbai those who responded in most cases said that the attitude of the family and friends, especially the husbands, largely remained positive after the surrogacy was over. In Delhi, some of them (14%) remained ambivalent, though in majority of the cases they were the ones who had taken control over the money the surrogate mother had received. In any case it should not be overlooked that surrogate mothers did not disclose this engagement to their extended family members or friends for fear of social stigma. So, once they became free after the relinquishment, they either relocated to their original home town or to some new location within the metropolitan, where they could again mix up with their extended family members and friends.

Graph 3.57



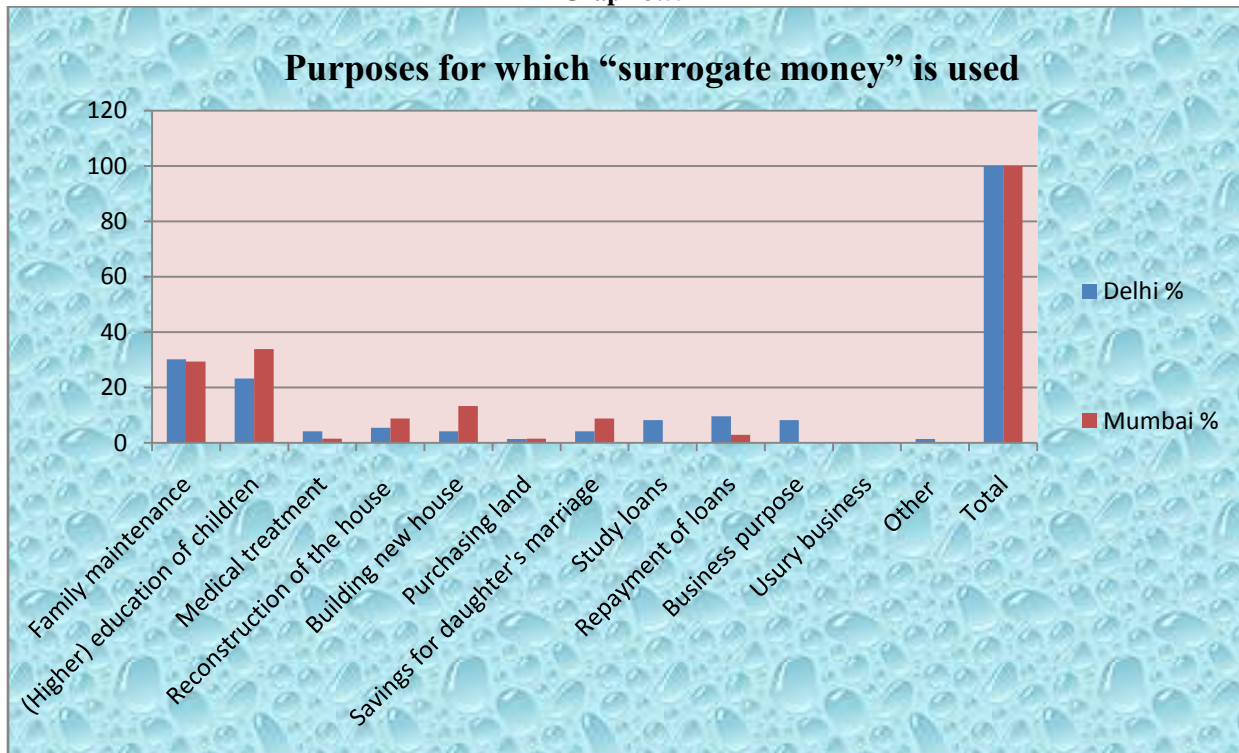
Both in Mumbai (46.26%) and Delhi (44.44%) respondents said that the worst part of being a surrogate mother was relinquishing the baby. However, a large number of surrogate mothers said that the secrecy involved in the entire process of surrogacy (14.29% in Delhi and 16.42% in Mumbai) was the worst part. Apart from this, other factors include the long and painful period of labor (28.57% of the respondents in Delhi and 25.37% of the respondents in Mumbai).

Graph 3.58



In few cases (5.45% in Delhi and 1.59% in Mumbai), the surrogate mothers' children made themselves distant from the mother. This was the case where the children were in their teenage. 31% of the respondents in Delhi and 33% in Mumbai said that the surrogacy agreement made them lose contact with their friends and family members as they did not tell them about the arrangement due to the social stigma attached with it. Also, they had to relocate or stay in shelter homes during this phase. 27.27% of the respondents in Delhi and 36.51% in Mumbai said that the way their household was run had been affected because of their decision to go for surrogacy as they had to stay away in shelter homes, and they did not ask for support from their extended family members as they did not want them to know about their involvement in surrogacy.

Graph 3.59



30.14% of the respondents in Delhi and 29.41% in Mumbai said that they used the money for maintenance of their family. The money was also used for the education of their children (23.29% of the respondents in Delhi and 34% in Mumbai). Other things include building a new house, saving for daughter's marriage etc.

However, during the field observation by the research team it was evident that though they had used part of the money for either buying a small hatchment or for the education of their children, it is inadequate for these purposes. Hence, we have to think whether the money they earned after

relinquishing the child was worth the surrogacy arrangement they underwent and the physical pain the surrogate mother endured during the process.

3.8 Conclusion

- The study shows that the surrogate mothers were mostly between the age group of 26-30 years (74% of the respondents in Delhi and 58% in Mumbai), belonged to Hindu religion (56% of the respondents in Delhi and 60% in Mumbai), were married (72% of the respondents in Delhi and 46% in Mumbai) and were educated up to primary level (54% of the respondents in Delhi and 44% in Mumbai).
- Surrogate mothers, who were interviewed for this study, were employed (68% of the respondents in Delhi and 78% in Mumbai), mainly worked as housemaids or domestic help and earned more than 3000 per month (50% of the respondents in Delhi and 68% in Mumbai).
- Respondents mainly came from nuclear families (88% of the respondents in Delhi and 92% in Mumbai), belonged to male headed households (72% of surrogate mothers in Delhi and 78% in Mumbai) and had their own children. This was a prerequisite for infertility physicians/clinics/hospitals engaged in surrogacy as a proof of the fertility of the potential surrogate mother.
- Very few of them (12% of the respondents in Delhi and 10% in Mumbai) had experienced this before. For most of them it was the first experience. All of them were planning to undergo or had already undergone Gestational surrogacy. It was also found out that surrogate mothers (80% in Delhi and 82% in Mumbai) didn't know the commissioning parents prior to the surrogacy arrangement. This may be due to the fact that the doctors/clinics matched the surrogate mothers with the commissioning parents, unless the commissioning parents had already zeroed down on a particular surrogate mother. Also, the commissioning parents usually came to India to sign the contract when the pregnancy had been confirmed and all abnormalities had been ruled out by the doctors dealing with the case, which was around second trimester.
- Most of them (90% of the respondents in Delhi and 96% of them in Mumbai) were already pregnant and were in different stages of pregnancy.

- Surrogate mothers mainly (96% of them in Delhi and 90% in Mumbai) stayed in rented houses. In Delhi, 44% out of the respondents had sanitary latrines; while in Mumbai 24% of the respondents used this type of latrines. 76% of the respondents in Delhi and 44% in Mumbai had access to supply water. All of them, in both the cities, had electricity facility.
- Reasons to become surrogate mother differed between both the cities. In Delhi, 27.85% of the respondents said that poverty was the reason for them to choose this, while in Mumbai, 46.91% said the same. For 15.82% of the surrogate mothers in Delhi and 23.46% in Mumbai education of their children was the reason to opt for becoming a surrogate mother.
- Source of information for the surrogate mothers was mainly the agents who had approached them for surrogacy (73.77% of surrogate mothers in Delhi and 73.21% of them in Mumbai said so).
- Decision to become a surrogate mother was mainly taken by the surrogate mother herself, but under pressure from her husband and only few of them (36% of surrogate mothers in Mumbai and 14% in Delhi) had faced any resistance from their family and friends.
- The surrogacy contract was signed between the surrogate mother (including her husband), the commissioning parents and the fertility physicians (sometimes). This way, the clinic authorities evade legal hassles. More than 85% of the contracts were found to be signed around the second trimester of the pregnancy as it takes one to two months more for the commissioning parents to arrange their visit to India after being informed about the confirmation of pregnancy of the surrogate mother by the clinic/infertility physician. In some clinics/agencies, the contract is first signed by the surrogate mother and her husband and then sent either by e-mail or post to the Commissioning parents to be signed by them and sent a copy back to the clinic/doctor/agency dealing with the surrogacy arrangement.
- Surrogate mothers didn't have a copy of the written contract of surrogacy arrangement, though they were a party to this contract. They were not even aware of the clauses of the contract.

- The surrogacy arrangement contract rarely addressed issues related to the health and well being of the surrogate mother. The health of the mother was considered only when the health of the fetus was an issue.
- In case the intended parents did not wish to continue with the pregnancy due to fetal abnormalities or sex preference, the baby was aborted, often without consulting the surrogate mother.
- There was no fixed rule related to the amount of compensation for the surrogate mother; it was arbitrarily decided by the clinics. Usually the surrogate mother was paid 1%-2% of the total amount received by the clinics from the commissioning parents for the surrogate baby.
- As far as the nature of contract is concerned, for most of the surrogate mothers it was a bonded paper on which the agreement would take place (70% of respondents in Delhi and 72% of respondents in Mumbai).
- The ICMR guidelines suggest maximum three IVF sessions for a surrogate mother to become pregnant for a particular Commissioning parent. But, under the cover, violations took place as the surrogate mothers who were always at the receiving end were poor, illiterate/semi-literate and in need of immediate fortune and were not in a position to understand the medical procedures their bodies were being subjected to.
- 46% of the respondent surrogate mothers replied that maximum number of IVF sessions in Delhi was two times and in Mumbai 52% of respondents said that they had experienced IVF sessions two times.
- 80% of the respondents in Mumbai said that they didn't undergo any test during pregnancy to determine the sex of the child. But, in contrast, 60% of the respondents in Delhi said that there had been tests to rule out any abnormalities regarding the health of the child during their pregnancies.
- Majority (71%) of the respondents stated that the child, if born with deformity, will remain in the clinic/centre/agency and they will find a solution as to what would be the next step. 74% of the respondents in Delhi and 68% of the respondents in Mumbai had the same option. However, 6% of the respondents in Delhi and 26% of the respondents in Mumbai said that the Commissioning parents would accept the child even if the child had some deformity.

- The clinic/hospital authorities said that in case the commissioning parents refused to accept the child or the pregnancy was aborted due to some reason, the surrogate mother was often paid half of the amount what she was supposed to get under normal circumstances (56% of the respondents in Delhi and 36% of the respondents in Mumbai). 24% of the respondents in Delhi and 34% of the respondents in Mumbai said that they would not receive any money if the pregnancy goes wrong by any chance.
- There was no clarity about the payments in case the surrogate mothers were pregnant with twins. The normal practice was that when the doctor found out about twin pregnancy of the surrogate mother, s/he consulted the commissioning parents, who in most cases were happy to be parents of twins and wanted to continue with the pregnancy.
- Regarding one of the most crucial factors i.e. payment received by the surrogate mothers under the surrogacy agreement/contract, 46% of the respondents in Delhi and 44% of the respondents in Mumbai stated that they received 3 to 3.99 lakh for being a surrogate mother. 42% of the respondents in Mumbai mentioned that they received payment between 2.1 to 2.99 lakh. In Delhi, 26% of the respondents said that they received 4 lakh or more than that for this arrangement.
- In most of the cases relationship between the surrogate mother and the commissioning parents remained harmonious, but from a distance. It should be taken into account that language remained a barrier and the doctor was the sole communicator between them. According to the surrogate mothers, the level of involvement of the commissioning parents in the entire pregnancy of the surrogate mother remained limited. It was restricted to the initial stage of getting introduced to the former and making sure that the surrogate mother delivers and relinquishes the baby as it was decided.
- Most of the surrogate mothers (65% in Delhi and 56% in Mumbai) stayed in shelter homes during the pregnancy. According to them, they do not want to disclose their pregnancy to the neighbors and surroundings due to the social stigma associated with it. In addition, the clinics also preferred them to stay at home instead of their respective villages in the interest of the surrogate baby, as these houses were better equipped to take care of the pregnancy-related issues and to prevent the surrogate mother from being infected with STDs or HIV/AIDS due to physical contact with her husband.

- Though surrogate mothers were not very happy with clinics, they feel hesitant to share their actual experience with the team. The reason may be that they were afraid if they tell the truth the clinics may not give them their full amount.
- Anticipation and fear topped the list of emotions experienced by surrogate mothers before the pregnancy. 47% out of the respondents in Delhi and 41% in Mumbai chose anticipation in response to this question. 43% of the respondents in Delhi and 31% of the respondents in Mumbai said that they felt fear before their pregnancy. Anticipation and fear in surrogate mothers before pregnancy was there because, unlike their own pregnancies which happened naturally, here an artificial procedure was used to impregnate them about which they had absolutely no clue. Also, they knew that they had to stay away from their families for 9 months and were unsure about the payments they would be receiving.
- Majority of the surrogate mothers didn't reply to the question 'whether they have any doubt or difficulty to handover the baby'. The major reason behind this was most of the respondents were in the middle of their pregnancy and this was the most uncomfortable question for which they are not emotionally prepared.
- 20% of the respondents in Delhi stated that the child was to be taken care of by the clinic in case the commissioning parents refused to or were unable to take care of it. But majority of the respondents did not reply to this question from both the locations as they seemed unprepared for such possibility.
- 4% of the respondents in Delhi said that they felt a special bond towards the child and the child was like their own child while only 2.04% of the respondents in Mumbai felt so. Majority of the respondents did not answer this question, may be due to the continuous counseling that the clinic's counselors were providing them saying the child belonged to the commissioning parents.
- Though the surrogate mother wanted the child should know how He/S came into existence, they were not sure whether it was acceptable under the contract as they were not well versed with the clauses of the contract. Also, they were not sure whether the commissioning parent would approve of it, whether it would be good for the mental and emotional health of the baby.

- Many of the respondents did not want to disclose much information when asked about the attitude of family and friends, especially the husbands. However, those who did respond in Mumbai said that in most of the cases the attitude of the families, friends, especially the husbands largely remained positive after the surrogacy was over. In Delhi, majority (88%) of them remained ambivalent.
- The surrogate mothers (44.44% in Delhi & 46.26% in Mumbai) stated that relinquishing the baby was the worst part of surrogacy. However, they added that the long and painful period of labor, where they had to live away from their family members, was the other bad part in the surrogacy arrangement.
- In few cases (5.45% in Delhi and 1.59% in Mumbai), the surrogate mother's children made themselves distant from the mother. This was the case where the children were teenagers. 31% of the respondents in Delhi and 33% of the respondents in Mumbai said that the surrogacy agreement had led to loss of contact with family and friends as they did not disclose about it to their extended family members due to social stigma attached to it. Also, they had to relocate or stay in shelter homes during this phase.
- 30.14% of the respondents in Delhi and 29.41% of the respondents in Mumbai said that they used the money for maintenance of their family. They also used the money for the education of their children (23.29% of the respondents in Delhi and 34% of the respondents in Mumbai). Other things included building a new house, saving for daughter's marriage etc.

Chapter IV

Commissioning Parents

The Commissioning Parents, sometimes also called the intended parents, are the couples who are unable to have children naturally, or with medical help, and decide to acquire a child through a surrogacy arrangement. The intended parents opting for surrogacy can be Indians, Non-Resident Indians (NRIs) or Foreigners.

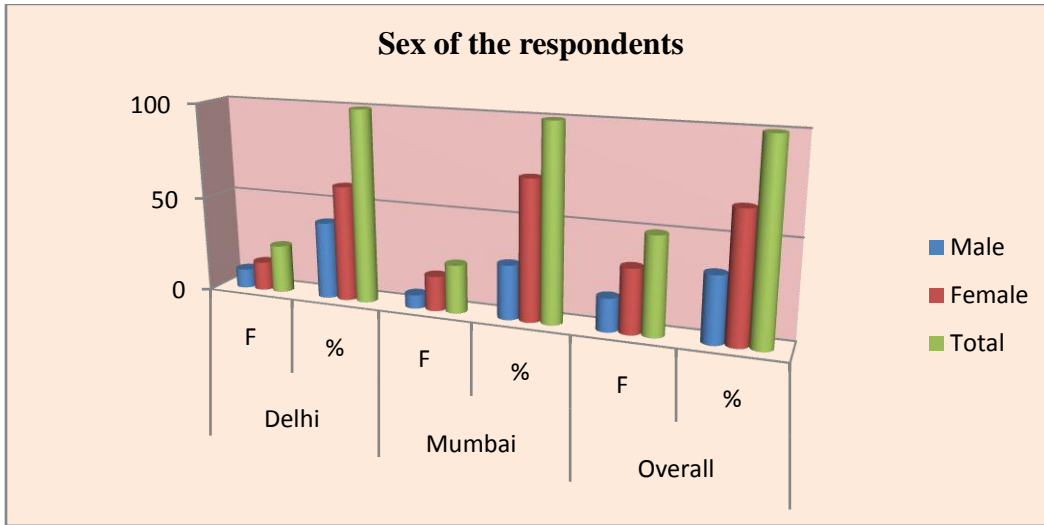
In India, surrogacy is increasingly becoming a popular and well-accepted practice amongst childless couples. Most of the Commissioning Parents come from the creamy layer of the society who can bear the huge cost of surrogacy. India is emerging as a leader in international surrogacy and a destination in surrogacy-related fertility tourism. Indian surrogates have become increasingly popular with fertile couples in industrialized nations because of the relatively low cost. Indian clinics are also becoming more competitive, not just in the pricing, but in the hiring and retention of Indian females as surrogates. Clinics charge exorbitant amount for the complete package, which includes fertilization, the surrogate's fee, and delivery of the baby at a hospital, the cost of flight tickets, medical procedures and hotels.

The field study conducted in Delhi & Mumbai, which are high prevalence areas, has helped CSR come up with extremely interesting findings. The amount of data collected was restricted by the extent to which the clinics allowed the researcher to observe and the information they divulged. Thus, keeping in mind the aforementioned, CSR collected the maximum data it could from Delhi (25 respondents) and Mumbai (25 respondents).

4.1 Demographic and socio-economic background

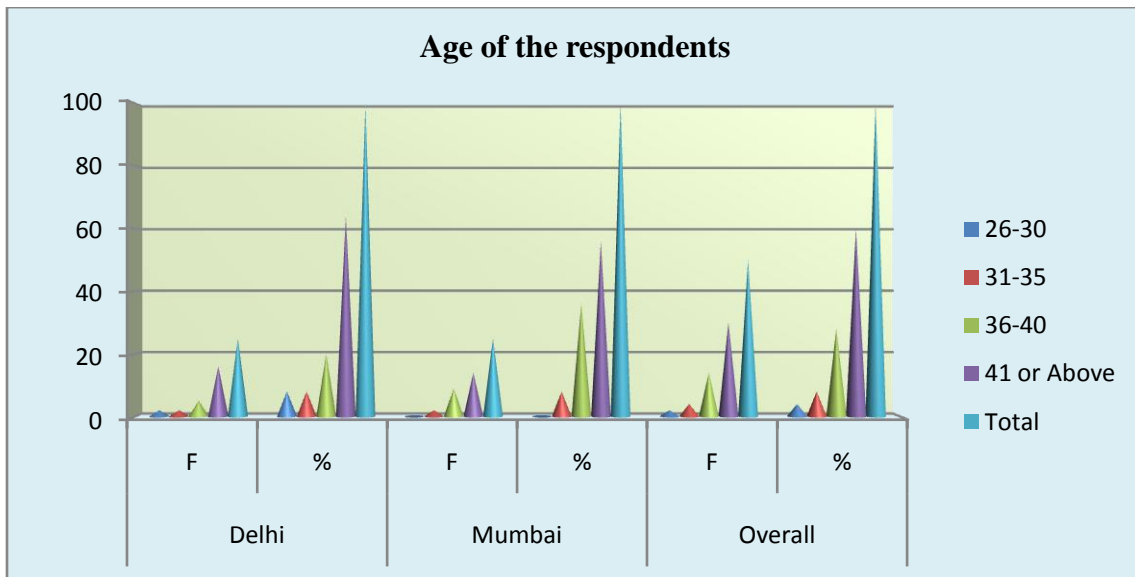
The present section deals with the age, religion, educational status, employment scenario, etc. of the commissioning parents to depict a clear picture of the socio-economic background of the study participants.

Graph 4.1



The graph shown above depicts that more than half (66%) of the respondents from both the study areas were (in Delhi 60% of the respondents and in Mumbai 72% of the respondents) females.

