

---

## **CROSS-BORDER SURROGACY IN GLOBALISED WORLD- IMPACT ON THE RIGHTS OF WOMEN AND CHILDREN**

---

Shankar Dayal, LL.M., Central University of South Bihar<sup>1</sup>

### **ABSTRACT**

Cross-border surrogacy has become a multibillion-dollar business, which has resulted in much tension between the right of individuals to choose what to do with their own bodies and the necessity to protect human rights. Although it may prove to be a saviour to a couple that is unable to have children naturally, the world-wide market of reproductive services usually exploits legal loopholes between nations and exposes surrogate mothers and the children born of such an arrangement to a particularly high level of vulnerability. This paper will discuss the relationship between globalisation, poor laws and breach of fundamental rights in cross-border surrogacy.

The paper claims that surrogate mothers, in particular, the low-income ones, are deprived of control over their bodies, their medical decisions and their consent. The children born of cross-border surrogacy are also under the threat of being stateless, deprived of rights to identity and being regarded as an object of the contract instead of a person with rights. The campaign of a global ban by the UN Special Rapporteur demonstrates that there are a significant number in the international community who realise the sheer exploitation present in commercial surrogacy.

It is concluded that we should collaborate on a global level to establish robust legal frameworks where the dignity, autonomy and welfare of vulnerable individuals particularly surrogate moms and children are prioritized. Any solution must be a balance involving reproductive rights, protection of human rights and address the global economic disparity which has placed surrogacy as a good but dangerous choice to desperate women and affluent intended parents.

**Keywords:** Cross-border surrogacy, reproductive tourism, women's rights, children's rights, medical exploitation, global regulatory frameworks, human rights violations.

---

<sup>1</sup> LL.M., Central University of South Bihar.

## 1. Introduction: Finding our way into Surrogacy and its types.

Surrogacy simply implies that a woman “the surrogate” has agreed to carry or bear a child to birth to another individual or couple known as “intended parents”. As soon as the baby is born, the surrogate gives the child to the targeted parents.<sup>2</sup>

The division of surrogacy can be made into two, primarily depending on the genetics and payment.

Traditional surrogacy is in which the surrogate is the biological mother since she is using her own egg, normally through artificial insemination. Gestational surrogacy is however a process where an embryo is implanted with the use of eggs and sperms of the intending parents or donors and therefore the surrogate mother bears no biological connection to the child. This difference is important as gestational surrogacy has emerged as the best type, particularly in the case of cross-border transactions.<sup>3</sup>

The second major distinction of the arrangement is the difference between altruistic and commercial. Altruistic Surrogacy implies that the mother is not paid any money other than the medical expenses and other costs associated with it; she is driven by the desire to assist the parents who she already knows. Commercial surrogacy pays the surrogate a lot of money other than reimbursement. That model raises serious questions on the commodity of the body and labor of women especially when there are the economically disadvantaged women of developing countries.<sup>4</sup>

Increased commercial surrogacy has been brought about by the development of reproductive technology and the popularity of non-traditional families. However, massive differences in the surrogacy regulations in different countries provide a field of exploitation. This created the so-called reproductive tourism, with countries with lax legislations and lower medical costs, such as India prior to its 2019 ban, Ukraine, and Georgia, becoming spacious simply to cross-border surrogacy. The scale of the commercial operation is so large that the industry in India alone

---

<sup>2</sup> Jakub Valc. “Towards an international consensus on cross-border surrogacy: The Role of the European Court of Human Rights.” 33(3) *Med Law Rev.* (2025 Jul) 14-33.

<sup>3</sup> *Ibid.*

<sup>4</sup> Stephen Wilkinson, “Exploitation in International Paid Surrogacy Arrangements,” 33 *Journal of Applied Philosophy* (2016) 125-130.

was estimated to be approximately two billion dollars a year prior to the ban.<sup>5</sup>

## 2. The Reason Why People resort to Cross-border surrogacy: Globalisation.

So, such as, the concept of the transgression across boundaries in the pursuit of surrogacy is a reality. It has become a giant in the past two decades, due largely to globalization, increased airlines and enhanced communications technology.