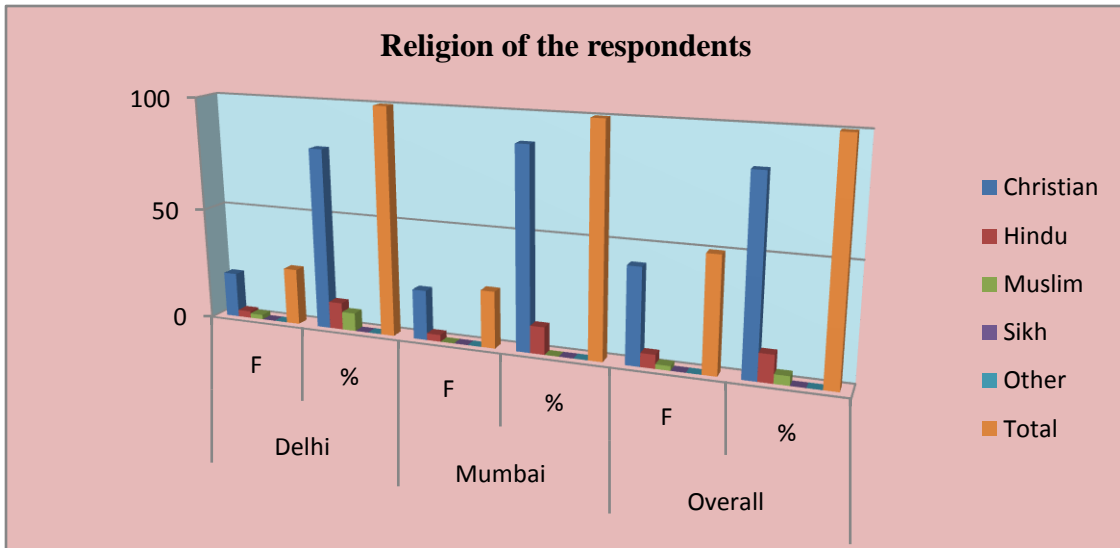
Graph 4.2



64% of the respondents in Delhi and 56% of the respondents in Mumbai were more than 40 years old. This indicates that most of the couples had opted for surrogacy after having made several attempts of natural parenthood. It should be mentioned that only few (20% of the respondents in Delhi and 36% of the respondents in Mumbai) of the respondents from both the areas were in the age group of 36-40. Almost similar data (for the age group of 41 and above, the

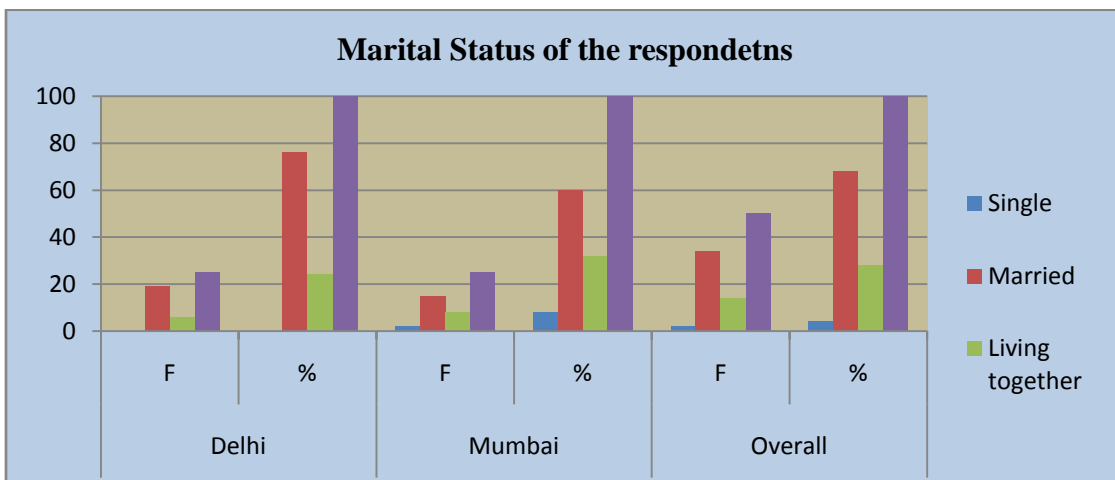
data stands at 60% of the respondents from Delhi and 52% of the respondents from Mumbai) was recorded for the partners of the respondents.

Graph 4.3



Majority (84%) of the couples were Christian (80% in Delhi and 88% in Mumbai), educated up to Master’s degree (72% of the respondents in Delhi and 52% of the respondents in Mumbai) and were fully employed. Only 12% of the respondents, in both the areas, were Hindu. However, interviewed surrogate mothers gave references of some Sikh NRI couples.

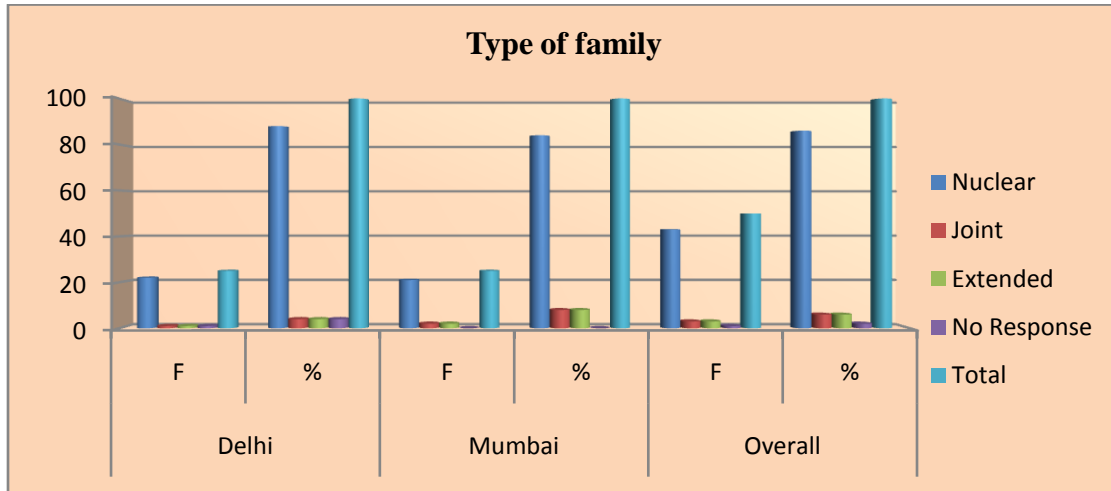
Graph 4.4



76% in Delhi and 60% in Mumbai were married, while 24% in Delhi and 32% in Mumbai were living together. It should be mentioned that majority of the commissioning parents who were

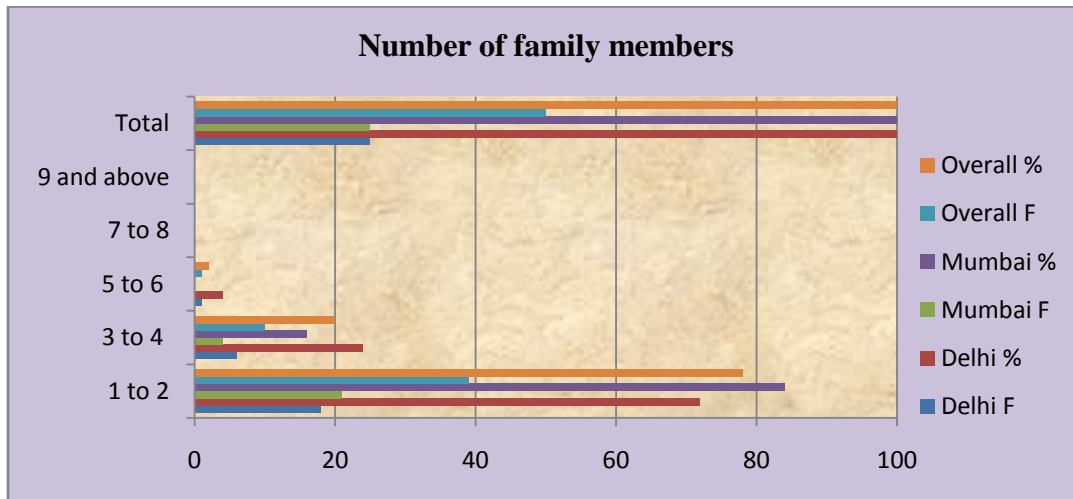
interviewed by the research team were from western countries, where living together or cohabitation is an emerging form of family system. This is the reason why we had a considerable number of couples who were not married. This percentage of live-ins also includes gay couples.

Graph 4.5



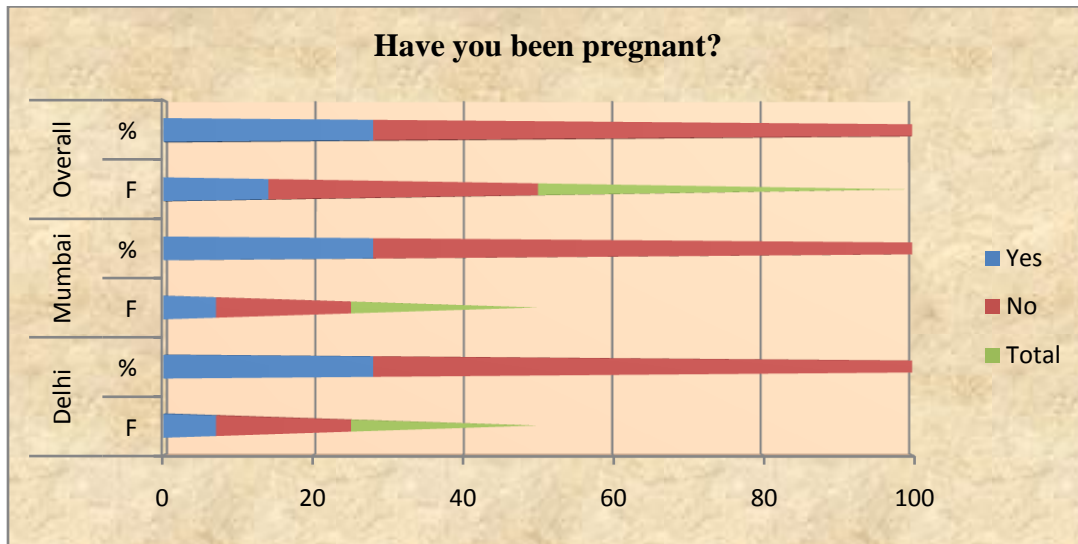
Commissioning couples interviewed by the CSR team in Delhi and Mumbai were from nuclear family set up and had an equal decision making process in the family. In Delhi 88% and in Mumbai 84% of them were from the nuclear family set up. In Delhi, 52% of the commissioning parent's families were male-headed and 48% of the respondents were jointly headed. In Mumbai, 44% of the commissioning parent's families were male-headed and 48% of the respondents were jointly headed.

Graph 4.6



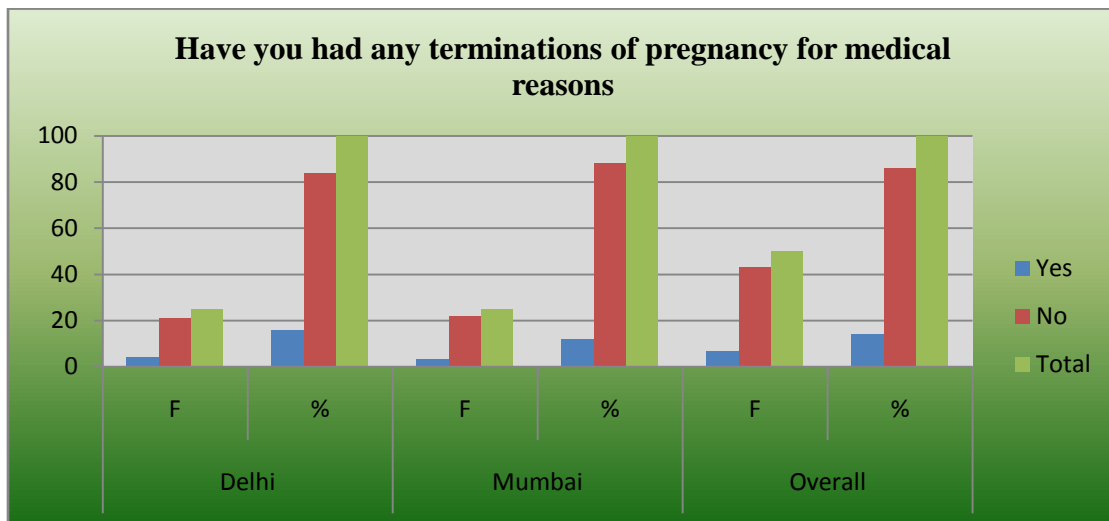
78% of the respondents had 1-2 members in their family. In Delhi, 72% of the respondents had 1-2 members in the family and in Mumbai the percentage was 84. As discussed above, under the Graph 4.5, since most of them belonged to nuclear families without children, the number of family members was also less.

Graph 4.7



28% of the respondents said that they had been pregnant before, but half of them (14%) had a miscarriage, due to various reasons.

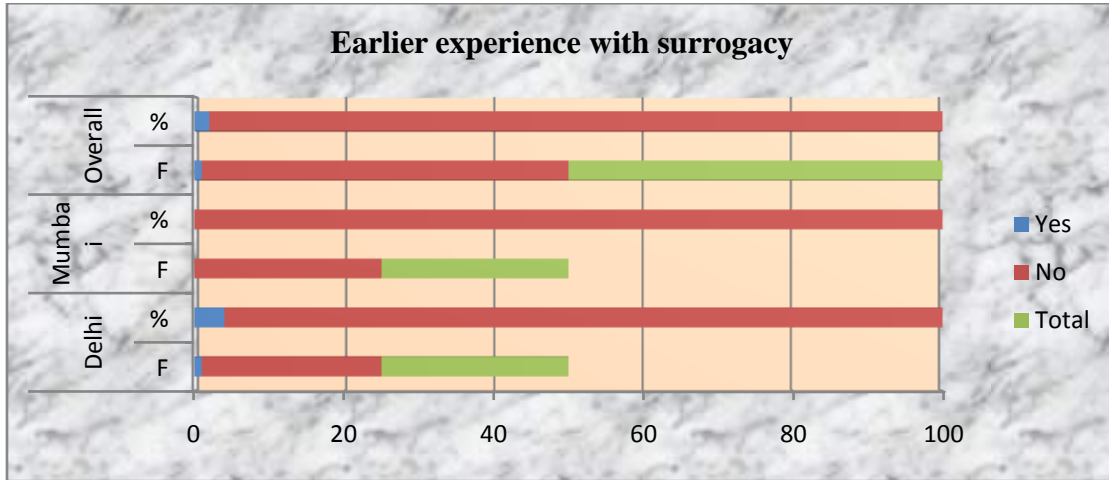
Graph 4.8



In Delhi, one of the respondents said that she had terminated her pregnancy due to social reasons. The reason behind this could have been family pressure for a male child. 14% of the respondents

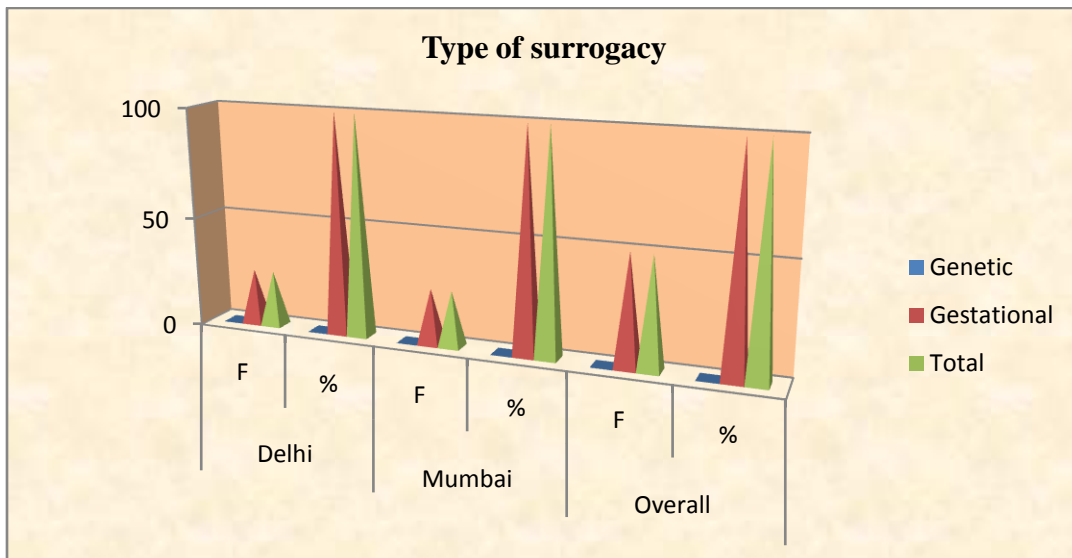
said that they had terminated their pregnancy due to medical reasons. 16% in Delhi and 12% in Mumbai also replied the same. Only one respondent said that she had had a live birth, but the baby couldn't survive and died after few hours.

Graph 4.9



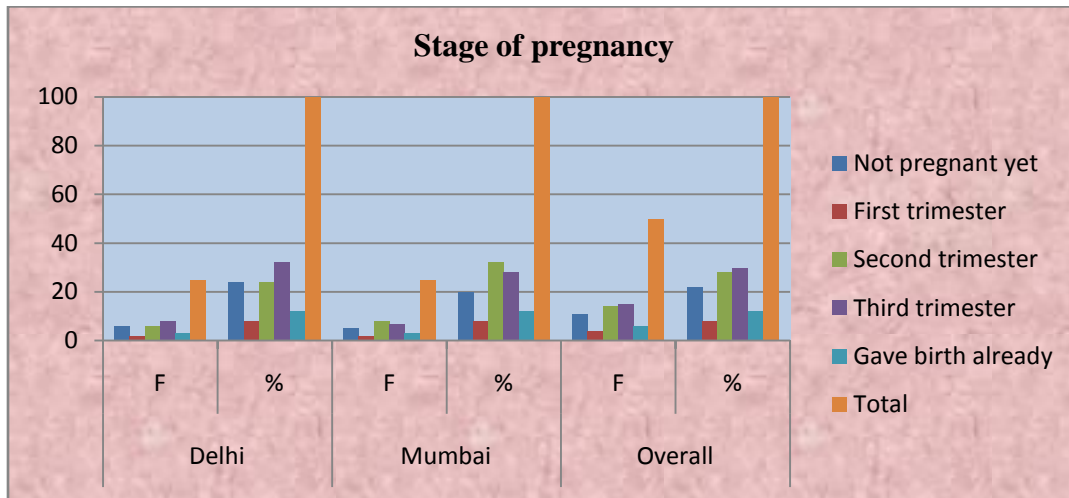
98% of the respondents hadn't had any earlier experience of surrogacy. In Mumbai majority of them said that they hadn't experienced it before. Though one of the surrogate mothers in Mumbai shared with us that she was carrying the second surrogate child for one particular NRI couple. In Delhi, one NRI couple stated that they had experienced this arrangement once before and they had come back for a second baby.

Graph 4.10



The research findings revealed that 100% of the commissioning parents from both the study areas opted for gestational surrogacy. Majority (96%) of the respondents claimed that they didn't know the surrogate mother before. Only 8% of the respondents in Delhi said that they knew the surrogate mother beforehand.

Graph 4.11

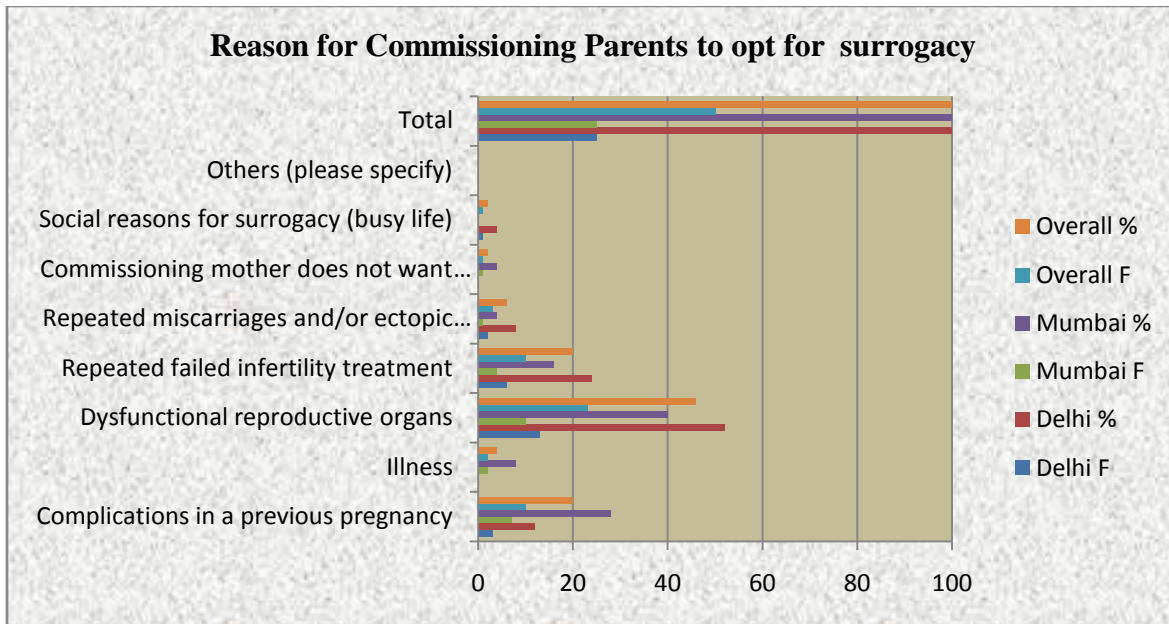


30% of the respondents said that they were in their third trimester of pregnancy. In Delhi, percentage for this was 32% and in Mumbai it was 28%. 24% of the respondents in Delhi and 32% of the respondents in Mumbai replied that they were in the second trimester of pregnancy, while 20% of the respondents in Mumbai and 24% in Delhi were still not pregnant and were in the very initial stage of surrogacy arrangement. In both Delhi and Mumbai, 3 were in post pregnancy stage. Two of them, in Delhi, had two weeks old babies and one had a month old baby. In Mumbai, a couple had three weeks old baby and two had 14 days old babies.

4.2 The surrogacy decision

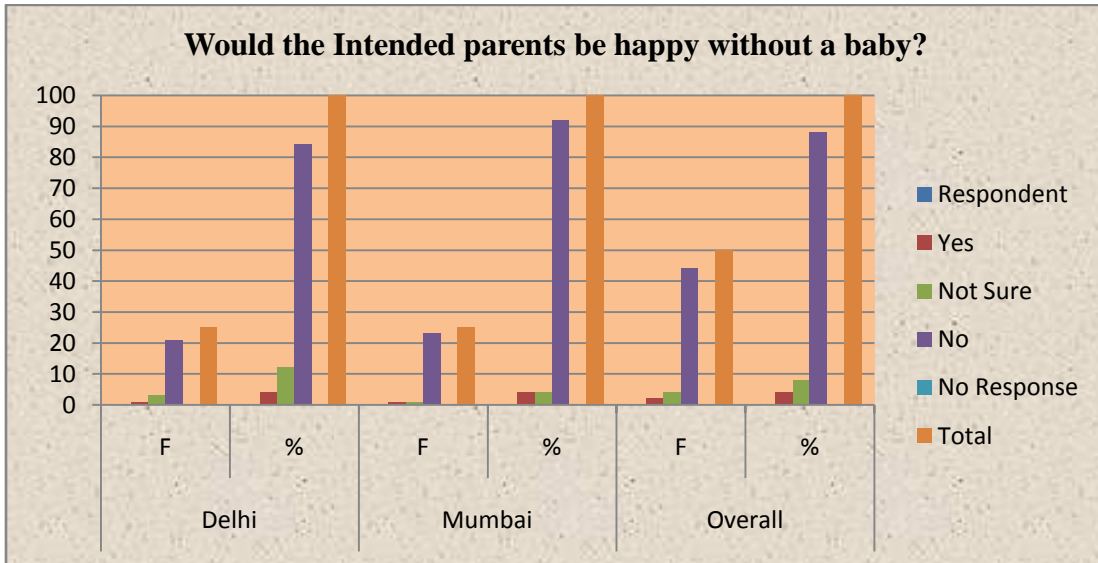
This section outlines the surrogacy decision-making process. Reason for commissioning parents to opt for surrogacy, factors that influence the decision, source of information, reason for coming to India are the main issues which will be discussed in this section.

Graph 4.12



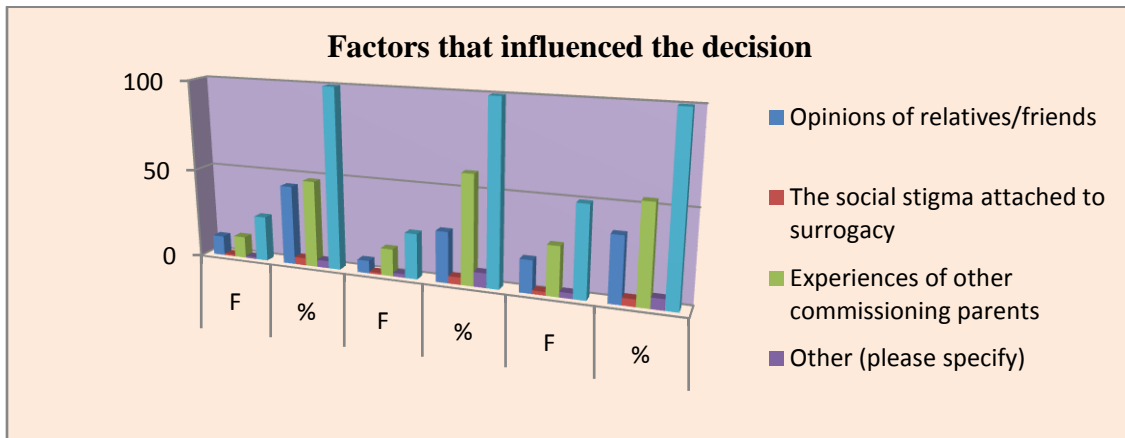
The research finding shows that 46% of the respondents had dysfunctional reproductive organs, which appeared to be the reason for not being able to have children the natural way (52% of the respondents in Delhi and 40% of the respondents in Mumbai). In Delhi, 24% of the respondents and in Mumbai, 16% of the respondents said that the reason for them to opt for surrogacy arrangement was repeated failure of infertility treatment. In Mumbai, 28% of the respondents said that they had complication in pervious pregnancies. 12% of the respondents in Delhi said the same. However, during the field visits through our observations doubts emerged whether there were few gay/homosexual couples who were coming to India to avail the cheap surrogacy facility in the absence of a concrete law. Even for Indian gay/homosexual couples surrogacy is emerging as the only option because adoption is prohibited for such couples in India. It was also observed that couples who opted for surrogacy because of busy lifestyle/career had also been accepted by some clinics for surrogacy arrangements, which is prohibited by the ICMR guidelines.

Graph 4.13



The research study attempted to find out how important it was for the happiness of commissioning parents to have a baby by any means. It appears that 84% of the respondents in Delhi and 92% of the respondents in Mumbai were not happy without their own biological child. This shows the desperation of commissioning parents to have their own baby. When it comes to the partners of the respondents, they gave a similar response.

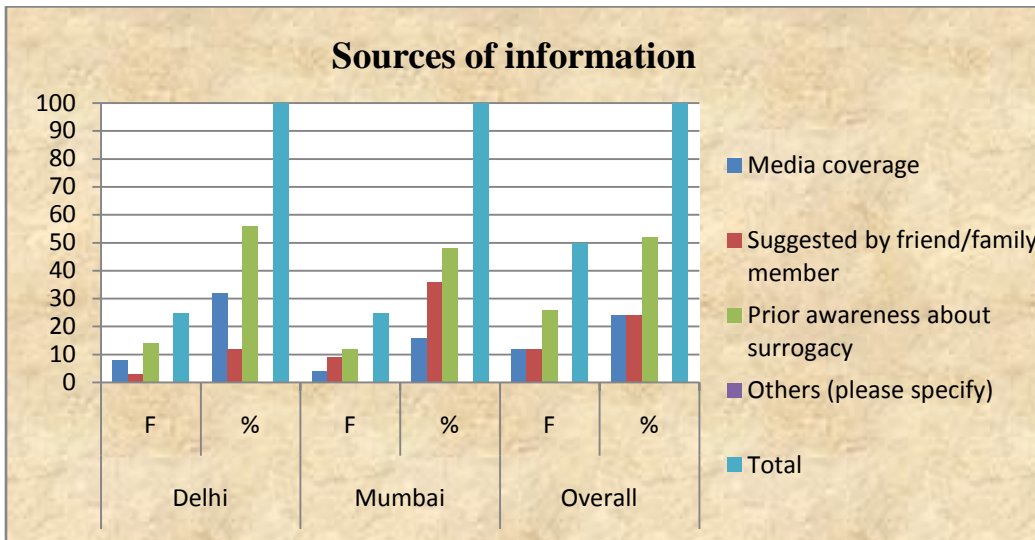
Graph 4.14



In their pursuit of having a baby through surrogacy, experiences of other commissioning parents (54%) and the opinions of relatives and friends (36%) appear to be the most important factors influencing the commissioning parents' decision to opt for surrogacy. It may be kept in mind that

since commissioning parents were from nuclear families, educated and had decent earning capacity, opinions of friends and persons who underwent the same infertile conditions mattered a lot. However, there is a social stigma attached to surrogacy that makes few of the commissioning parents (4%) doubtful till they finally decide to opt for it.

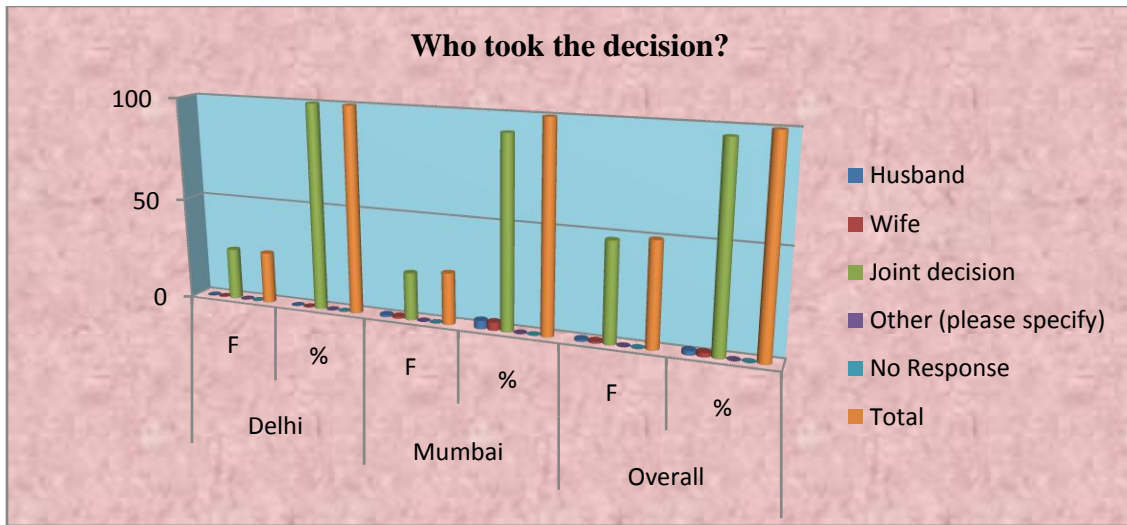
Graph 4.15



The research study also looked at the different factors that triggered intended parents to opt for surrogacy. 52% of the respondents stated that prior awareness about surrogacy was the source of information for them (56% of the respondents in Delhi and 48% of the respondents in Mumbai). Also, it appears that in Mumbai, suggestion of friends/family members (36%) also influenced their decision. The findings revealed that 32% of the respondents in Delhi made their decision to opt for surrogacy on the basis of media coverage.

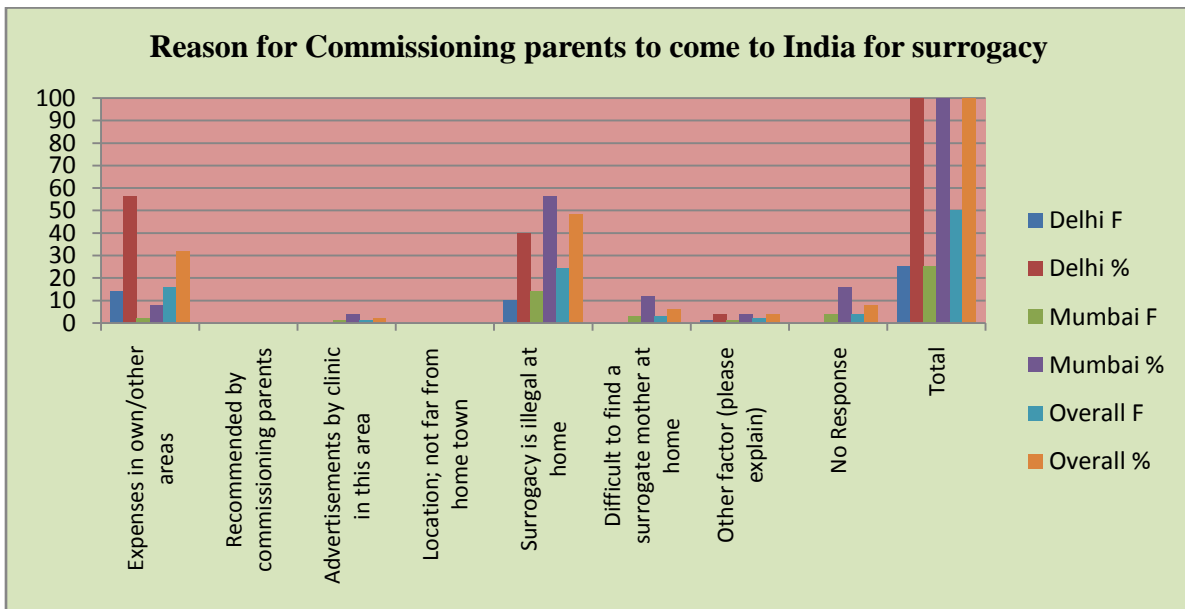
It was noticed that in most (96%) of the cases surrogacy decision was taken by the couple jointly (all the respondents in Delhi and 92% of the respondents in Mumbai).

Graph 4.16



The reason behind this was having a baby is a mutual decision, they were educated couples of western society, earned equally and, as it has been discussed earlier in this report, in most of the cases both the parents were unhappy without the baby. It was interesting to note that only one of them in Delhi faced any resistance from family and friends.

Graph 4.17



48% of the respondents came to India for surrogacy because it was illegal in their home country. The couples who came to India for surrogacy arrangement were from Western countries where surrogacy is illegal and costly. Another reason mentioned by quite a few (32% overall and 56%

in Delhi) of the respondents was that the surrogacy arrangement was expensive in their own areas. Here, it is important to mention that our research team interviewed a couple (both in Delhi and Mumbai) who were NRI and came to India to find an Indian surrogate mother for their baby.

Table 4.1

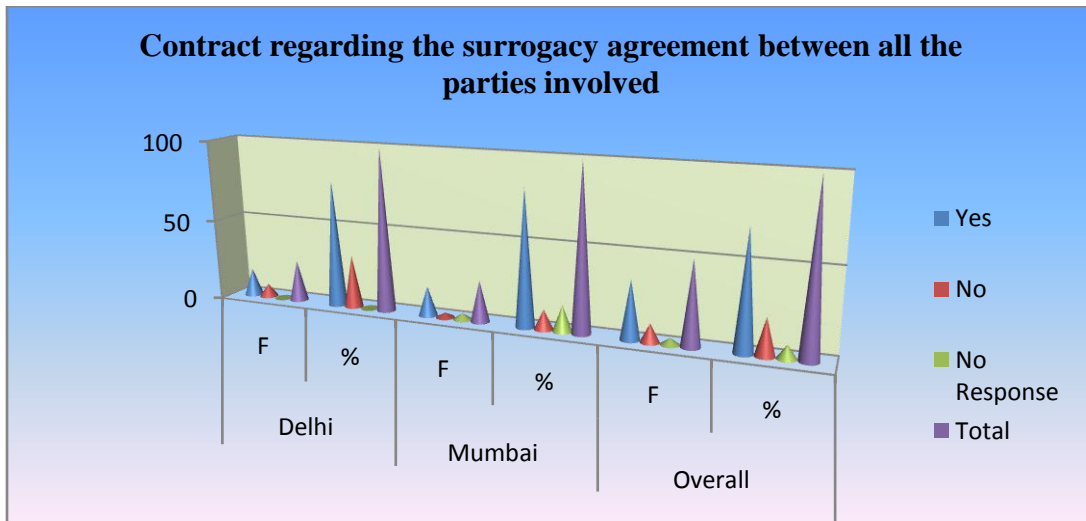
Expenditures in US \$	Delhi		Mumbai		Overall	
	Number	%	Number	%	Number	%
10000 To 20000	9	36.00	4	16.00	13	26.00
20000 and above	1	4.00	0	0.00	1	2.00
No response	15	60.00	21	84.00	36	72.00
Total	25	100.00	25	100.00	50	100.00

Respondents who had looked for the cost of surrogacy arrangement in their own countries said that it was mainly between US\$ 18000 to 20000 (26% of respondents).

4.3 The surrogacy arrangement

This section includes questions related to the surrogacy agreement, parties involved in this agreement, issues addressed in it, etc.

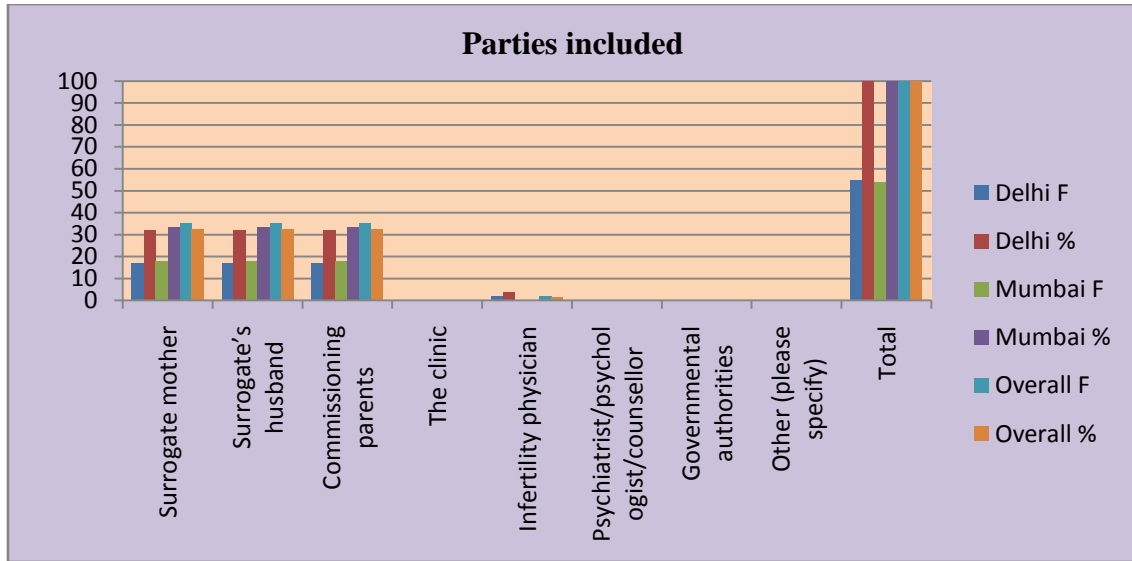
Graph 4.18



The issue of a written surrogacy contract is a crucial part of the entire process. 70% of the respondents said that they had signed the contract (78% in Delhi and 82% in Mumbai). Rest of them who said no in response to this question or didn't respond as they were in an early stage

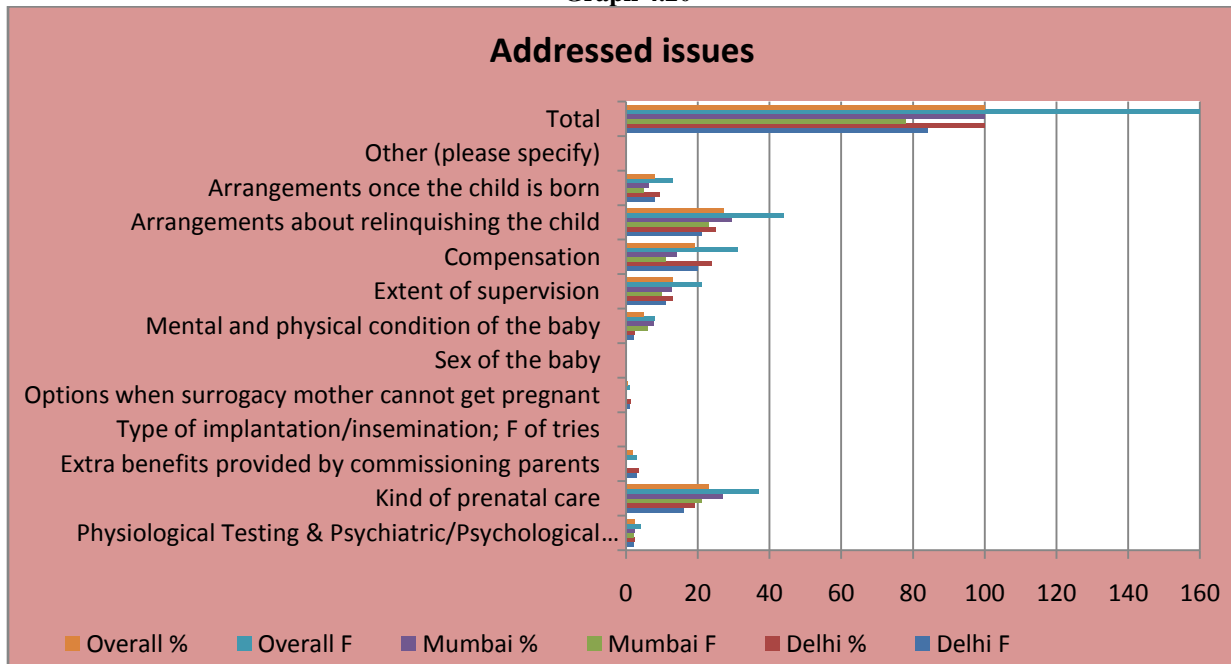
of this arrangement and the surrogate mother was still not pregnant. All the respondents who had signed the agreement had a copy of their agreement.

Graph 4.19



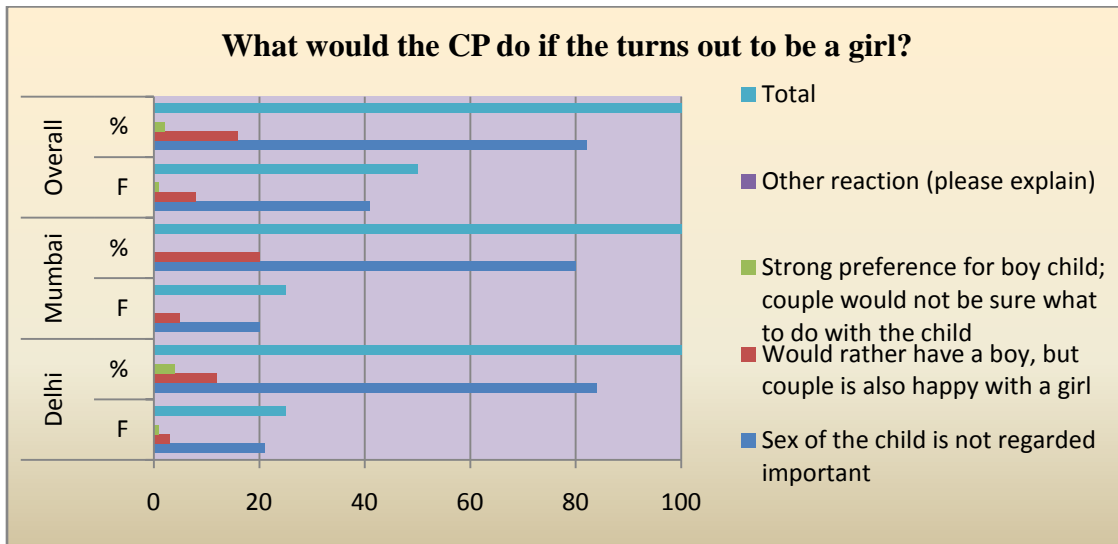
The surrogacy contract was basically an agreement between the surrogate mother (32.71% of the respondents), including her husband (32.71% of the respondents), and the commissioning parents (32.71% of the respondents). The clinic/doctors/agencies usually try to stay out of any documented agreement in order to avoid transparency in their proceedings.