One big reason is the laws. Wherever you cannot get a surrogate or the regulations are too rigid, people resort abroad. In a 2018 study in the UK, it was found that many of them reported that the main factor was the chill legislation overseas. Australian researchers received the same results in 2023 no surrogates at home, no legal framework, and the likelihood to receive payment reasonably on behalf of the mom. Fundamentally, the harsh regulations at home force the families to the other end of the world.<sup>6</sup>

Money is another huge factor. The cost difference between surrogacy in this country and the developing countries is enormous. The entire package in the US may cost 40k to 150k, and the mom is awarded 20k to 30k. In India, the all-inclusive balloon- medical bill, air travel, hotel, etc. cost about 25k, with the lowest cost at 12k. Mother makes \$2k-10k there. That is a game changer to middle-income families that are unable to pay the US expenses but have the money to fly.<sup>7</sup>

It is much easier in a billion ways just because of globalization. The internet and digital applications allow you to research, contact agencies, and also chat with doctors wherever you go. Surrogacy brokers are currently posting comprehensive online advertisements that display all the ways of locating a surrogate, donating eggs, and even legal and immigration assistance. In effect, these agencies encourage the developing nations to act as the cheap destination to surrogacy.<sup>8</sup>

Transport matters too. Direct flights and cheaper fares imply that you can make a few stops to have procedures and check-ups and take your baby. There are even some programs that allow

---

<sup>5</sup> A. A. Shafy, "Commodification, Exploitation, And Human Rights: A Critical Analysis of Cross-Border Surrogacy Practices," 2(1) *IOSR Journal of Multidisciplinary Research (IOSR-JMR)*, (2024) 23-25.

<sup>6</sup> *Supra* note 2.

<sup>7</sup> *Supra* note 4.

<sup>8</sup> Angela Savage, "Baby Gammy Case Highlights Pitfalls of Surrogacy in Thailand," The Wheeler Centre, 2014, available at: <https://www.wheelercentre.com/news-stories/2014/baby-gammy-case-highlights-pitfalls-of-surrogacy-in-thailand>. (last accessed Oct. 20, 2025 at 04:23 PM).

you to do much of it remotely so that you do not necessarily have to be present at any given time.<sup>9</sup>

This has made medical knowledge international and the processes are rather standardized. Most of the leading clinics in these destinations are staffed by expatriates who were trained abroad with technology that is comparable to the western clinics. That, combined with reduced wages and cost of living presents what economists term a comparative advantage in the surrogacy market.<sup>10</sup>

However, it is not that sunshine and rainbows only. Exploitation can also be caused by this globalized industry. The ease of access that leads targeted parents to such services also allows malicious people to exploit helpless women.

### **3. Impact Caused by the Legal Gaps as well as Exploitation using Case Study Analysis.**

The effects of the cross-border surrogacy differ significantly based on how individual nations handle them. In order to understand the areas in which legal loopholes could be exploited, it is reasonable to divide countries into three distinct categories according to the regulatory strategies: countries that totally prohibit surrogacy, countries that permit it but impose strict regulations, countries that freely allow commercial surrogacy.<sup>11</sup>

#### **3.1 Category One: Surrogacy Bans Countries That Are Total.**

Thus, the first type is everything that completely prohibits surrogacy in all its manifestations. There, surrogacy arrangements are not legal and may result in criminal or civil fines. A good example is the United Kingdom. Since the UK does not legalize commercial surrogacy, any surrogacy arrangement that occurs in another country is not legalized by the British authorities, despite being legal in the foreign jurisdiction. This brings significant legal problems to individuals going to other countries in search of surrogacy.

The Re X and Y case provides a good example of the advantages of a clear legal framework

---

<sup>9</sup> Comparison of Surrogacy Conditions in Ukraine and Georgia, *available at*: <https://www.mother-surrogate.com/surrogacy-in-georgia-and-ukraine-where-are-the-conditions-better.html>. (last accessed Oct. 20, 2025 at 05:57 PM).

<sup>10</sup> Abhijeet Kamath, "A Case for Commercial Surrogacy," *RostrumLegal*, 2017, *available at*: <https://www.rostrumlegal.com/a-case-for-commercial-surrogacy/> (last accessed Oct. 20, 2025 at 06:29 PM).

<sup>11</sup> Nishitani, Yuko, "Surrogacy Under the Shadow of Globalization," *56 International Law and Politics* (2024) 311-329.

within Ukraine as well as the difficulties related to cross-border cases of surrogacy. A British couple has twins born off a Ukrainian surrogate. Ukraine acknowledged them as the legal parents but failed to grant citizenship to the twins and allowed them to remain in Ukraine. Nonetheless, due to the fact that the UK prohibits commercial surrogacy, the British officials initially acknowledged the Ukrainian surrogate and her husband to be the legal parents of the twins, which left the children stateless and without parents. The case illustrates that the absence of alignment between countries in their legislation can result in tremendous suffering of the life of children born as a result of a cross-border surrogacy.<sup>12</sup>

### **3.2 Category Two: It is Authorized in Countries but Controlled.**

The second category includes those countries, which permit surrogacy but with extremely severe requirements. Most of these locations have rigid altruistic frameworks. Only in these jurisdictions, surrogacy is permitted when it is altruistic, surrogate mothers may only receive reimbursed the medical cost and some other reasonable expenses, but never the surrogacy. The rules are established to safeguard the intended parents and the surrogates to ensure that the intended parents and surrogates are eligible. These controlled mechanisms attempt to find a compromise between allowing surrogacy to occur and preventing commercialization and exploitation.