Graph 4.20



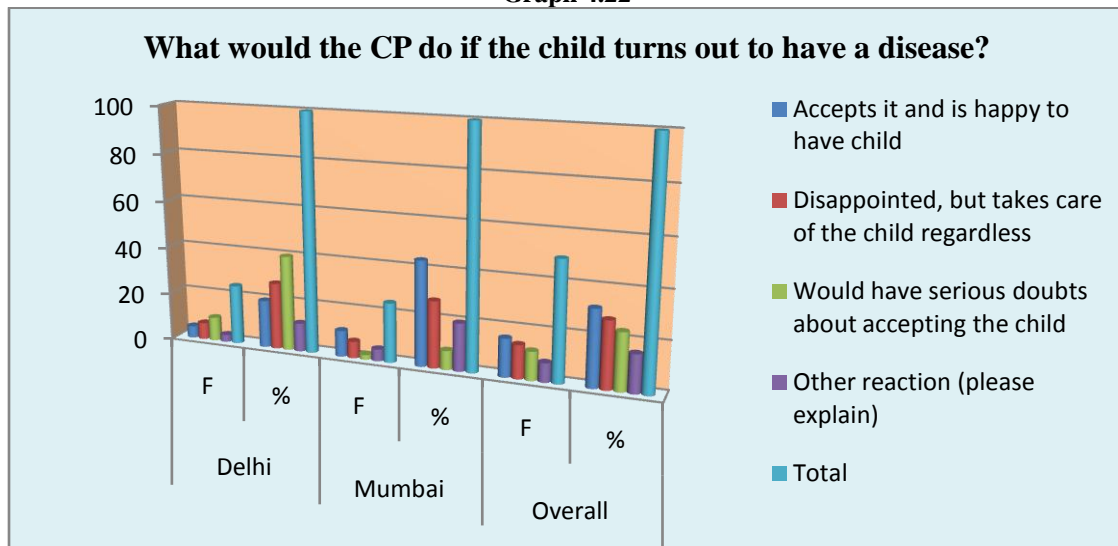
This type of contract primarily included issues like arrangement about relinquishing the child (25% in Delhi and 29.48% in Mumbai), Secondly, it included compensation (24% of the respondents in Delhi and 14.1 % in Mumbai). The contract also consisted of the extent of supervision, kind of parental care etc.

Graph 4.21



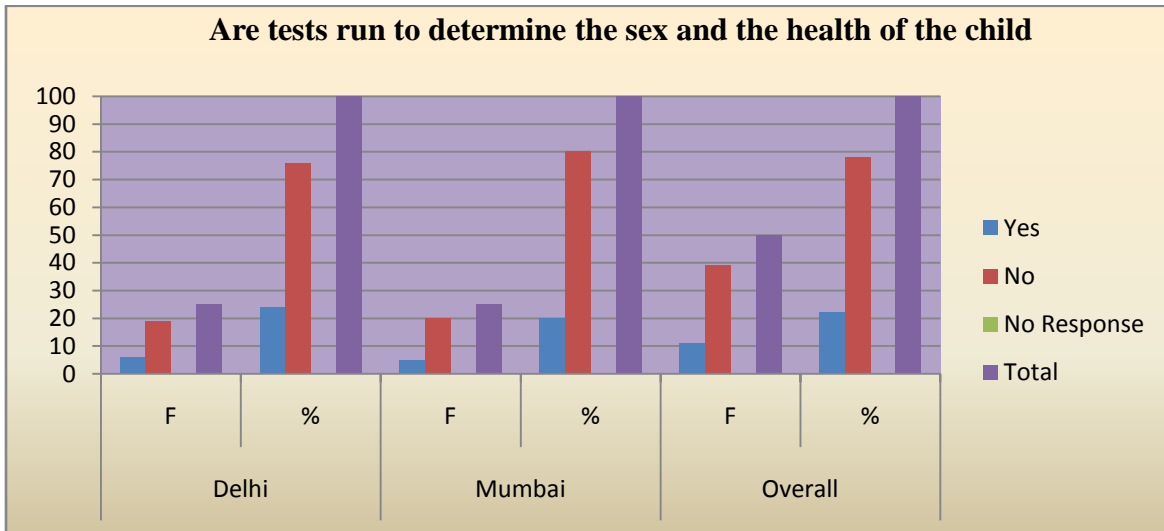
It should be mentioned that most (82%) of the commissioning parents in both the places claimed that the sex of the child was not important for them. For instance, 84% of the intended parents in Delhi and 80% of them in Mumbai stated that they would be equally happy if the child turned out to be a girl.

Graph 4.22



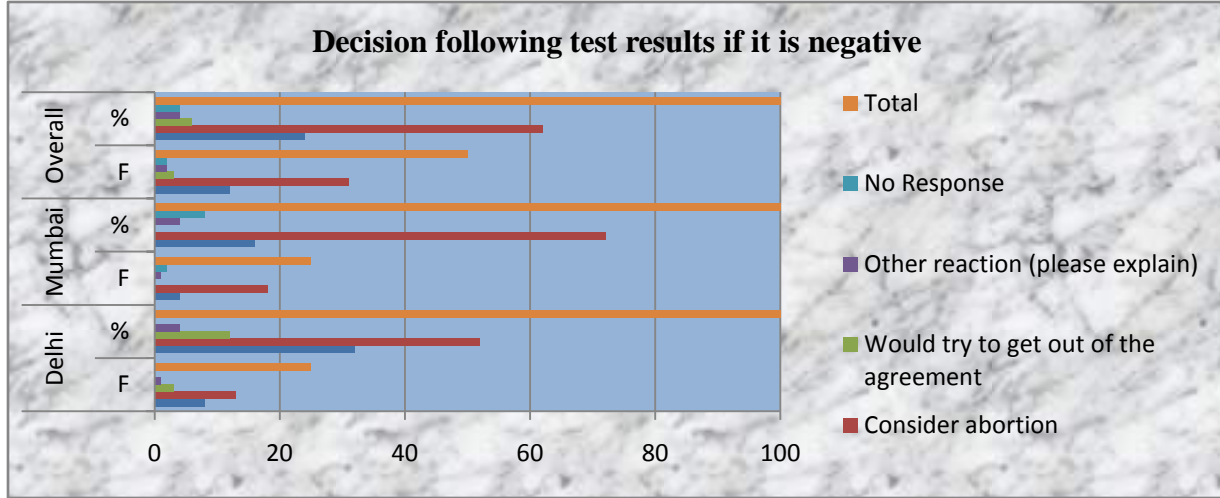
32% of the respondents stated that they would accept the baby and would be happy with it even if the baby had a disease, while 28% of the respondents said that though they would feel disappointed but would accept the baby. 24% of them said that they would have serious doubts about accepting the baby.

Graph 4.23



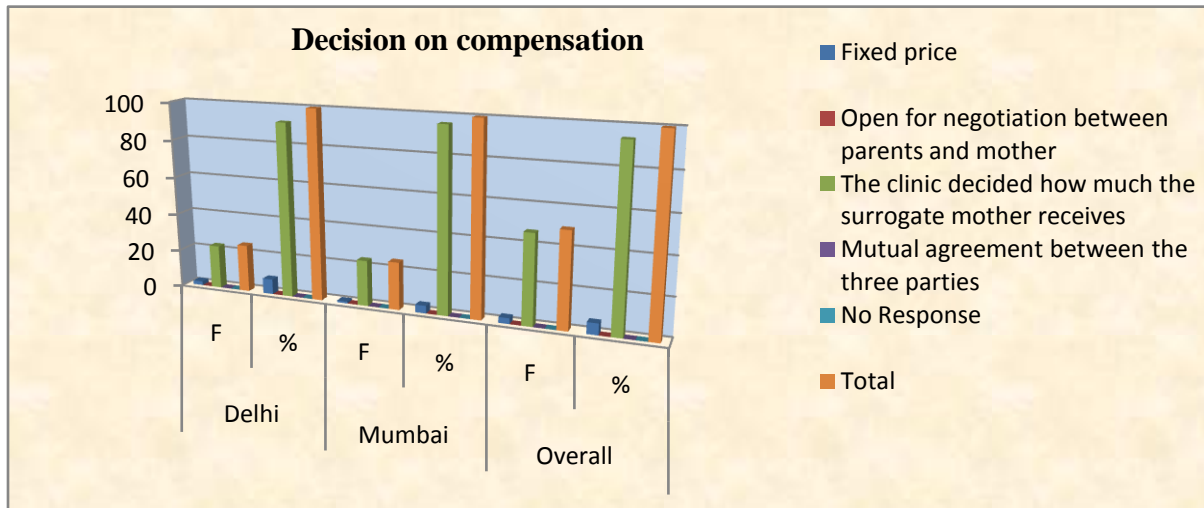
78% of the respondents said that they didn't go for sex-determination test (76% in Delhi and 80% in Mumbai). This shows that couples who opted for surrogacy were really keen and desperate and they just wanted their own biological child. But there were few (22%) respondents who admitted that they opted for sex-determination test. In these cases it may be true that couples preferred a male child.

Graph 4.24



The research findings revealed that 62% of the total respondents admitted that they would consider abortion if the test result was not according to their expectation (52% of the respondents in Delhi and 72% of the respondents in Mumbai).

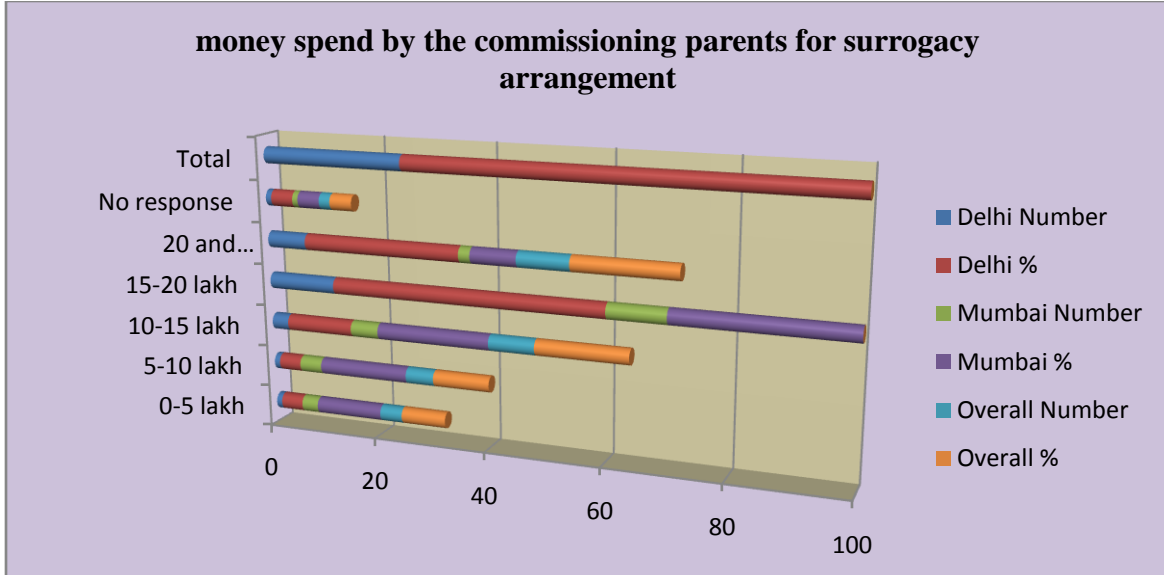
Graph 4.25



The study found out that in the surrogacy arrangement the surrogate mother did not have any right to decide the compensation she got from the concerned clinic, which was paid to them by the commissioning parents. The graph above shows that in 94% of cases the concerned clinic decided (92% of the respondents in Delhi and 96% of the respondents in Mumbai) how much the surrogate mother received as compensation from the total amount that was paid to the clinic by

the commissioning parents. This shows that it was arbitrarily decided and there was no fixed price for the surrogate mother.

Graph 4.26

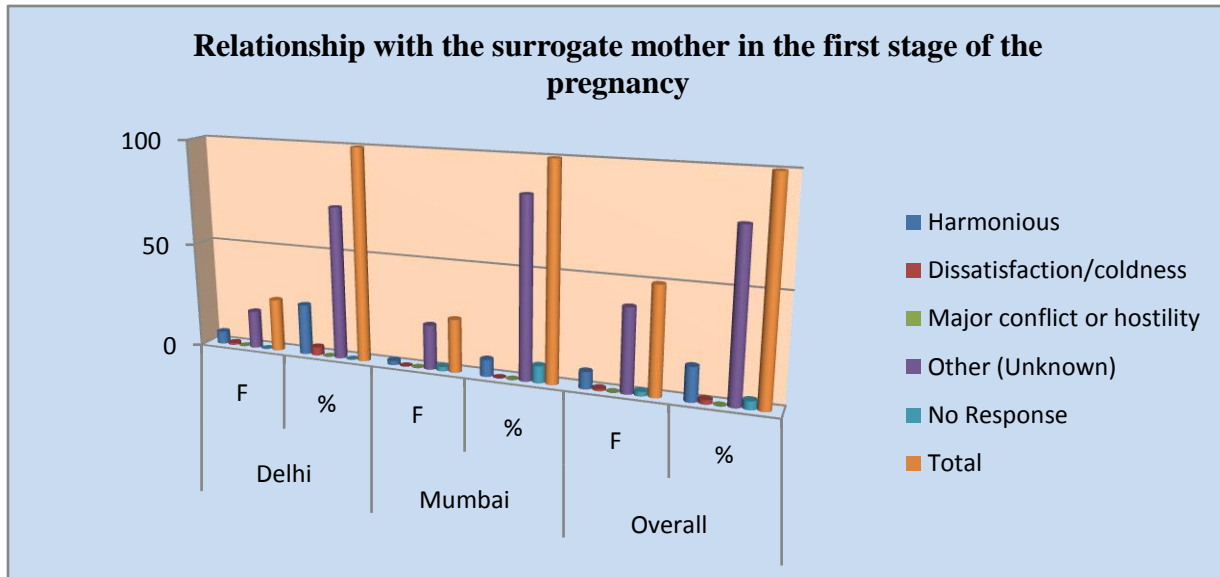


The surrogacy arrangement for one time generally costs between 15-20 lakhs for the commissioning parents. 44% of the respondents said so, while 20% of the respondents said that the cost for them was 20 lakhs or even more than that. It varied from clinic to clinic, agency to agency, but it was mostly between 10-20 lakhs or even more.

4.4 Experiences before and during pregnancy

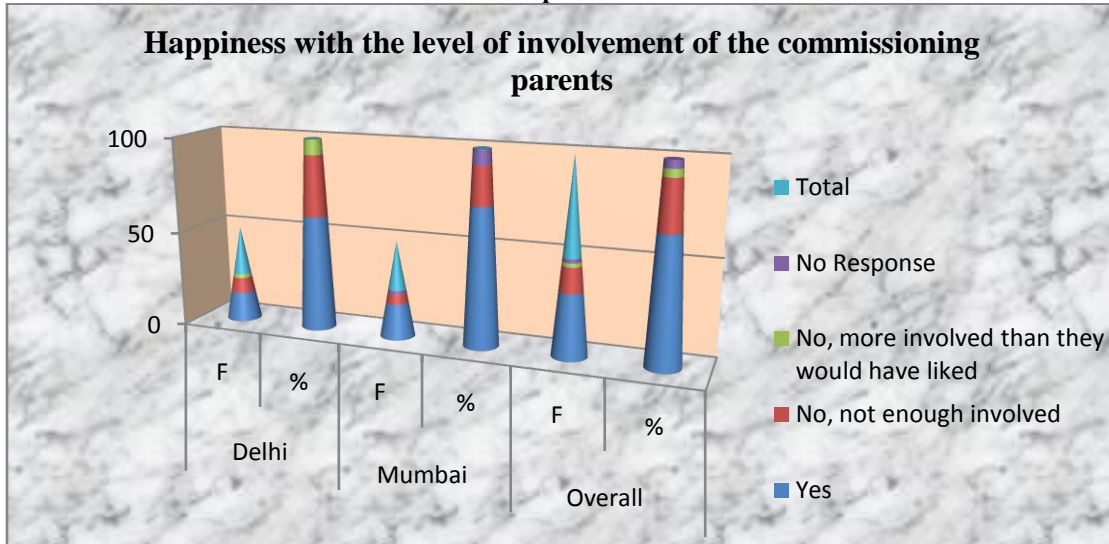
A lot of emphasis needs to be given to the experience of the commissioning parents, which depends on a number of factors including their relationship with the surrogate mother, their place of stay, relationship with their husbands before and during pregnancy, management of their home and children in their 'absence', emotions felt during pregnancy for the baby, etc. So, the present section deals with such critical issues to weigh the pros and cons of surrogacy arrangement.

Graph 4.27



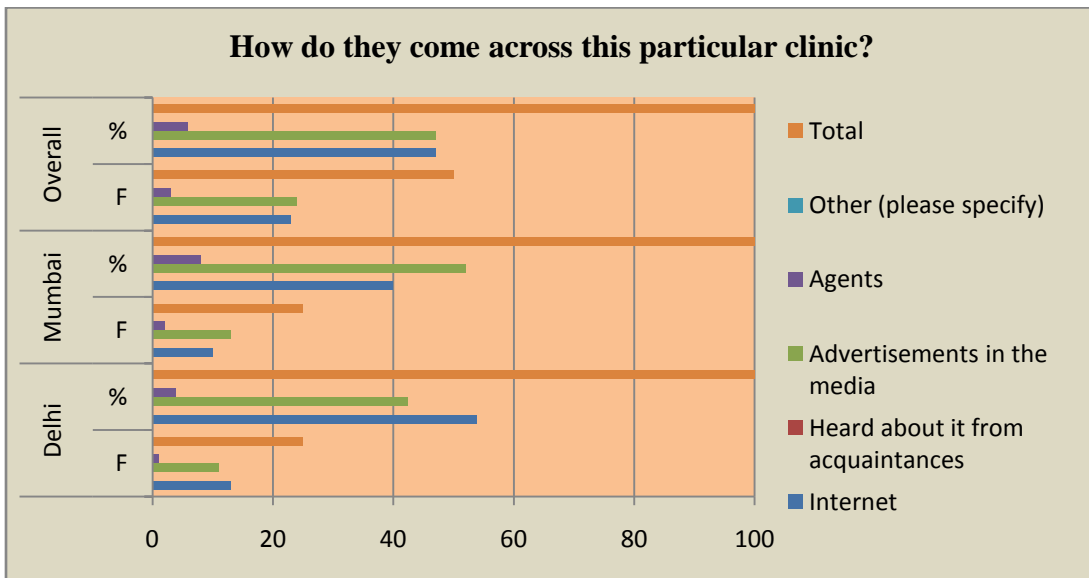
84% of the respondents stated that they were unknown to the surrogate mother before the pregnancy. It should be mentioned here that normally clinics don't allow commissioning parents to choose the surrogate mother, that's the reason why in majority of cases commissioning parents were unknown to the surrogate mother. Even in the first stage of pregnancy, commissioning parents remained unknown to the surrogate mother and didn't know her (72% in Delhi and 84% in Mumbai). In the later stage of pregnancy the relationship between commissioning parents and surrogate mothers remained the same as it was in the first stage of pregnancy. The frequency of meeting was also very low (once in three months). The reason behind this may be that because clinics usually don't allowed the commissioning parent to meet the surrogate mother more than once in three months they don't get much time to interact with them.

Graph 4.28



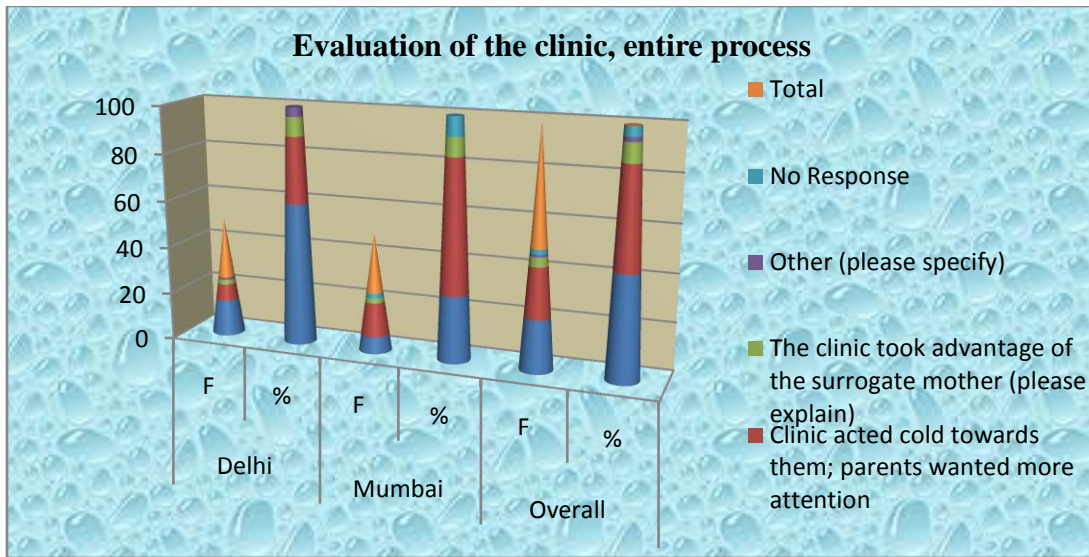
Though there was not much involvement of commissioning parents with the surrogate mother, they were still happy with the level of involvement. 66% of the respondents said that they were happy with the level of involvement (60% of the respondents in Delhi and 72% of the respondents in Mumbai). It may be because most of the intended parents were foreigners who were living abroad; they found it comfortable to have few visits to the surrogate mother.

Graph 4.29



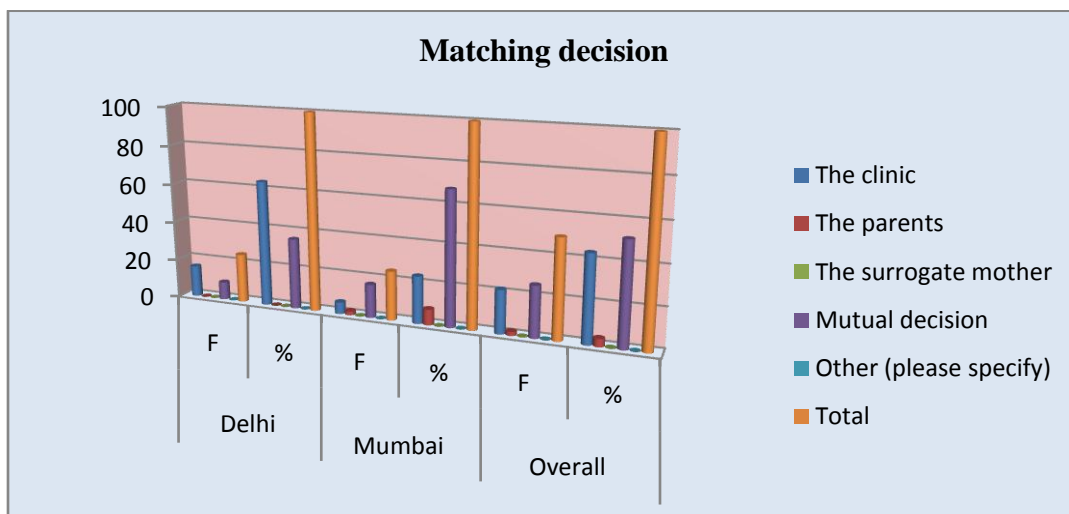
53.85% of the respondents in Delhi and 40% in Mumbai said that they came to this particular clinic through internet. 47.6% of the commissioning parents said that they came to know about this particular clinic through media advertisement.

Graph 4.30



In the beginning of this process 98% of the commissioning parents felt that the clinic was friendly and guided the process well. But only 44% of them felt the same during the entire process and 42% of the respondents felt that the clinic was cold towards them. This shows that the clinics/agencies were only interested in their financial gain and treated both the surrogate mothers and the commissioning parents without any sensitivity.

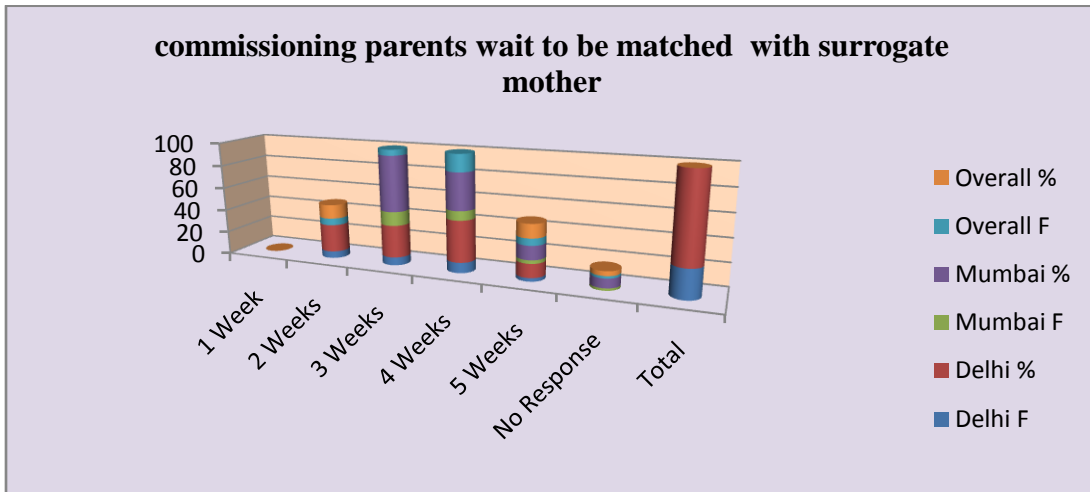
Graph 4.31



It was the clinic (44% of the respondents opted for clinic) who took the decision to match the surrogate mother with the commissioning parent, and 52% of the respondents said that it was

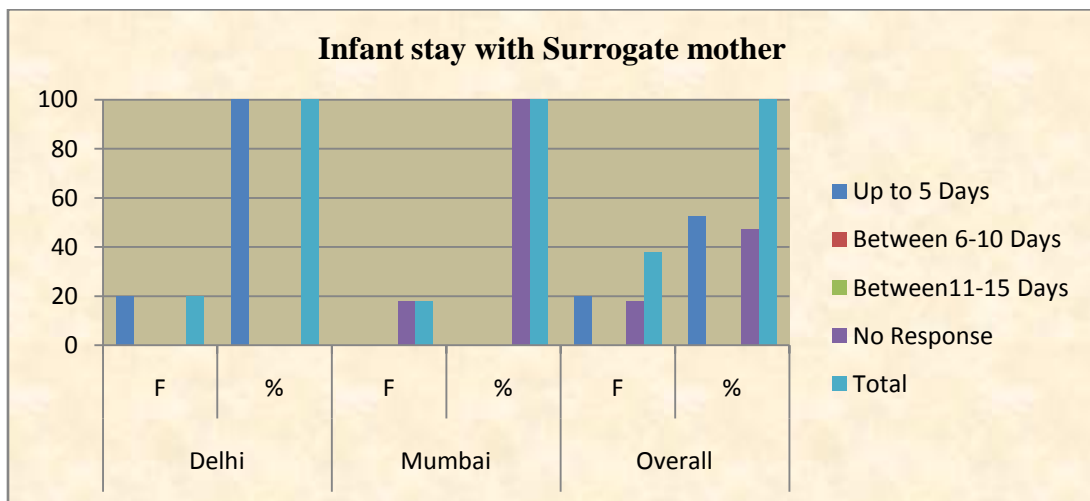
their mutual decision (clinic and commissioning parents) to match with the specific surrogate mother.

Graph 4.32



The interviews revealed that the procedure of matching with the surrogate mother took around 3 weeks (38%). 36% of the respondents in Delhi and 32% in Mumbai mentioned that it took 4 weeks to match with the surrogate mother. It was interesting to note that the decision when to hand the child over was made by the commissioning parents and the clinic authorities mutually (64% of the respondents had said so), while the surrogate mother hardly had any say in it.

Graph 4.33

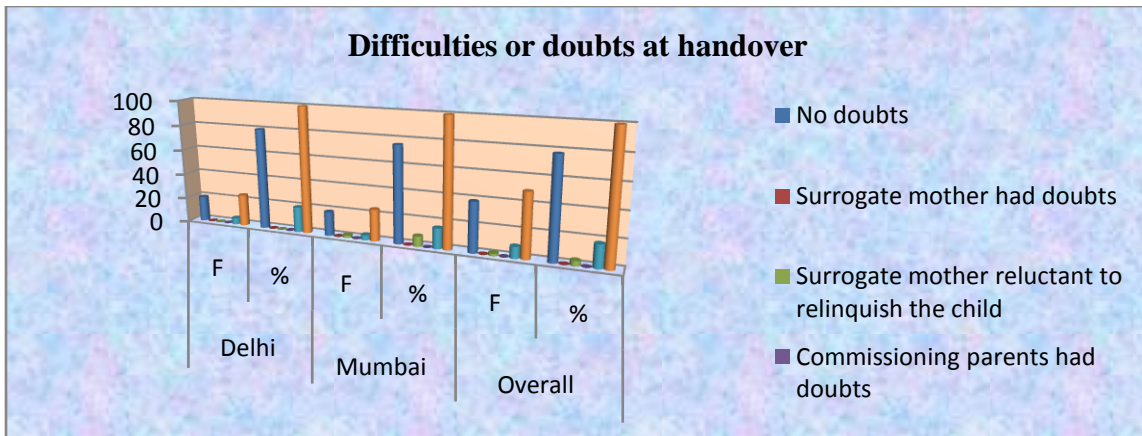


52.63% of the commissioning parents said that their baby had stayed up to 5 days with the surrogate mother; rest of them didn't respondents to this question because they had still not delivered the baby.

4.5 Post delivery- relinquishing the child and consequences of surrogacy for the commissioning parents

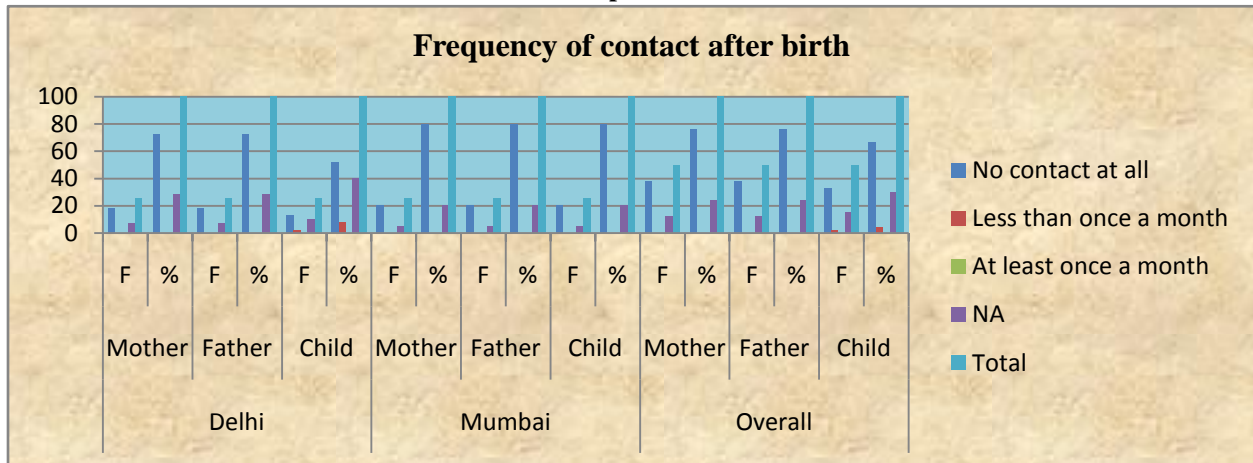
Relinquishing the child is the most difficult part in the whole surrogacy arrangement, as in some cases the surrogate mother becomes emotionally attached to the child but still has to part with him/her.

Graph 4.34



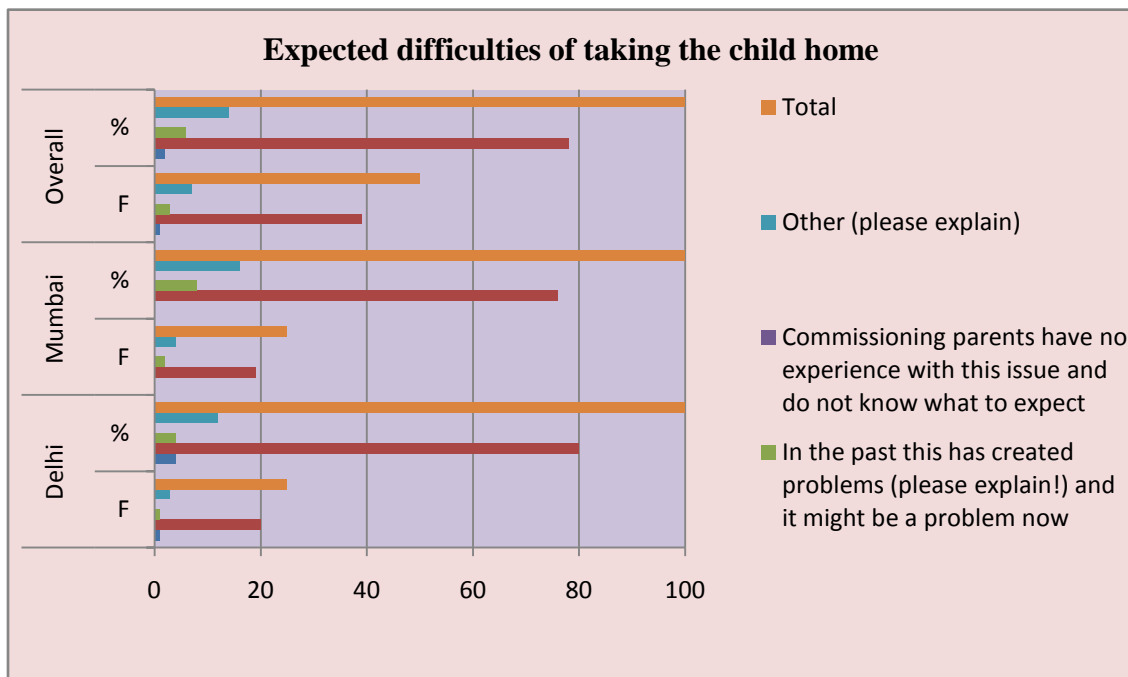
When the respondents were asked about the difficulties or doubts during the handover of the baby, 78% of them said that they didn't have any doubts (80% in Delhi and 76% in Mumbai), while 18% didn't respond to this question, maybe because they were still not in the surrogacy agreement.

Graph 4.35



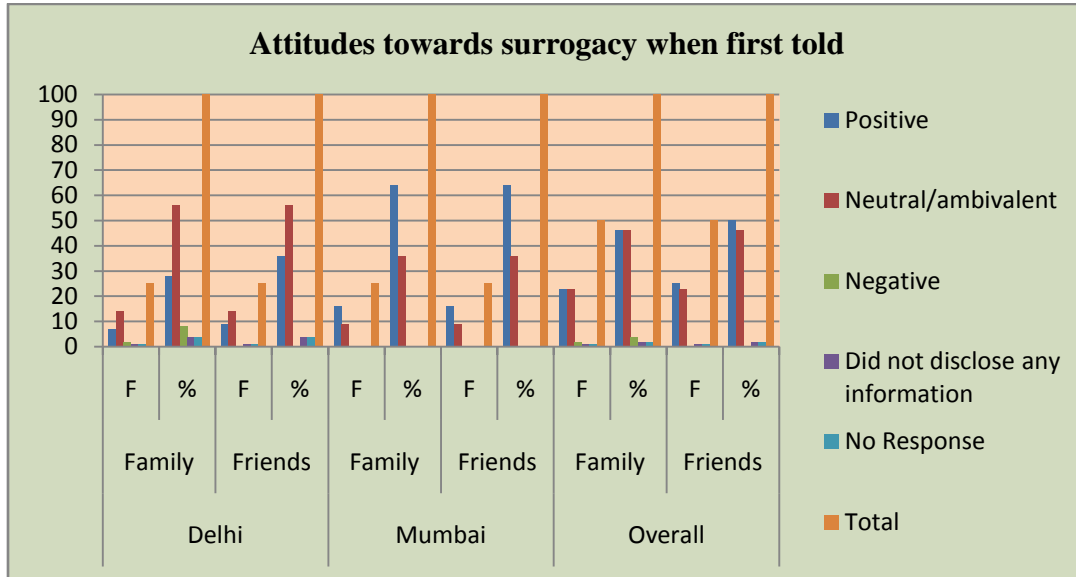
The clinic and commissioning parents both were sure that the surrogate mother shouldn't make any contact with the child after birth. 72% of the commissioning parents in Delhi and 80% of them in Mumbai said that they didn't make any contact with the surrogate mother after the birth of the baby and since the baby was too small to take a decision regarding any contact with the surrogate mother, it totally depended on the parents whether they wanted to have any contact with the surrogate mother or not. The best they could do was to send a picture of the baby on his/her first birthday to the clinic, but it depended on the clinic whether they would show it to the surrogate mother or not.

Graph 4.36



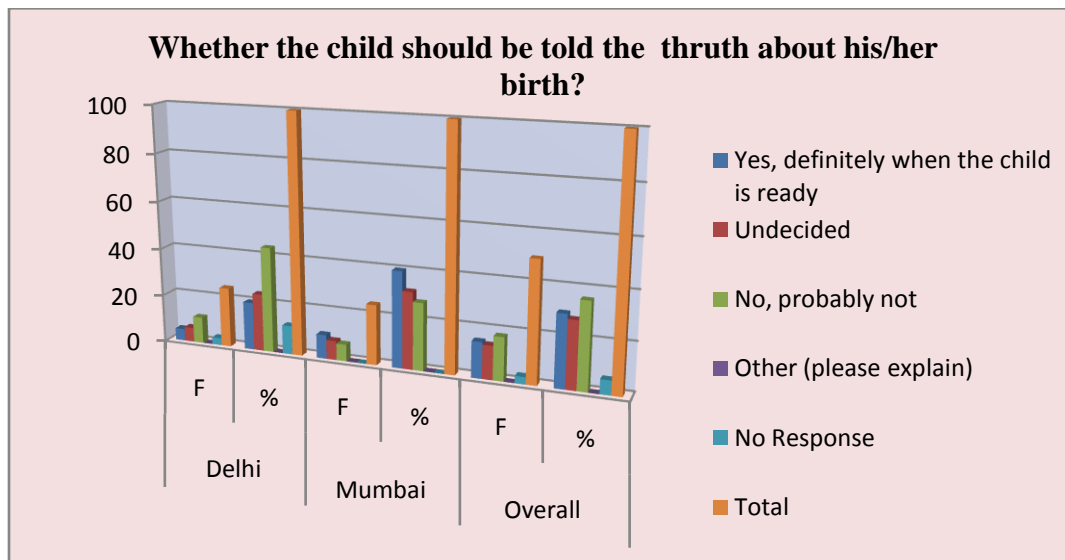
Couples coming to India for surrogacy arrangement, usually sort out the issues of taking the child home early on. 78% of the respondents said so (80% of the respondents in Delhi and 76% of them in Mumbai).

Graph 4.37



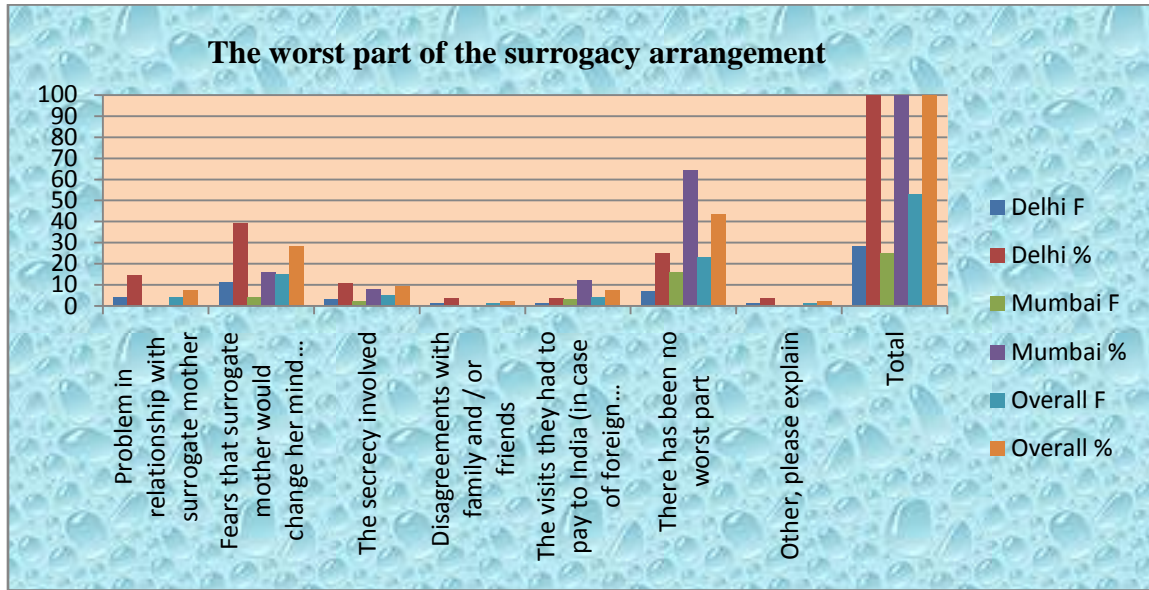
It seems that surrogacy as a concept is quite acceptable in western countries that are why 50% of the respondents said that friends and family replied positively when they first told them about this. 46% of them said that their friends and family were neutral on this issue.