### **3.3 Category three: Nations that openly allow commercial Surrogacy.**

The third group consists of the countries which permit commercial surrogacy freely. Here, surrogacy is a legal practice and is done commercially, i.e. with a pay charge, i.e. the target parents can afford to pay the surrogates handsomely.

This was the case with India before much of the recent changes to the law. Surrogacy was very common, particularly in Gujarat, but the legal framework was not well established in several years. Guidelines were issued by the Indian Council of Medical Research which was not legally binding and enforceable and there was neither a central or state body to implement them. Such regulatory loophole allowed the surrogacy business to multiply unchecked and so many

---

<sup>12</sup> Urja Kaushik “International Surrogacy and The Child’s Rights to Identity and Family,” *available at*: <https://www.lawpret.com/international-surrogacy-and-the-childs-rights-to-identity-and-family/> (last accessed Oct. 16, 2025 at 09: 33 PM).

instances of exploitation are reported.<sup>13</sup>

The case *Baby Manji Yamada v. The case of Union of India and Anr (2008)* pointed at the issues that arose because of ineffective legal frameworks. Gestational surrogate In Gujarat, Baby Manjo was born through surrogacy to a couple of Japanese. Prior to the birth of the baby, the targeted parents got divorced and the surrogate did not intend to keep the child as she had no biological or legal bond to the child. The father belonged to the biological father whose visa expired and the father was forced to go back to Japan leaving the baby with his grandmother. A NGO filed habeas corpus petition, raising the issue of legality of surrogacy and alleged that the practice had been enabling an illegal industry. The Supreme Court permitted that Baby Manji could return to Japan with his grandmother but indicated that urgent legislation over surrogacy was required. The case reveals the confusion by the vague laws on citizenship, parental rights, and welfare of the surrogate born children.<sup>14</sup>

Women trafficking was high with the absence of a good surrogacy law in India. A particularly traumatic example is that of a 13 yrs old girl who was trafficked in Delhi, raped, sold to traffickers where she was enslaved and her traffickers forced her to bear six babies, where she breastfed them six months and sold them to adoption. She reported “They treated me like a money-minting machine. My will never mattered to them; all they wanted was me to deliver babies for them”. This case came to light only when she was rescued by rights activists and filed a complaint when she was 31 years old.<sup>15</sup>

Before strict rules were enforced Thailand used to be in this category. Over the years commercial surrogacy was a fairly secretive thing in some IVF clinics but over time it slowly turned into big business whereby more local and foreign broker agencies are involved. The business was largely unregulated and there was a lot of room to exploit and abuse, with the costs of the business being very high, both monetary and emotionally.<sup>16</sup>

Thailand was put in the international limelight in the Baby Gammy case in 2014 to highlight the horrors of unregulated surrogacy in the country. An agreement was made with a 21-year-

---

<sup>13</sup> *Supra note 10.*

<sup>14</sup> (2008) 13 SCC 518.

<sup>15</sup> Sheela Suryanarayanan, “Surrogacy Biomarkets in India: Troubling Stories from before the 2021 Act” The India Forum (2021), available at: <https://www.theindiaforum.in/article/surrogacy-biomarkets-india-troubling-stories-2021-act> (last accessed Oct. 18, 2025 at 07:09 PM).

<sup>16</sup> Alessandro Stasi, “Protection for Children Born Through Assisted Reproductive Technologies Act, The Changing Profile of Surrogacy in Thailand,” 11 *Clinical Medicine Insights: Reproductive Health* (2017) 22-34.

old Thai female, Pattaramon Chanbua, who had her first child at age about 15 and was likely to not have completed high school, to be a paid surrogate to an Australian couple. In the case of Down Syndrome in a baby boy, she did not accept the parents request of abortion. The biological parents kept only the healthy twin sister back to Australia after birth and abandoned the boy.<sup>17</sup>