Graph 4.38



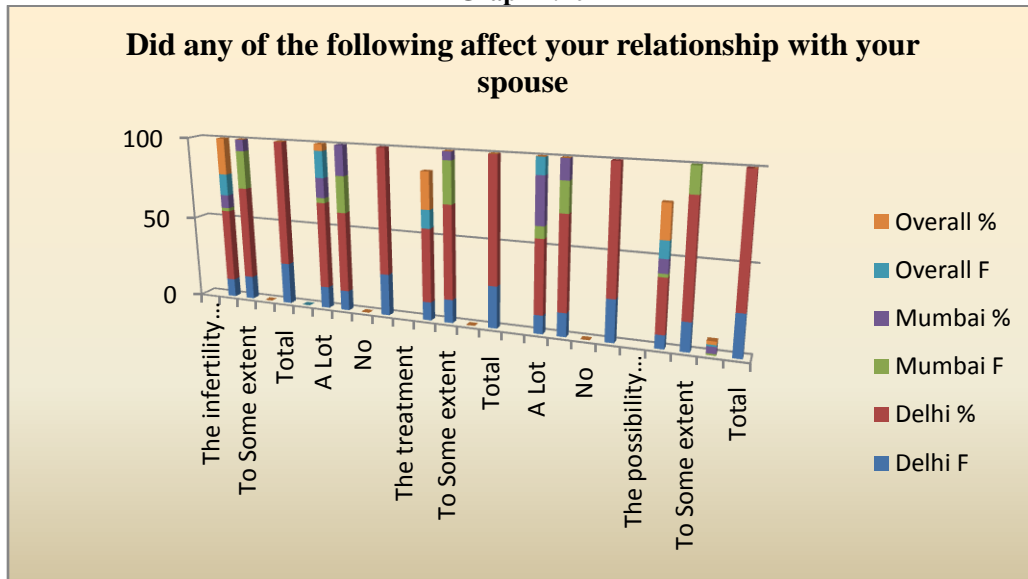
With regards to whether or not the child should be told about his/her origins, 36% of the respondents said that they would probably not tell the child about this, while 30% of them said that they would definitely tell the baby about his/her birth.

Graph 4.39



43.4% of the respondents did not have any problem with the surrogacy arrangement, while 28.3% of them said that the worst part of the surrogacy process was the fear that the surrogate mother might change her mind and refuse to relinquish the baby. Apart from this, there were other disturbing factors such as the level of secrecy, problem in relationship with surrogate mother and the visit they had to pay to India.

Graph 4.40



Actually, the fear of the possibility of remaining childless (78%) and the infertility treatment (74%) were the two main factors that affected the intended parents’ family life a lot. Other factors included the surrogacy arrangement and the news of not being able to have a baby in the natural way, etc.

4.6 Conclusion

- The research conducted in the two metropolitan cities of India (Delhi and Mumbai) found out that the commissioning parents coming to India from different countries of the world, especially from western world, were well educated (62%), fully employed (96%) and were from high class.
- Out of the total number of respondents, 66% were female and were in the age group of 41 or above. Because majority of the couples were from USA or European countries, 84% of them were Christians.
- Only 28% of the respondents had been pregnant before, and had miscarriages. Out of the total respondents, 2% of them had termination of pregnancy for ‘social’ reasons (expectation of a male child) and 14% have to terminate pregnancy because of medical reasons.

- Couples coming to India for surrogacy arrangement had not experienced surrogacy before. When they were asked about their earlier experience with surrogacy, 98% of them said they had no previous experience.
- All of the commissioning couples opted for gestational surrogacy. 96% of them were unknown to the surrogate mother. 46% of the respondents said that their reason for choosing this type of arrangement was dysfunctional reproductive organs. A few of them mentioned other issues as well, like complications in a previous pregnancy (20%) and repeated failed infertility treatment (20%).
- Surrogacy as the option of having one's own biological child is becoming very popular in the western countries. 54% of the respondents who had come to India for this had taken this decision under the influence of other commissioning couples who had already experienced this.
- In recent years India has emerged as a very popular destination for surrogacy arrangement. Reasons behind this are- low cost in comparison with other countries and surrogacy being illegal in certain European countries and in some states of USA. 48% of the respondents said that they had come to India for this arrangement because surrogacy was illegal where they came from.
- Though the surrogacy contract includes commissioning parents, surrogate mother and the clinics, as equal parties. The contract is only between the commissioning parents and the surrogate mothers, the clinics are not the signatories. The reason being that clinics never want any legal action against themselves.
- This contract basically deals with issues related to arrangement about relinquishing the child (27.16%), Compensation (19.13%), Extent of supervision (13%) etc.
- Couples who had come to India for surrogate baby seemed very desperate for the baby, so it hardly mattered for them whether the child was male or female. 82% of them said that sex of the baby didn't matter at all for them and they were happy in any case.

- The clinic and the commissioning parents were the ones who bargained in this arrangement, but the surrogate mother, who had an equal partnership in this agreement, didn't have any bargaining power at all. 94% of the respondents said that it was the clinic who had fixed the amount for surrogate mothers.
- Clinics who were involved in surrogacy arrangement were very cautious about the surrogate mothers and commissioning parents interacting and did not want them to interact much as it may have harmed their own financial benefits. That's the reason why 84% of the commissioning parents said that they were unknown to the surrogate mother and they got very few chances to meet the surrogate mother (once in three months or no contact at all).
- Commissioning parents who were interviewed by the research team for this study seemed happy with the level of involvement because most of them were foreigners and lived abroad. For them coming to India to meet the surrogate mother was not very convenient, so they normally saw the pregnant belly through 'skype/video chat' and felt happy with such improvement.
- The commissioning parents seemed to be satisfied with the clinics' performance in conducting and supervising the entire process of surrogacy.
- All the major decisions related to the surrogacy arrangement were taken by the clinics and the commissioning parents mutually. Surrogate mothers, who were equally involved in this agreement, were not involved in the decision-making. 52% of the respondents replied that matching decision (with the surrogate mother) was taken by the clinics and the commissioning parents mutually. Similarly, decision about handing over the baby was also taken by them mutually (in 64% cases).
- The commission parents feared that the surrogate mother might change her mind and refuse to relinquish the baby.

4.7 Findings about Clinics/Centres/Hospitals/Agencies of Delhi

Unlike in small towns like Anand and Surat, where doctors/clinics are directly involved in surrogacy arrangement starting from contacting the potential surrogate mother to the relinquishment of the child by the surrogate, in Delhi and Mumbai at least 10-20 agencies/organizations are functioning as facilitators for surrogacy arrangements. They are responsible for contacting the surrogate mother, for convincing her into becoming a surrogate mother and for providing her with shelter home, food and clothing during the surrogacy period. In some cases they even go to the extent of arranging educational facilities for their children, provide the family with temporary rented accommodation and job opportunity for the husband. It has been found that the doctors and clinics who indulge in surrogacy arrangement are dependent on these agencies for providing surrogate mothers and taking care of them as a great amount of apprehension exists among the doctors and they fear that the surrogate mother might flee before relinquishing the child.

◆ **Clinic ‘A’**

- The doctor said that she personally feels that surrogacy is a good option for the surrogate mothers, since the women who opt for surrogacy are generally very fertile. They incidentally conceive in absence of any protective measures and undertake abortions. Surrogacy provides them an opportunity to improve their financial status.
- She also mentioned that surrogate mothers do not have problem in relinquishing the surrogate baby since the former already has children and they realize the difficulties of upbringing the children.
- The doctor mentioned that the surrogate mothers were paid in installments and a major chunk of this went to her during the IVF cycle. In case of abnormality in the child, the child was aborted and the installments given to the surrogate mother were discontinued.

◆ **Agency ‘A’**

- The coordinator mentioned that he felt that their agency was doing a humanitarian work where both the parties in surrogacy arrangement i.e. surrogate mother and the intended parents get something in their hand.
- He mentioned that their success rate had increased since the surrogate mothers had started residing in the surrogate homes. Being in surrogate homes ensured that they ate nutritious food and took their medicines on time and that **they did not run away**. The coordinator mentioned that they realized the commissioning parents spent huge amount of money and that they were answerable to the IPs.
- He mentioned that their organisation willingly stimulated contact between the surrogate mother and intended parents. The intended parents met the surrogate mother when they visited India or the contact was stimulated through video conferencing. However, when the surrogate mother was interviewed, it was found out that she wasn't aware that the person she had met was the intended parent of her surrogate child.
- When asked for what all purpose agency provides surrogacy services, the coordinator mentioned that the agency provides surrogacy services for people with medical problems, homosexuals as well as those intended mothers who do not want to bear a child for 9 months (as this is prohibited)
- The coordinator also mentioned that the agency prefers to deal with international intended parents since they are very clear regarding their decisions in the surrogacy arrangement, unlike the national intended parents who take a lot of time deciding about commissioning surrogacy.
- The coordinator also mentioned that Delhi is becoming popular for surrogacy arrangement due to the presence of embassies; it becomes easier for the intended parents to take back the surrogate child.

◆ **Centre ‘A’**

- The doctor said that the onus of increasing popularity of surrogacy arrangement goes to Media.

- The doctor mentioned that their center chooses only those surrogate mothers who are financially not so poor and so that back home they can take care of themselves during the pregnancy.
- The doctor emphasized that their centre does not stimulate contact between surrogate mother and the intended parents. The centre used to encourage this contact but they witnessed that this contact usually puts pressure on both the parties. Where the intended parents put undue pressure on the surrogate mother to take care of her health during pregnancy; the surrogate mother expects the intended parents to visit her frequently or demands gifts from the intended parents.

◆ **Centre 'B'**

- The embryologist mentioned that the surrogate mothers live in their own house during pregnancy. To ensure that they take care of themselves a **care taker** (appointed by the centre) who is from the same community visits them on a regular basis. She also mentioned that a **lot of women from the same community opt to become the surrogate mothers** and thus it becomes easy for the care taker to visit them.
- The website of the centre mentions about opting for **two surrogate mothers**. When this question was asked, the embryologist mentioned that 60% of the clients opt for two surrogate mothers in order to increase the chance of begetting the child. The option seems to be more economical for the intended parents who like to spend 17 lakh once than spending Rs. 13 lakh twice (in case the 1st attempt of surrogacy is unsuccessful)
- The rate mentioned in the website for surrogacy is :
 - (one surrogate) = 13 lakhs
 - (two surrogate) = 17 lakhs

The ART draft bill 2010, however doesn't allow the centers to recruit two surrogate mothers for one intended couple.

- As told by the embryologist, although a normal delivery is possible in case of surrogacy, but in order to avoid taking any chances the centre opts for a caesarean over a normal delivery. This can cause problem in the obstetric history of the surrogate mother.

- The embryologist mentioned that the surrogate child is immediately taken from the surrogate mother in order to avoid any emotional bond formation between the surrogate mother and the baby. Therefore in that case the surrogate mother cannot breastfeed the child. The website of the centre mentions that in order to provide breast milk to the child, either a donor mother or the intended mother are induced for lactation, using mechanical or hormonal induction.

◆ **Hospital ‘A’**

- The doctor mentioned that there had been a case where the surrogate mother aborted the surrogate child. Therefore she now makes sure that only those women are selected as surrogates who agree to stay in the shelter home.
- The doctor mentioned that where on one hand it is important for the surrogate mothers to stay in the shelter home, on the other hand, in their absence, the husbands of surrogate mothers start visiting commercial sex workers. Thus, the doctor emphasized that this surrogacy arrangement is spoiling the society.
- The doctor called this commercial surrogacy as ‘**Maid Business**’
- She said that she strongly feels there should be a law governing surrogacy arrangement. She feels in absence of any specific law, if a discrepancy arises it is the agency dealing with surrogacy who is the first one to quit.
- She also mentioned that there is a need for a central body where all the surrogacy cases should be registered.

◆ **Centre ‘C’**

- The surrogate mother was not aware of the legal documents signed by her. She mentioned that in absence of any permanent employment of her husband she had opted for surrogacy for a better future of her children. The husband of the surrogate mother mentioned that 3 of his sister-in-laws had undertaken surrogacy. He mentioned that 30-35 women from his community had undertaken surrogacy.

◆ **Centre ‘D’**

- The doctors seemed to be hesitant in disclosing information regarding surrogacy.

- When asked about the agencies dealing with surrogacy arrangement, he mentioned that the agencies dealing with surrogacy are unorganized.
- The doctor mentioned that the amount spent by the intended parents for surrogacy is between 4 lakh to 10 lakh.
- The doctor emphasized that the amount paid for surrogacy varies largely depending on the profile of surrogate mothers. Nowadays a lot of intended parents opt for educated and fair skinned surrogate mothers.
- The doctor mentioned that the more organized agencies dealing with surrogacy prefer to keep the surrogate mothers in surrogate homes. He opined that the purpose of keeping the surrogate mothers in shelter homes is not to ensure proper nutrition and medication, but to have control over them.

◆ **Agency ‘B’**

- This surrogacy agency has its branches in different parts of the world, including Georgia, Armenia, Ukraine, Israel, Estonia and India.
- The Director emphasized that their agency is surrogate mother friendly.
- When asked about the social stigma attached to surrogacy, she mentioned that sometimes the mother in laws themselves get their daughter in laws for surrogacy arrangement and that she doesn't think that surrogate mothers have any adjustment problems in their family during or after the surrogacy arrangement.
- She mentioned that the surrogate mothers are not required to live in shelter homes and in order to ensure that surrogate mothers take proper care during their pregnancy; their agency's staff makes **surprise visits** to her house. Regular counseling is given to her during pregnancy.

◆ **Hospital ‘B’**

- She mentioned that commercial surrogacy should be provided to only those international intended parents who get clearance from their country's ministry about the surrogacy arrangement in order to avoid any uncertainty about the process and the nationality of the child.

- She mentioned that surrogate mothers don't undertake the surrogacy arrangement willingly but due to lack of education and employment. She emphasized that the entire social fabric needs to be changed in order to raise the status of women.
- The doctor mentioned that delivery can be normal in the surrogacy arrangement. But when told about the clinics who undertake cesarean, the doctor mentioned that unnecessary caesareans can spoil the obstetric history of the surrogate mother.
- The doctor mentioned that despite of its loopholes, surrogacy arrangement is very beneficial for the surrogate mother who can earn a big amount of money for a single surrogacy.

◆ **Centre 'E'**

- The doctor mentioned that they have a specific agency called Bliss ART to deal with surrogacy arrangement. He mentioned that Ridge IVF centre has dealt with only a single surrogacy case through Bliss ART services. The centre has a separate shelter/surrogate home for the surrogate mothers. It seems fishy that the centre has a separate surrogate home but has dealt with only a single surrogate case and has no surrogacy case at present.
- The doctor also mentioned that younger children of surrogate mothers can stay with her during pregnancy but the surrogate mothers who have teenage children doesn't like to keep them with her.
- The doctor was pro surrogacy arrangement and mentioned that surrogacy arrangement should not be restricted, rather liberalized and monitored in order to prevent exploitation of surrogate mothers.
- When asked about his opinion on intended mothers who undertake surrogacy for career reasons, the doctor mentioned that there is nothing wrong in the same and that such things should be allowed in the surrogacy law in order to make the surrogacy arrangement more transparent and liberal and to avoid its misuse.
- He said that in order to monitor the surrogacy arrangement, a monitoring committee should be formed comprising of Professional doctors, NGOs/CSOs working for women and children.

◆ **Centre 'F'**

- He mentioned that the total cost of surrogacy with them is **Rs. 5.5 lakh** out of which 3.5 lakh is paid to the surrogate mother.
- When asked about the socio-economic background of surrogate mothers, he mentioned that nowadays educated women who are graduates and earn Rs. 8,000-10,000 per month also opt for becoming surrogate mothers.
- When asked about the eligibility of being a surrogate mother, he mentioned that surrogate mothers should have children, which will **prove that she is fertile**
- For twins Rs. 50,000-60,000 extra is paid.
- He told the research team that it is usually the husband of the surrogate mother who drives his wife to become a surrogate.
- While other clinics mentioned that the child is immediately taken away from the surrogate mother, he mentioned that the child stays with the surrogate mother for a month, so that the surrogate mother can breast feed the child.
- When asked if any nutritional, medical or emotional help is provided to the surrogate mother after delivery, the respondent mentioned that it is up to the intended parents who are most of the time happy to support the surrogate mother for some time
- He told the research team that in case of abortion due to abnormality, the surrogate mother is paid 2/3rd of the total amount, which seems very unrealistic.
- He said that the legal contract is signed before embryo transfer i.e. before intervening with the body of the surrogate mother.
- When asked to give general comments about surrogacy, the respondent mentioned that it is a wonderful opportunity for both the parties i.e. the surrogate mother and the intended parents. It's a boon for surrogate mother who can improve her socio economic status, especially single mothers who are separated from their husbands, and for the intended parents who can now have their own biological child.
- When asked about the darker side, he mentioned that the husband of the surrogate mother might keep the money to himself for his personal use and the surrogate mother who has earned the money might not be able to access it. When asked if there is a solution to this problem, he could not answer.

- The respondent's answers seemed quite unrealistic. He said that their organisation is dealing with only the IVF part and not the other components of surrogacy arrangement. However, he seemed to know all the aspects of surrogacy arrangement.

◆ **Agency 'A' s Surrogate Shelter home- surrogate mothers**

- The surrogate mothers do not consider surrogacy as a good option for earning money but they opined that they opt for it to raise the educational status of their children and economical status of their family so that their children do not have to face the hardships they are facing.
- The surrogate mothers are not aware of the clauses in the contract.
- In few cases, the surrogate mother wasn't even aware of the amount that was to be paid to her. Most of it was by her acquaintance, who was the agent: a woman who herself had been a surrogate mother and had now become agent for the agencies.

◆ **Hospital 'C', Surrogate mothers and husband of one of the surrogate mother**

- Located in New Delhi, which provides dental services, is associated with Surrogate agencies. This clinic provides various medical services to surrogate mothers and egg donors.

◆ **Agency 'C'**

- Their agency deals with Medi tourism which also includes IVF and surrogacy services.
- For IVF and surrogacy, the agency refers to other hospitals and reputed doctors
- The respondent said that the hospital and the clinic deal with the surrogate mother, including recruitment of the surrogate mother to the IVF session, and the entire process of surrogacy. However, when the same question was asked from one of the doctors (to whom this clinic refers to), the doctor mentioned that the hospital deals only with the IVF procedure and that selecting surrogate mother and other arrangements during surrogacy are dealt with by the agencies. It seems that none of the stakeholders (surrogacy agency and doctor) wants to take the onus of dealing with the surrogate mother.

- He mentioned that the reasons for people to choose India as a destination for surrogate include: availability of an Indian cultured surrogate mother who doesn't smoke or drink and thus can deliver a healthy baby and no legal ban on surrogacy in India.
- When asked if the surrogate mother stays with her family or in shelter homes, the interviewee mentioned that it is up to the intended parents if they want to spend for a neat and clean accommodation for the surrogate mother. He narrated a case study where an Australian couple spent Rs. Forty eight lakhs for the surrogacy arrangement which also included accommodation and nurse for the surrogate mother. But the surrogate mother stayed **without** her family.
- The interviewee mentioned that intended parents are shown the photos of the women who are willing to be surrogate mothers out of which they select the surrogate mother.

Some of the doctors involved in surrogacy arrangement talked about the negative side of the surrogacy arrangement during the interviews, but in their video recordings uploaded on websites like “you tube” they encourage some of the blooming agencies who are minting money out of the surrogacy arrangement.

On interviewing the surrogate mothers and the agency coordinators, it was found out that the surrogate mothers usually belong to the same community. This is basically is due to a chain reaction where the surrogate mother becomes an agent herself and then brings other women from her community to become surrogate mothers. This arrangement makes it convenient for the surrogacy agencies to keep a vigil on the surrogates by hiring a care taker from that community who can regularly visit the surrogate mothers.

The blooming surrogacy business has opened gates for other businesses i.e. DNA testing agencies which provide DNA matching for the intended parents and surrogate child.

Some of the centers/clinics/doctors admitted that nowadays few intended mothers opt for surrogacy arrangement to avoid a break in their career, but their organisation does not encourage the same. One of the leading agencies in surrogacy arrangement in Delhi openly mentioned that they cater to even those intended mothers who **choose** not to keep their genetic baby in their womb. A leading doctor in this context mentioned that surrogacy arrangement should be liberalized so that the things which are undercover can be accepted and then monitored.

To have strict control on surrogate mother during surrogacy arrangement, some of these surrogacy centers have adopted certain measures:

- CCTV cameras inside and outside the clinics to keep a strict vigil on the activity of surrogate mothers and their family members
- Keeping the surrogate mothers in shelter homes/surrogate homes
- Surprise visits to house of surrogate mothers by the staff members of surrogacy centre or a special caretaker appointed for the specific purpose during surrogacy arrangement.

Many of these surrogacy centers have formed a network with other hospitals and clinics. For instance, one very famous surrogacy centre (surrogacy centre India), provides only embryo transfer / IVF session through their own clinic; medical treatment during pregnancy is provided through a hospital which works as a dental clinic on paper, and delivery in some other hospital nearby. This raises doubts like why a dental clinic is chosen to provide medical treatment to surrogate mothers. It also shows that a lot of processes under surrogacy are operating undercover/ undersurface.