All these three classifications indicate that the legal limitations of commercial surrogacy are connected with various forms of exploitation and legal issues. Nations that prohibit all forms of surrogacy, in the former category, do not in fact stop it, they simply drive it into the black market, where it leads to the creation of a demand in exploitative arrangements in other countries, such as the Re X and Y case. The second category consists of locations where surrogacy is permitted with some very rigid altruistic restrictions; the attempt is to avoid commercialization and exploitation by offering legal protection, but the effectiveness of such protection is a matter of the rigor of enforcement of the laws. The third group includes those nations which openly access commercial surrogacy practice, including Thailand in the past and India prior to 2019, which had inadequate regulation, which resulted in severe exploitation, trafficking, and tragic outcomes, such as Baby Gammy and Baby Manji. These examples demonstrate that legal approaches determine the market and condition the risks of surrogate moms and kids.

#### **4. Effect to the women and children rights.**

The surrogacy business has severe consequences on the basic rights of the surrogate mother and the children born in the process of such surrogacy creating significant issues regarding human dignity, freedom, and safeguarding against exploitation.

##### **4.1 Impact on Women's Rights**

According to my study, surrogate mothers, particularly those that belong to the economically disadvantaged people in the developing nations are at a risk of having their fundamental rights undermined. Bodily autonomy being a fundamental premise of the women rights is sacrificed in commercial surrogacy setups. I also encountered stories about Indian surrogates who were put in clinical compounds where they were closely observed in everything they ate and did,

---

<sup>17</sup> *Supra* note 8.

and they were not allowed to go anywhere until after birth. This amount of authority over women bodies and movement limits the individual freedom and autonomy to a great extent.<sup>18</sup>

Another sphere in which women are continuously deprived of their autonomy is medical decision-making. Only, in a study there were two surrogates who delivered naturally and vaginally, the rest used Caesarean because of the time schedule requirements by the prospective parents and the clinic. Surrogates said that they were afraid of such procedures, one of them stating that it was a scissor yesterday. My two older children were regular home delivery. It is the first time I have ever been in a hospital. Even not when I fell ill with typhoid. I was much afraid to hear them tell me that I needed a scissor. Placing surrogates at the risk of infection, excessive bleeding and organ damage simply to suit other people is a highly debatable ethical issue of whether or not they have the right to make informed decisions regarding their healthcare.<sup>19</sup>

The question of a valid consent is particularly troublesome in the case of cross border surrogacy where the women are economically disadvantaged. A good number of the Indian surrogates were illiterate and uneducated, and the contracts involved in surrogacy were drafted in English which only a few of them could barely read. This raises severe issues of consent in terms of capacity and information. The consent cannot be fully informed when women are not able to read contracts and learn all the medical procedures, risks and legal aspects of the surrogacy.<sup>20</sup>

More than a matter of information and capacity, there is a more fundamental issue of whether consent made under a condition of extreme poverty can be ever voluntary. There are those who say that poverty as a result of government failures to offer decent welfare or employment is a kind of coercion that cannot legitimize consent.<sup>21</sup>

In 2023, the United Nations Special Rapporteur on Violence against Women and Girls, Reem Alsalem, advocated a global ban on surrogacy on the basis that the practice causes mass violence, abuse, and exploitation of women and children. In her report, the global surrogacy business was discussed as a fast-growing market that will reach 14.49 billion dollars in 2023 and 96.62 billion dollars in 2033. The majority of the profits are received by agencies and brokers and surrogate mothers are exposed to huge physical, emotional, and financial risks.

---

<sup>18</sup> Supra note 4.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

There are increased complication rates of pregnancy, depression and post-traumatic stress disorder among women who undergo surrogacy.<sup>22</sup>

#### 4.2 Impact on Children's Rights

Children born in cross-border surrogacy are under special risks of violation of their fundamental rights, in particular, right to identity, nationality, and family relationships. The worst outcome is when the children end up being stateless when the nationality laws of the two jurisdictions conflict with each other. The absence of regulation relating to cross-border surrogacy tends to render children in legal limbo since the process of establishing legal parenthood is subject to the nationality regulation of the country of birth and country of origin of the target parents.<sup>23</sup>

Childhood statelessness in the case of a surrogate born child is not merely an administrative issue, but a denial of dignity, identity, and chances in life. A child has no nationality and therefore, invisible to the state, lacking the fundamental services and protection, such as the right to education, health, and legal protection. The European Court of Human Rights has appreciated that children have their rights to their own and family life are abused when they are not able to obtain the nationality of their actual parents because legal parenthood is not recognized.<sup>24</sup>

The most basic issue, though, is the answer to whether or not commercial surrogacy is commercializing children. In the report by the UN Special Rapporteur, it was mentioned that the underlying issue with surrogacy is the contractual separation between a woman and the child she carries. These risks subject the child to be an inactive object of a contract between adults or a product. Such instances as the Baby Gammy one where the intended parents rejected children who were born with disabilities contain shocking evidence of how some intended parents perceive surrogate-born children as products that can be required to fit a specific set of

---

<sup>22</sup> Reem Alsalem, "Surrogacy Industry Dehumanizes Women and Children, Should Be Banned Globally, UN Expert Says," *Christian Daily International*, available at: <https://www.christiandaily.com/news/surrogacy-industry-dehumanizes-women-and-children-should-be-banned-globally-un-expert-says> (last accessed Oct. 20, 2025 at 04: 23 PM).

<sup>23</sup> Marianna Iliadou, "International Surrogacy and Stateless Children: Article 7 UNCRC and the Harmful Effects of Statelessness," 5(3) *Amicus Curiae* (2024) 474-492.

<sup>24</sup> Humanium, "Children's Rights and Surrogacy," available at: <https://www.humanium.org/en/childrens-rights-and-surrogacy/> (last accessed Oct. 18, 2025 at 10:30 PM).

requirements instead of human beings and their rights.<sup>25</sup>

All actions in relation to children must be dominated by the best interest of the child, which is one of the most important principles in the international children rights law. In a commercial surrogacy set-up, though, the interests of children are frequently put against the wishes of the intended parents and the financial gains of the agencies. The commercial aspect of surrogacy is that the very existence of the child is a part of a commercial deal that then leaves the basic question whether such an arrangement can ever safeguard the rights and wellbeing of the children in a satisfactory manner.<sup>26</sup>

## 5. Conclusion

The issue of cross-border surrogacy in the globalised world is an elaborate combination of reproductive technology, economic disparity, and human rights. Although I understand that surrogacy can bring hope to individuals who are unable to conceive, the international commercial industry prompts some serious ethical issues concerning exploitation and the sale of human reproduction and the newborn babies.

The facts that I have reviewed indicate that cross-border surrogacy is now a massive business enterprise especially as a result of globalisation. The development of medical technology, improved international transport and communication and the massive economic disparities between countries has generated a more favourable environment of outsourcing reproductive technology services to less developed countries. Loopholes in laws - in the rich world, surrogacy is illegal, and in the poor world, it is legal or poorly regulated, which provides a cross-national loophole.

It has far-reaching implications on the surrogate mothers, particularly those who belong to economically disadvantaged groups. Women are restricted in their autonomy of the body, are the objects of medical treatment mainly in the comfort of others, and can make the consent on the backdrop of poverty that does not contribute to their voluntariness. This is because the financial benefits that surrogates enjoy are just but a minor percentage of the overall expense incurred by the targeted parents and the majority of the earnings end up in the hands of clinics

---

<sup>25</sup> *Supra* note 22.

<sup>26</sup> *Supra* note 2.

and agencies. Through their involvement, many women have permanent, long-term physical, emotional, and financial damages.

The children born under cross-border surrogacy risk the violation of their basic rights including statelessness when the laws of both countries contradict and the children do not have identified parents or nationality. The anonymity in business dealings can undermine their right to learn their origins and there are reports of abandonment or even rejection of children which indicate that there are some children who are being used as commodities and not as human beings with dignity and rights.

The way to go involves collaboration at the international level to address these issues. They include complete banning of commercial surrogacy suggested by the UN Special Rapporteur and reflected in the Casablanca Declaration, on one end; and on the other end, better regulation of the system that will, however, allow some form of surrogacy. The thing is that the absence of the global agreement opens the way to exploitation and leaves vulnerable parties without enough protection which is unacceptable.

Regulatory strategies should be more concerned about the rights and welfare of the most vulnerable, which is the surrogate mothers and children. This will imply that the surrogates shall be capable of making informed and voluntary consent, and being compensated fairly, retaining bodily control at all times, and being accessible to quality health care and legal safeguards. In the case of children, the international mechanisms should guarantee their right to nationality, legal identity as well as knowledge of their origin, without subjecting them to commodity treatment.

The cross-border surrogacy market will continue to play off legal loopholes, and the disparity in wealth, until extensive international frameworks are in place, to continue with a system where the financial aspects of the world economy are dominant in the very existence of the child, where individuals who are wealthy can chain with people who are poor and buy their children. To overcome this dilemma, it is important to not only change the law but also challenge the global inequalities that drive commercial surrogacy as a viable choice to the economically desperate women and an easy way to solve the situation to the rich intending parents.