4.8 Findings of Clinics/Centers/Hospitals/Agencies of Mumbai

◆ Fertility Institute

- This Fertility Institute Mumbai was opened in 2010.
- The reason for opening up to surrogacy was that it was seen as the only option of providing a genetically related child to a childless couple. Women who have an absent uterus or have some medical complications such as the uterine tuberculosis (very common in Mumbai) or have failed IVFs opt for surrogacy.
- 70% of the cases are international couples and the rest are Indians.
- Most of the international couples come from US, Singapore, UK and sometimes Africa (very rare though).
- The clinic gets around 5-6 calls for surrogacy from international patients.
- The clinic handles around 3-4 surrogacy cases in a year.
- The success rate in the case of embryo transfer is 45-50%.

- The success rate has increased over the years because of improved technology.
- The clinic deals in gestational surrogacy and egg donation.
- All the surrogate mothers are Indians.
- The clinic keeps all the surrogates in a surrogate hostel in Ahmadabad. The surrogates come from the interiors of Gujarat. The Ahmadabad clinic has a tie up with an agency there which keeps providing surrogates whenever need arises.
- There has been a rise in the popularity of surrogacy over the years. The doctor feels that it has been due to actor Aamir Khan publically sharing about his surrogate child. It has encouraged a lot of couples to consider surrogacy as an option. Couples who have had failed IVFs now immediately opt for surrogacy.
- Social stigma attached with surrogacy is also being removed as more and more people are becoming aware of the process. Even the lower classes have started accepting surrogacy.
- The reason for the rise in surrogacy cases in Mumbai is because of “the international connection”. Mumbai is well connected, hence, more accessible and also offers good facilities for the intending parents.
- The main motives for commissioning a pregnancy are missing uterus and uterine TB.

Description of a typical surrogate:

- Most of them are unemployed, in some cases they may even be employed in some small time work.
- They are at the most 10th class pass.
- Their average monthly income is around Rs.3, 000.
- They have to be married and should have had produced children. There are also cases where the women intending to be surrogates are divorced or separated from their husband or are widows. All such women prefer staying in hostel as they do not want their families to know what work they are doing.
- Surrogates usually come from nuclear families.
- They usually have 1-2 children.

No preference for a particular trait in surrogate mothers is expressed. But in case of egg donation- white, fair, beautiful women are preferred. Some extra payment is also made in such cases.

The main motives for becoming a surrogate are to get money for building a house, to pay off the debts and to pay for their children's education.

Criteria for becoming a surrogate:

- The woman should be less than 30 years of age.
- She should have at least 1-2 children of her own.
- Maximum of 2 surrogate births are allowed.

In most of the cases, the women intending to be surrogates are fully aware of the arrangement and take it up willingly. Most of them are widows or divorced or separated, so they have to take the decision on their own.

In very rare cases, the women are forced by their husbands to be surrogates.

Matching decision:

- The doctors screen the surrogates by conducting medical tests to check her medical fitness.
- The commissioning parents select the profile of the surrogate and the doctors match the blood groups of the surrogate mother and the intending mother.
- Usually it takes around 2-3 months for the commissioning parents to be matched with the surrogate.
- The surrogate and the intending parents meet each other at the time of embryo transfer and at the time of delivery.

Contract:

- A legal contract is signed between the intending parents and the surrogate before the embryo transfer.
- The contract addresses issues such as financial compensation for surrogacy, miscarriages and abnormalities.

- The doctor claims that the surrogate is made fully aware of the contract clauses.
- In case of any legal dispute, the legal advisor or notary intervenes and solves the issue.
- No legal dispute has been reported though.
- The intending parents do get furious in case of multiple failures.

Compensation:

- On an average, the commissioning parents spend around Rs.8-9 lacs.
- Of this, the surrogate gets Rs. 4 lacs (which is fixed for all) and **may** get a little more in case of delivery of twins
- The surrogate gets paid in installments.

Tests performed during pregnancy:

- Routine tests, Sonography tests are conducted during the pregnancy.

Dr. Rana shared that embryo freezing is not very expensive these days. It costs around Rs.20, 000 for six months. In case of miscarriages or failures, these embryos can be used to re-implant.

◆ **Centre**

- The clinic was opened in 1990s.
- Most of the commissioning parents are from the US. The others come from Australia.
- Approximately 35-40 surrogacy cases per year are entertained by the clinic.
- 40-45% is the success rate in case of gestational surrogacy. Whereas in the cases where egg is also donated then the success rate increases to 70-75%.
- Surrogate's nationality is strictly Indian.
- An agency has been hired which supplies surrogates whenever there is a need.
- What we observed was that two previous surrogate mothers are functioning as agents and are in regular touch with the doctors of the centre. Thus, it can be inferred that Become Parents may be the agency providing the surrogates to the centre.

- The doctor feels that there has been a rise in surrogacy cases because people have become more aware about the surrogacy practice in India. People are openly discussing about surrogacy. Surrogacy is no more a taboo among the educated classes.
- The main reason for the intending parents to opt for surrogacy is either the intending mother's uterus is absent or there are some medical complications due to which the intending mother is not able to carry a fetus in her womb.
- According to the doctor, a typical surrogate has the following characteristics:
 - Surrogates are usually unemployed and uneducated
 - They come from a low income category.
 - They are married and have children (usually 2 children)
 - Most of them are living in a nuclear family.
 - They usually live in kaccha houses.
- Generally the main motives for the women to become surrogate mothers are: to get money for building a shelter for themselves, to educate their children and to support their family.
- Criteria for becoming surrogates is :
 - A woman intending to be a surrogate should be married.
 - Should have had own set of children.
 - Should be at least 21 years of age.
 - Only 2-3 surrogate births are permissible.
 - She should be medically and mentally fit to be a surrogate.

** The clinic claims that it follows all the ICMR guidelines religiously.

- Surrogate's husband's consent is taken as it is mandatory under the ICMR guidelines.
- The matching procedure is done by the clinic based on the medical fitness of the surrogate. The lining of the surrogate's uterus should match with the embryo.
- Interaction between the intending parents and the surrogate:
 - Only the international intending parents like to be in touch with the surrogate. They visit the surrogate at the onset of pregnancy and then come again at the time of delivery. They like maintaining regular contact with the surrogate.

- Indian intending parents do not even wish to see the surrogate as they are scared of any harassment that may follow. In some cases, the surrogates have extorted money from the intending parents by blackmailing that she may not give the baby to them.

Contract

- A legal contract is signed between the intending parents and the surrogate.
- The clinic believes that the surrogate is fully aware of the clauses in the contract.
- No dispute regarding the custody of the child has ever come up.
- The doctor said that out of the total amount paid by the intending parents approximately Rs.2.5 lacs are given to the surrogate mother. She gets paid in installments and is given Rs.50, 000 extra in case of delivery of twins.
- Before taking a woman as surrogate, a lot of tests are done to check if she is medically fit. Endometry is done to check if she is fertile or not (formation of lining).
- In case if the fetus is unhealthy or in case of any other medical complication, then the clinic/doctor decides if the pregnancy needs to be terminated. The surrogate gets paid half the amount if abortion is done.
- Tests to check the health of the fetus are done during pregnancy. Tests to determine the sex of the child aren't done.
- The surrogates are not required to stay at any shelter homes. They stay with their families. Only in the last phase of pregnancy or in case of some medical complication, they are admitted in Hiranandani hospital as the doctor feels that better medical care is given to the surrogates under expert supervision.
- Emotional care of the surrogates is also looked after by providing them with regular counseling sessions. At the moment, the doctors themselves counsel the surrogates but the clinic is contemplating on hiring a professional counselor.
- The surrogates are counseled to stay emotionally detached with the baby but at the same time take proper care of the nourishment of the baby.
- Most deliveries are normal, only in medical complications caesarean delivery is done.
- The surrogate is allowed to see the baby for a while before it is handed over to the intending parents.

- Breastfeeding is strictly not allowed as there is a fear that the surrogate may develop a bond with the child (which the doctors quite obviously don't want) and consequently may find it difficult to relinquish the child.
- In all cases, irrespective of the health or sex of the child, the intending parents have to accept the child. They are legally bound to do so.
- Nutritional, medical, as well as emotional support is provided to the surrogate by the clinic. The surrogate is provided with nutritional supplements and medicines, just like in any other pregnancy.
- The clinic has never encountered a situation where the surrogate has had a problem in relinquishing the child. All the surrogates are counseled in a very good manner, as claimed by the clinic.
- Legal assistance is provided to the commissioning parents. The clinic has a tie up with a lawyer who handles all such surrogacy cases and provides legal help wherever needed.

Benefits of surrogacy:

- The doctor feels that the surrogacy arrangement is definitely beneficial to the surrogate mother as she receives a handsome compensation for being a surrogate mother. She can never earn this much anywhere else. Every profession has shades of grey, so does the surrogacy arrangement. There is nothing much to lose.
- For the parents, it is definitely beneficial as they are able to get a biologically related child which they otherwise could not have got despite repeated number of IVFs.
- The doctor added that she is contemplating recommending surrogacy to IUI patients as well.

◆ **Hospital**

- The hospital is the favorite place for delivery of surrogate children. Most doctors and commissioning parents prefer this hospital owing to its high-tech services and “world class hospital” reputation.
- Another doctor of the hospital says that there is no harm in surrogacy as parents get genetically related child. Money is the main motive behind surrogacy.

- According to the later, the hospital is not involved in any surrogacy arrangement except for delivery of the child. The first surrogate child was delivered in 2004 for a Chinese woman.
- The doctor also mentioned that the hospital exclusively deals with high-risk pregnancies, wherein they take care of the surrogate mother by keeping her under 24 hour observation. 2- Day OPD services are available exclusively for surrogate mothers.
- Post-delivery, the surrogate stays in the hospital for 5 days and receives her medicines for one month.
- All medical files of surrogate mother are maintained by agencies dealing with surrogate arrangements.
- Almost 30 surrogate deliveries are done in a month.
- 35years is the age limit for potential surrogate mothers and a gap of two years is required if a second IVF/pregnancy is done.
- Normal delivery is preferred but the doctor decides what has to be done depending upon the case.
- In case of C-sections and twin deliveries, extra payment is made to the surrogate mother.
- The clinic takes about 4 to 6 weeks to match the surrogate mother with intended parents. The egg and uterus lining of the surrogate mother should match for an embryo to be formed and settled. Most intended parents do not want to get in touch with surrogate mothers, they just want to be informed about the pregnancy at regular intervals.
- According to the doctor, the agencies and IVF centers should not consider the social aspect of surrogate mothers; they should provide medical assistance to willing women who are ready to be surrogate mothers.
- IVF centers are willing to exploit both parties, no insurance is given to surrogate mothers.
- She said that a contract is signed between surrogate mother and commissioning parents and a lawyer is hired for explanations. Nothing is done forcefully; all parties willing undertake surrogacy.

◆ **Fertility Center**

- We met three surrogate mothers. The first surrogate mother talked about problems in urination and was carrying twins. No Horlicks or Protenex is given to surrogate mothers, she said. The clinic has hospitals in Mulund and Andheri. Her agent got Rs. 7000 and she received Rs. 7000 for embryo transfer and no other payment has been made to her.
- The second surrogate mother hesitated in telling how much money she would receive for her surrogacy.
- The third surrogate mother said she delivered “twins” two male children, who were now kept at Jupiter hospital in Neo-Natal ICU (NICU). This indicates that new centers are coming up for new -born babies who are born out of surrogate arrangement. She also mentioned that the agent who got her there was an egg donor and belonged to her maternal family. She did not receive any extra payment for delivering twins.

We observed that the shelter home was too congested, with 5 beds in one room and very little space for movement. Even the corridor and toilets were too small. The surrogate mothers are being controlled and exploited by the doctors/clinics. This is evident from the following:

- 1) Congested shelter homes for surrogate mothers.
- 2) CCTV cameras installed inside shelter homes
- 3) They are not allowed to go outside shelter homes. Their families may visit them on Sundays. Husbands are not allowed to stay overnight.

◆ **Reproductive Center**

- Started in 2002 and located in Mumbai.
- The doctor claims that they only deal with IVF technology and not surrogacy arrangement due to absence of proper law. They have dealt with altruistic surrogacy cases but not commercial surrogacy.
- In case of surrogacy, they refer to more specialized doctors or specialized hospitals such as Rotunda, Leelavati and Hiranandani. He also talked of involvement of huge amounts of cash and money in the arrangement.

- According to the doctor, the centre is only an IVF center and charges around Rs. 60,000-70,000 per IVF cycle including medication.
- Talked about growth of many IVF centers in Mumbai due to surrogacy as cash deals are involved in it.
- However, the Center is the only IVF center in Mumbai. It is very near to railway station (local trains) and their high success rate of IVFs makes them popular among migrants and NRI patients coming from Borivalli, Kandivalli and nearby areas.
- They dissuade commercial surrogacy and support opening of MTP centers (Medical Termination of Pregnancy centers) to monitor such arrangements. However, they do say that if proper laws come up, they may think of starting surrogacy centers.
- When asked about their website catering to international patients, they answered that they just provide consultation and tell them about their services, but direct them to other clinics after successful IVF.

◆ **Centre**

- Claims to be an ART Bank and not ART Clinic. Hence no IVFs done at this centre.
- It provides services such as egg donation, sperm freezing, embryo freezing etc. They do proper screening of the surrogate mother in three stages and provide medical, psychological and legal counseling to them.
- The doctor says that surrogacy is a win-win situation for both the surrogate mother and the intended parent. The surrogate mother is “empowered” and her experience is a life changing experience. She receives in both cash and kind (in terms of sponsorship for education of her children). He reacted very sharply to the banning of surrogacy in India.
- The doctor is in good terms with foreign embassies and Hiranandani Hospital.
- He also has a shelter home in Thane.
- According to the doctor, the agent gets Rs.50,000 for getting a potential surrogate mother. He talked about a case where the surrogate mother received Rs.3,80,000, which included basic pay+ bonus and medical care +nourishment.
- A total of 5 embryo transfers are done within a month.
- He talked about another case where the intended parents came from Toronto, Canada and stayed at The Leela, Mumbai (a five star hotel). The egg extraction of Intended mother

and later on DNA testing of the surrogate child was done at Lilavati Hospital, Mumbai. The intended parents met the surrogate mother on good terms.

◆ **Fertility Centre**

The clinic was opened on 10th June 2012.

- The doctor used to work with another centre involved in surrogacy arrangements but has recently opened her own clinic.
- Her clientele is composed of 10% nationals and 90% international patients.
- Success rate is 60% for embryo transfers.
- All surrogate mothers are Indians.
- All the surrogates are taken through an agency in order to be sure about their whereabouts.
- The rate of surrogacy in big cities has increased over the years because the cities are seen as trustworthy spots for such activities. Convenience in terms of access and facilities is an added advantage.
- There has been a rise in surrogacy cases because people have become more open about it and there is also an increase in advertisements.
- India (Mumbai) is becoming popular with the intending parents because the surrogacy arrangement is cheaper here and there are no laws to protect anyone's interests.
- Generally, the motive for commissioning a surrogacy is either a missing uterus or some medical complication due to which the mother cannot carry a pregnancy.
- The doctor had received one case from Italy where the mother was an actress and she did not want to spoil her figure and hence considered surrogacy. But the clinic claims that it discouraged the woman to do so.
- Most of the clients are gay couples.
- Description of a typical surrogate:
 - The surrogates are usually unemployed/ housewives.
 - They are educated up to 4th-5th class.
 - Their monthly family income is around Rs.4, 000- 5,000.
 - They are married, divorced, widowed or separated.

- They live in nuclear families.
- They usually have 1-2 children. If the woman already has 3 children then we do not take that woman as a surrogate.
- They usually live in rented kaccha houses.
- The main motive behind women becoming surrogates is money. They all do it to get money to pay back loans, build a house, or educate their children.
- Criteria for becoming a surrogate:
 - The age limit is 35 years.
 - The woman should have a maximum of 1-2 children.
 - A woman who has been a surrogate once and wants to become once again needs to wait for at least 2 years after giving birth to the first surrogate child.
- The woman intending to be a surrogate and her husband both need to agree to the surrogacy arrangement. It has to be a collective decision.
- The surrogate and the intending parents have to wait for some 4-6 weeks before a matching is done.
- The clinic makes the matching decision.
- The clinic does not stimulate contact between the intending parents or the surrogate. The doctor says that we do not get into the non- medical part of surrogacy because it is very difficult to monitor the behavior of the surrogate. We stick to the medical part only.

Contract

- A contract is signed between the surrogate and the intending parents before the embryo transfer.
- The contract deals with issues like financial compensation for being a surrogate, number of IVF trials, etc.
- The clinic claims that the lawyer explains all the clauses of the contract to the surrogate.
- On an average, the commissioning parents spend around Rs. 11-15 lakhs, out of which the surrogate mother gets around Rs. 3-5 lakhs.
- The money is given to the surrogate in installments on a monthly basis.

- In case of delivery of twins, and C-section deliveries, extra money – approx. Rs.25, 000-50,000 is given.

Medical tests before and during pregnancy

- Almost all the medical tests to ascertain the medical fitness of the surrogate mothers are done. The list of tests includes CBC, HIV- AIDS, and blood tests.
- In case the surrogate mother experiences high blood pressure or is suffering from diabetes then we decide to abort the pregnancy.
- It is not mandatory for the surrogates to live in any hostel. They may if they feel like.
- Agencies have been hired which take care of such surrogates. They provide shelter and food to these surrogates.
- The doctors at Hiranandani hospital decide whether a normal or caesarean delivery has to be done.
- The baby does not stay with the surrogate after the delivery.
- The baby is taken away and given to the commissioning parents.
- The surrogate is not allowed to breast feed the child. In fact, some injections are given to the surrogates so that they don't get milk.
- If the intending parents disown the child, then the child has to be taken by the person referred as the nominee in the contract. So the contract talks about the nomination for intending parents.
- After the birth of the child, the surrogate is provided with nutritional, medical, as well as emotional care.
- The surrogates usually do not have any problem in relinquishing the baby.
- We do not provide any assistance to the intending parents.
- The lawyer and the hospital take care of their needs.
- The surrogacy arrangement is beneficial for both- the surrogate and the intending parents. The surrogate gets the money and the couple a child.
- IVF centers which provide all the services try to extract money.
- Biggest fear is of maternal death. Insurance companies also do not cover surrogates under any insurance package.

Chapter V

Conclusion and Recommendations

The major findings and conclusions drawn from the study are as follows:

5.1 Conclusion

Surrogate Mother:

- The study shows that the surrogate mothers were mostly between the age group of 26-30 years (74% of the respondents in Delhi and 58% in Mumbai), belonged to Hindu religion (56% of the respondents in Delhi and 60% in Mumbai), were married (72% of the respondents in Delhi and 46% in Mumbai) and were educated up to primary level (54% of the respondents in Delhi and 44% in Mumbai).
- Surrogate mothers, who were interviewed for this study, were employed (68% of the respondents in Delhi and 78% in Mumbai), mainly worked as housemaids or domestic help and earned more than 3000 per month (50% of the respondents in Delhi and 68% in Mumbai).
- Respondents mainly came from nuclear families (88% of the respondents in Delhi and 92% in Mumbai), belonged to male headed households (72% of surrogate mothers in Delhi and 78% in Mumbai) and had their own children. This was a prerequisite for infertility physicians/clinics/hospitals engaged in surrogacy as a proof of the fertility of the potential surrogate mother.
- Very few of them (12% of the respondents in Delhi and 10% in Mumbai) had experienced this before. For most of them it was the first experience. All of them were planning to undergo or had already undergone Gestational surrogacy. It was also found out that surrogate mothers (80% in Delhi and 82% in Mumbai) didn't know the commissioning parents prior to the surrogacy arrangement. This may be due to the fact that the doctors/clinics matched the surrogate mothers with the commissioning parents, unless the commissioning parents had already zeroed down on a particular surrogate

mother. Also, the commissioning parents usually came to India to sign the contract when the pregnancy had been confirmed and all abnormalities had been ruled out by the doctors dealing with the case, which was around second trimester.

- Most of them (90% of the respondents in Delhi and 96% of them in Mumbai) were already pregnant and were in different stages of pregnancy.
- Surrogate mothers mainly (96% of them in Delhi and 90% in Mumbai) stayed in rented houses. In Delhi, 44% out of the respondents had sanitary latrines; while in Mumbai 24% of the respondents used this type of latrines. 76% of the respondents in Delhi and 44% in Mumbai had access to supply water. All of them, in both the cities, had electricity facility.
- Reasons to become surrogate mother differed between both the cities. In Delhi, 27.85% of the respondents said that poverty was the reason for them to choose this, while in Mumbai, 46.91% said the same. For 15.82% of the surrogate mothers in Delhi and 23.46% in Mumbai education of their children was the reason to opt for becoming a surrogate mother.
- Source of information for the surrogate mothers was mainly the agents who had approached them for surrogacy (73.77% of surrogate mothers in Delhi and 73.21% of them in Mumbai said so).
- Decision to become a surrogate mother was mainly taken by the surrogate mother herself, but under pressure from her husband and only few of them (36% of surrogate mothers in Mumbai and 14% in Delhi) had faced any resistance from their family and friends.
- The surrogacy contract was signed between the surrogate mother (including her husband), the commissioning parents and the fertility physicians (sometimes). This way, the clinic authorities evade legal hassles. More than 85% of the contracts were found to be signed around the second trimester of the pregnancy as it takes one to two months more for the commissioning parents to arrange their visit to India after being informed about the confirmation of pregnancy of the surrogate mother by the clinic/infertility physician. In some clinics/agencies, the contract is first signed by the surrogate mother and her husband and then sent either by e-mail or post to the Commissioning parents to be signed by them and sent a copy back to the clinic/doctor/agency dealing with the surrogacy arrangement.

- Surrogate mothers didn't have a copy of the written contract of surrogacy arrangement, though they were a party to this contract. They were not even aware of the clauses of the contract.
- The surrogacy arrangement contract rarely addressed issues related to the health and well being of the surrogate mother. The health of the mother was considered only when the health of the fetus was an issue.
- In case the intended parents did not wish to continue with the pregnancy due to fetal abnormalities or sex preference, the baby was aborted, often without consulting the surrogate mother.
- There was no fixed rule related to the amount of compensation for the surrogate mother; it was arbitrarily decided by the clinics. Usually the surrogate mother was paid 1%-2% of the total amount received by the clinics from the commissioning parents for the surrogate baby.
- As far as the nature of contract is concerned, for most of the surrogate mothers it was a bonded paper on which the agreement would take place (70% of respondents in Delhi and 72% of respondents in Mumbai).
- The ICMR guidelines suggest maximum three IVF sessions for a surrogate mother to become pregnant for a particular Commissioning parent. But, under the cover, violations took place as the surrogate mothers who were always at the receiving end were poor, illiterate/semi-literate and in need of immediate fortune and were not in a position to understand the medical procedures their bodies were being subjected to.
- 46% of the respondent surrogate mothers replied that maximum number of IVF sessions in Delhi was two times and in Mumbai 52% of respondents said that they had experienced IVF sessions two times.
- 80% of the respondents in Mumbai said that they didn't undergo any test during pregnancy to determine the sex of the child. But, in contrast, 60% of the respondents in Delhi said that there had been tests to rule out any abnormalities regarding the health of the child during their pregnancies.
- Majority (71%) of the respondents stated that the child, if born with deformity, will remain in the clinic/centre/agency and they will find a solution as to what would be the next step. 74% of the respondents in Delhi and 68% of the respondents in Mumbai had

the same option. However, 6% of the respondents in Delhi and 26% of the respondents in Mumbai said that the Commissioning parents would accept the child even if the child had some deformity.

- The clinic/hospital authorities said that in case the commissioning parents refused to accept the child or the pregnancy was aborted due to some reason, the surrogate mother was often paid half of the amount what she was supposed to get under normal circumstances (56% of the respondents in Delhi and 36% of the respondents in Mumbai). 24% of the respondents in Delhi and 34% of the respondents in Mumbai said that they would not receive any money if the pregnancy goes wrong by any chance.
- There was no clarity about the payments in case the surrogate mothers were pregnant with twins. The normal practice was that when the doctor found out about twin pregnancy of the surrogate mother, s/he consulted the commissioning parents, who in most cases were happy to be parents of twins and wanted to continue with the pregnancy.
- Regarding one of the most crucial factors i.e. payment received by the surrogate mothers under the surrogacy agreement/contract, 46% of the respondents in Delhi and 44% of the respondents in Mumbai stated that they received 3 to 3.99 lakh for being a surrogate mother. 42% of the respondents in Mumbai mentioned that they received payment between 2.1 to 2.99 lakh. In Delhi, 26% of the respondents said that they received 4 lakh or more than that for this arrangement.
- In most of the cases relationship between the surrogate mother and the commissioning parents were described as harmonious, but from a distance. It should be taken into account that language remained a barrier and the doctor was the sole communicator between them. According to the surrogate mothers, the level of involvement of the commissioning parents in the entire pregnancy of the surrogate mother remained limited. It was restricted to the initial stage of getting introduced to the former and making sure that the surrogate mother delivers and relinquishes the baby as it was decided.
- Most of the surrogate mothers (65% in Delhi and 56% in Mumbai) stayed in shelter homes during the pregnancy. According to them, they do not want to disclose their pregnancy to the neighbors and surroundings due to the social stigma associated with it. In addition, the clinics also preferred them to stay at home instead of their respective villages in the interest of the surrogate baby, as these houses were better equipped to take

care of the pregnancy-related issues and to prevent the surrogate mother from being infected with STDs or HIV/AIDS due to physical contact with her husband.

- Though surrogate mothers were not very happy with clinics, they feel hesitant to share their actual experience with the team. The reason may be that they were afraid if they tell the truth the clinics may not give them their full amount.
- Anticipation and fear topped the list of emotions experienced by surrogate mothers before the pregnancy. 47% out of the respondents in Delhi and 41% in Mumbai chose anticipation in response to this question. 43% of the respondents in Delhi and 31% of the respondents in Mumbai said that they felt fear before their pregnancy. Anticipation and fear in surrogate mothers before pregnancy was there because, unlike their own pregnancies which happened naturally, here an artificial procedure was used to impregnate them about which they had absolutely no clue. Also, they knew that they had to stay away from their families for 9 months and were unsure about the payments they would be receiving.
- Majority of the surrogate mothers didn't reply to the question 'whether they have any doubt or difficulty to handover the baby'. The major reason behind this was most of the respondents were in the middle of their pregnancy and this was the most uncomfortable question for which they are not emotionally prepared.
- 20% of the respondents in Delhi stated that the child was to be taken care of by the clinic in case the commissioning parents refused to or were unable to take care of it. But majority of the respondents did not reply to this question from both the locations as they seemed unprepared for such possibility.
- 4% of the respondents in Delhi said that they felt a special bond towards the child and the child was like their own child while only 2.04% of the respondents in Mumbai felt so. Majority of the respondents did not answer this question, may be due to the continuous counseling that the clinic's counselors were providing them saying the child belonged to the commissioning parents.
- Though the surrogate mother wanted the child should know how s/he came into existence, they were not sure whether it was acceptable under the contract as they were not well versed with the clauses of the contract. Also, they were not sure whether the

commissioning parent would approve of it, whether it would be good for the mental and emotional health of the baby.

- Many of the respondents did not want to disclose much information when asked about the attitude of family and friends, especially the husbands. However, those who did respond in Mumbai said that in most of the cases the attitude of the families, friends, especially the husbands largely remained positive after the surrogacy was over. In Delhi, majority (88%) of them remained ambivalent.
- The surrogate mothers (44.44% of the respondents in Delhi & 46.26% in Mumbai) stated that relinquishing the baby was the worst part of surrogacy. However, they added that the long and painful period of labor, where they had to live away from their family members, was the other bad part in the surrogacy arrangement.
- In few cases (5.45% in Delhi and 1.59% in Mumbai), the surrogate mother's children made themselves distant from the mother. This was the case where the children were teenagers. 31% of the respondents in Delhi and 33% of the respondents in Mumbai said that the surrogacy agreement had led to loss of contact with family and friends as they did not disclose about it to their extended family members due to social stigma attached to it. Also, they had to relocate or stay in shelter homes during this phase.
- 30.14% of the respondents in Delhi and 29.41% of the respondents in Mumbai said that they used the money for maintenance of their family. They also used the money for the education of their children (23.29% of the respondents in Delhi and 34% of the respondents in Mumbai). Other things included building a new house, saving for daughter's marriage etc.

Commissioning Parents:

- The research conducted in the two metropolitan cities of India (Delhi and Mumbai) found out that the commissioning parents coming to India from different countries of the world, especially from western world, were well educated (62%), fully employed (96%) and were from high class.

- Out of the total number of respondents, 66% were female and were in the age group of 41 or above. Because majority of the couples were from USA or European countries, 84% of them were Christians.
- Only 28% of the respondents had been pregnant before, and had miscarriages. Out of total respondents, 2% of them had termination of pregnancy for 'social' reason (expectation of a male child) and 14% had to terminate pregnancy for medical reasons.
- Couples coming to India for surrogacy arrangement had not experienced surrogacy before. When they were asked about their earlier experience with surrogacy, 98% of them said they had no previous experience.
- All of the commissioning couples opted for gestational surrogacy. 96% of them were unknown to the surrogate mother. 46% of the respondents said that their reason for choosing this type of arrangement was dysfunctional reproductive organs. A few of them mentioned other issues as well, like complications in a previous pregnancy (20%) and repeated failed infertility treatment (20%).
- Surrogacy as the option of having one's own biological child is becoming very popular in the western countries. 54% of the respondents who had come to India for this had taken this decision under the influence of other commissioning couples who had already experienced this.
- In recent years India has emerged as a very popular destination for surrogacy arrangement. Reasons behind this are- low cost in comparison with other countries and surrogacy being illegal in certain European countries and in some states of USA. 48% of the respondents said that they had come to India for this arrangement because surrogacy was illegal where they came from.
- Though the surrogacy contract includes commissioning parents, surrogate mother and the clinics, as equal parties. The contract is only between the commissioning parents and the surrogate mothers, the clinics are not the signatories. The reason being that clinics never want any legal action against themselves.

- This contact basically deals with issues related to arrangement about relinquishing the child (27.16%), Compensation (19.13%), Extent of supervision (13%) etc.
- Couples who had come to India for surrogate baby seemed very desperate for the baby, so it hardly mattered for them whether the child was male or female. 82% of them said that sex of the baby didn't matter at all for them and they were happy in any case.
- The clinic and the commissioning parents were the ones who bargained in this arrangement, but the surrogate mother, who had an equal partnership in this agreement, didn't have any bargaining power at all. 94% of the respondents said that it was the clinic who had fixed the amount for surrogate mothers.
- Clinics who were involved in surrogacy arrangement were very cautious about the surrogate mothers and commissioning parents interacting and did not want them to interact much as it may have harmed their own financial benefits. That's the reason why 84% of the commissioning parents said that they were unknown to the surrogate mother and they got very few chances to meet the surrogate mother (once in three months or no contact at all).
- Commissioning parents who were interviewed by the research team for this study seemed happy with the level of involvement because most of them were foreigners and lived abroad. For them coming to India to meet the surrogate mother was not very convenient, so they normally saw the pregnant belly through 'skype/video chat' and felt happy with such improvement.
- The commissioning parents seemed to be satisfied with the clinics' performance in conducting and supervising the entire process of surrogacy.
- All the major decisions related to the surrogacy arrangement were taken by the clinics and the commissioning parents mutually. Surrogate mothers, who were equally involved in this agreement, were not involved in the decision-making. 52% of the respondents replied that matching decision (with the surrogate mother) was taken by the clinics and

the commissioning parents mutually. Similarly, decision about handing over the baby was also taken by them mutually (in 64% cases).

- The commissioning parents feared that the surrogate mother might change her mind and refuse to relinquish the baby.

Surrogacy Centres/Clinics/Agencies in Delhi & Mumbai

- The doctors felt that surrogacy is a good option for the surrogate mothers since the women who opt for surrogacy are generally very fertile. They incidentally conceive in absence of any protective measures and undertake abortions. Surrogacy provides them an opportunity to improve their financial status.
- The coordinator of an agency mentioned that he feels that their agency is doing a humanitarian work where both the parties in surrogacy arrangement i.e. surrogate mother and the intended parents, get something in their hand.
- He mentioned that their success rate has increased since the surrogate mothers have started residing in the surrogate homes. Being in surrogate homes ensures that they eat nutritious food and take their medicines on time and that **they do not run away**. The coordinator mentioned that they realize the intended parents spend a lot of money and they are answerable to the IPs.
- The doctor emphasized that their centre does not stimulate contact between surrogate mother and the intended parents. The centre used to encourage this contact but they witnessed that this contact usually puts pressure on both the parties. Where the intended parents put undue pressure on the surrogate mother to take care of her health during pregnancy; the surrogate mother expects the intended parents to visit her frequently or demands gifts from the intended parents.
- The embryologist mentioned that the surrogate mothers live in their own house during pregnancy. To ensure that they take care of themselves a **care taker** (appointed by the centre) who is from the same community visits them on a regular basis. She also

mentioned that a **lot of women from the same community opt to become the surrogate mothers** and thus it becomes easy for the care taker to visit them.

- The website of the centre mentions about opting for **two surrogate mothers**. When this question was asked, the embryologist mentioned that 60% of the clients opt for two surrogate mothers in order to increase their chances of begetting the child. The option seems to be more economical for the intended parents who prefer to spend 17 lakh once than spending Rs. 13 lakh twice(in case the 1st attempt of surrogacy is unsuccessful)
- The rate mentioned in the website for surrogacy is :
 - (one surrogate) = 13 lakhs
 - (two surrogate) = 17 lakhs

However, The ART draft bill 2010 doesn't allow the centers to recruit two surrogate mothers for one intended couple.

- As told by the embryologist, although a normal delivery is possible in case of surrogacy, in order to avoid taking any chances the centers opts for a caesarean over a normal delivery. This can cause problem in the obstetric history of the surrogate mother.
- The embryologist mentioned that the surrogate child is immediately taken from the surrogate mother in order to avoid any emotional bond formation between the surrogate mother and the baby. This way the surrogate mother cannot breastfeed the child. The website of the centre mentions that in order to provide breast milk to the child, either a donor mother or the intended mother are induced for lactation, using mechanical or hormonal induction.
- The doctor mentioned that there had been a case where the surrogate mother aborted the surrogate child. Therefore she now makes sure that only those women are selected as surrogates who agree to stay in shelter homes.
- The doctor mentioned that where on the one hand it is important for the surrogate mothers to stay in shelter home, on the other hand in their absence, the husbands of surrogate mothers start visiting commercial sex workers. Thus, the doctor thinks that surrogacy is spoiling the society.
- The doctor called commercial surrogacy '**Maid Business**'

- The doctor emphasized that the amount of payment for surrogacy varies largely depending on the profile of surrogate mothers. Nowadays a lot of intended parents opt for educated and fair skinned surrogate mothers.
- One of the hospitals in Delhi, which provides dental services, is associated with Surrogate agencies. This clinic provides various medical services to surrogate mothers and egg donors.

5.2 Recommendations

The desire for motherhood leads infertile couples/single persons/gay couples to search for alternative solutions, and surrogacy presents itself as the most viable alternative. In some cases surrogacy is the only available option for parents who wish to have a child that is biologically related to them. Slowly but steadily India is emerging as a popular destination for surrogacy arrangements for many rich foreigners. Cheap medical facilities, advanced reproductive technological know-how, coupled with poor socio-economic conditions, and a lack of regulatory laws in India in this regard combine to make India an attractive option.

However, with the entry of financial arrangements in exchange of the surrogate child, surrogate motherhood has raised difficult ethical, philosophical, and social questions. Surrogacy arrangements have made child a 'saleable commodity', and complications have arisen regarding the rights of the surrogate mother, the child, and the commissioning parents. As there is no legal provision to safeguard the interests of the surrogate mother, the child, or the commissioning parents in India, looking at such an issue from commercial or business point of view has complicated the matter further. Though the Assisted Reproductive Technology (ART) Regulation Bill, 2010 did bring forth certain important points for the legal framework to be based on, it has left out on many crucial issues relating to surrogacy arrangements.

The lack of research on surrogacy also poses a problem for Government agencies when it comes to initiating legal provisions and taking substantive action against those found guilty. A number of surrogacy related questions remains unanswered, including: is it legal to become surrogate mother in India? Will the child born to an Indian surrogate mother be a citizen of this country? Who arranges the birth certificate and passport required by the foreign couple at the time of

immigration? Whose name will appear on the birth certificate? How will the commissioning parents claim parenthood? What happens if the surrogate mother changes her mind and refuses to hand over the baby or blackmails for custody? Who will take the responsibility of the child if the commissioning parents refuse to take the child? What would happen if the child is born disabled? What would happen if the sex of the child is not to the liking of the commissioning parents? Such questions need thorough analysis before any policy related to surrogacy is designed and legal provisions are made. To address these issues relating to surrogacy, Centre for Social Research (CSR) conducted an exploratory study on surrogacy in two metros with high prevalence: Delhi & Mumbai. The sample size for the study consisted of hundred surrogate mothers and fifty commissioning parents. The research team also interviewed stakeholders of the study such as shelter home supervisors, husbands of surrogate mothers, embryologists, cab drivers, hotel employees, agents, slum dwellers, builders, etc.

The recommendations drawn out from the present study on surrogacy are meant for Central government, state government, National Commission for Women (NCW) and Indian Council of Medical Research (ICMR) and are as follows:

Role of Central Government:

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

- ✚ It has to be regulated whether paying the mother a fee for adoption beyond medical expenses is a crime (like in some countries) or not. In case it is recognized as a crime and one pays extra charges then it should prevent the adoption from being approved.
- ✚ There should be substantial regulation designed to protect the interests of the child
- ✚ Legal recognition of termination and transfer of parenting rights
- ✚ There should be an interpreter (other than doctor) for the communication between the surrogate and intended parents in order to convey the message from surrogate mother from time to time. When doctors speak on behalf of surrogate mothers there is no guarantee that their interests will be conveyed without any misinterpretation.
- ✚ Typically, after the birth the surrogate mother is left without any medical support. It is recommended that there should be a provision of intensive care and medical check-up of their reproductive organs during the 3 months after pregnancy.
- ✚ In case surrogate mother gives birth to twins she should be paid double amount or at least 75% of the price for the second child.
- ✚ The commissioning couple should try to establish a relationship of trust with the surrogate, yet such a relationship creates reciprocal rights and duties and might create demands for an undesired relationship after the birth.
- ✚ The citizenship right of the surrogate baby is also of crucial importance. The Indian government needs to take a stand in terms of conferring the surrogate baby Indian citizenship as s/he is born in the womb of an Indian (the surrogate mother) and in India.
- ✚ The rights of the child should be protected and in case s/he is not taken by the commissioning parents, then the child should be given Indian citizenship.
- ✚ Health Insurance for both the surrogate mother and the child is essential to ensure a healthy life.
- ✚ The government needs to monitor the surrogacy clinics, which generally charge arbitrary prices for surrogacy arrangements. Regulations would enable the government to ensure that the clinics charge a fair price.
- ✚ Proper Monitoring Committee should be established under the ART division of the Ministry of Health & Family Welfare (MoHFW) to control and regulate all surrogacy arrangements.

Ministry of Women & Child Development (MWCD)

- ✦ There is a need of right-based legal framework for the surrogate mothers, as the ICMR guidelines are not enough.
- ✦ The surrogate mother should be provided with the copy of the contract as she is a party in the agreement and her interests should be taken into account. It often happens that the decision is taken by the intended parents and clinic, while surrogate mother does not have any say in this matter.
- ✦ There is a need of debate and discussion of the stance that public policy and the law should take toward surrogate mothering. Actually, there exists a range of choices from prohibition and regulation to active encouragement.
- ✦ The government needs to monitor the surrogacy clinics, which generally charge arbitrary prices for surrogacy arrangements. Regulations would enable the government to ensure that the clinics charge fair prices.
- ✦ The contract signed between the commissioning parents and the surrogate mother should mention something about insurance and emergency needs that the surrogate mother may require during the pregnancy; it has to mention something about her future after relinquishing the baby.

Role of State Government:

- ✦ The government should check and control the proliferation of commercialization of surrogacy.
- ✦ The government needs to monitor the surrogacy clinics, shelter homes and agencies for ensuring the rights of surrogate mothers, commissioning parents and the child born through surrogacy arrangements.
- ✦ The state government must look into poverty alleviation schemes/programs particularly in and around the areas/localities where surrogate mothers live.
- ✦ The state government should encourage employment generation schemes/programs in those pockets where surrogate mothers live.

National Commission for Women (NCW)

- ✚ There is a need of right-based legal framework for the surrogate mothers, as the ICMR guidelines are not enough.
- ✚ The surrogate mother should be provided with the copy of the contract as she is a party to the agreement and her interests should be taken into account. It happens that very often decision is taken by the intended parents and clinic, while surrogate mother does not have any say in this matter.
- ✚ There is a need of debate and discussion on the stance that public policy and the law should take toward surrogate mothering. There exists a range of choices, from prohibition and regulation to active encouragement.
- ✚ The government needs to monitor the surrogacy clinics, which generally charge arbitrary prices for surrogacy arrangements. Regulation would enable the government to ensure that the clinics charge a fair price.
- ✚ The contract signed between the commissioning parents and the surrogate mother should mention something about insurance and emergency needs that the surrogate mother may require during the pregnancy; it has to mention something about her future after relinquishing the baby.

Indian Council of Medical Research (ICMR):

- ✚ Commercialisation of surrogacy should be dissuaded. However, there should be proper monitoring of existing surrogacy system through concrete legislation.
- ✚ It is crucially important to maintain and monitor the anonymity of the surrogate mothers.
- ✚ The surrogate mother should not undergo more than 3 trials and it has to be monitored.
- ✚ The surrogate mother should have a copy of the contract signed by all parties involved in the surrogacy arrangements including the clinic/hospital and the infertility physician.

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mother-to-be of a baby growing inside the womb of another woman four states away. She and Norah have formed a close friendship, but they are also business partners, the 'business' being carrying Ashley's baby. There is the traditional role of 'mother' and there is this new, ambiguous role of 'intended mother,' which for Ashley feels more like the father's role, the man who goes about his business for nine months then—Voila!—a baby appears in his arms. Ashley finds herself in the middle of what she calls “an actual transition in human evolution,” where she's in the passenger seat of a car, driven by a friend who also happens to be five months pregnant with her baby. This is motherhood with a twist, and it is complicated. With honesty, humor, and heartbreaking insight Ashley shares her experience of navigating through this new landscape with no guidebook, no map. “My generation and our children are the subjects of this reproductive revolution, how we live through it must be figured out on a trial and error basis,” Ashley writes. And like motherhood, which demands responsibility and love, Ashley is determined to figure it out, thereby shedding light and possibility on an uncharted place. In the end, *Standing in Two Places* is a memoir about love. If not for love, what other reason is there to willingly throw oneself head long into the unknown?

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