

World Health Organisation

Global regulations on surrogacy



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Introduction

Surrogacy is depicted as a controversial topic as it crosses different domains such as ethics, family law, and reproductive rights. It also creates ethical issues regarding the surrogate's well-being, the financial gain of the reproductive services, and the child's rights. Due to the wide range of cultural, legal, and social contexts across the world, different countries have distinct approaches regarding surrogacy. Some countries have adopted a more lenient framework that facilitates surrogacy, other countries have a more restrictive approach that either prohibits or has very extensive and strict regulations regarding surrogacy.

The regulations surrounding surrogacy vary significantly between countries, and even within distinct regions. They also vary depending on the context if it's a traditional surrogacy, gestational, or commercial. The global regulations regarding surrogacy include legal approaches, protecting the rights and well-being of the individuals involved, the prevention of exploitation and human rights violations, addressing cross-border surrogacy arrangements, and ensuring accountability and oversight regarding the topic (Bromfield and Rotabi).

Surrogacy is completely prohibited in certain countries, for example, France, Germany, and Italy, whom view it as inconsistent with their moral and legal systems. Whereas several countries provide surrogacy but implemented strict rules to prevent potential exploitation. For instance, previously popular countries for international surrogacy, India and Thailand, have passed more demanding rules restricting surrogacy to only nonprofit agreements and setting eligibility boundaries, including age restrictions, marital status requirements, and citizenship requirements ("Surrogacy Legal Countries").



Definition of Key Terms

Surrogate

A person that is selected to act in place of someone else (“Definition of SURROGATE”)

Surrogacy

The act of being a surrogate or surrogate mother (“Definition of Surrogacy | Dictionary.com”)

Traditional Surrogacy

Traditional Surrogacy is when the woman is both the egg donor and the biological mother of the baby that she carries (*Gestational vs. Traditional Surrogacy | Southern Surrogacy*)

Gestational Surrogacy

Gestational surrogacy is when the embryo from two other people is transferred into the uterus of the surrogate, therefore the surrogate has no biological connection to the baby (*Oklahoma*)

Commercial Surrogacy

Commercial Surrogacy entails that the surrogate will receive some financial compensation for her services and reimbursement of medical expenses and other pregnancy related costs (*What Is Commercial Surrogacy? | Surrogate.com*)

General Overview

Types of surrogacy

People or couples who are unable to conceive or carry a pregnancy to term on their own frequently turn to surrogacy. There are two different types of surrogacies: Traditional Surrogacy and Gestational Surrogacy. Traditional Surrogacy refers to when the surrogate's own egg is fertilized with sperm, either from the designated father or a donor, using artificial insemination. On the other hand, Gestational Surrogacy refers to when the surrogate carries the child that is conceived through in vitro fertilization. The embryo is created by using the predetermined parents, or donors' eggs and sperm, and afterward, it's transferred into the surrogate's uterus (“Learn about the Different Kinds of



Surrogacy"). But when the surrogate receives some sort of compensation due to her services of being a surrogate and some sort of medical compensation for the medical expenses.

Ethic surrounding surrogacy

Surrogacy makes certain ethical issues arise regarding exploitation, if the female body is being sold, the autonomy of the female body, and the well-being of the surrogate mother, child, and intended parents. It is crucial that the surrogate is aware and informed of the psychological, emotional, and physical risks involved in carrying someone else's child.

Exploitation

It can be argued that commodifying the surrogate's bodies and their reproductive rights and capabilities may lead to exploitation, mainly when surrogates come from LEDC backgrounds (Walker and Van Van Zyl). Their cases when exploitation could occur when the surrogates are coerced into entering contracts or when the compensation, they receive is inadequate for their services as surrogates. In 2013 there was a study conducted by a non-profit center, and they found that 88% of the surrogate mothers that they had interviewed in Delhi, and 76% in Mumbai were unaware of the terms related to their contracts as surrogates. And as a matter of fact, 92% of the surrogate women in Delhi did not have a copy of their own contract (Service).

The female body being sold

Certain writers view surrogacy as being a form of prostitution, through which the women sell their uterus as a utility as they surrender the use of their own bodies (Lieber). As surrogacy may be depicted as the female body being sold due to the transaction being involved, the surrogate agrees to carry and give birth to a child for the intended parents in exchange for financial compensation. But due to that, viewed There are cases in which women from third world countries are used as an aid for infertile women who decide to postpone becoming pregnant to focus on their careers. Countries such as India, in which has demonstrated that women from specifically poor backgrounds have been exploited and obligated into being surrogate mothers (Thirani). Nepal was a very common choice and destination for surrogacy up to when commercial surrogacy got banned in 2015, as there



were reports of women who acted as surrogate mothers who suffered from exploitation or unethical practices (U.S. Embassy Kathmandu). Cambodia went through a rise of commercial surrogacies up until 2016 when it got banned as there were concerns being raised regarding exploitation and concerns of human trafficking (Ferrie).

Major Parties Involved

United States Of America

With the introduction of the "Surrogate Parenting Act" in 1980, Michigan became the first state to legally allow surrogacy. Since then, surrogacy laws have changed, and state laws differ from one another. States with less restrictive surrogacy laws include Illinois, California, and Nevada (Hevia) . States, however, have stricter laws or even outright bans on surrogacy, due to worries about potential moral, governmental, and societal repercussions. New York, New York's surrogacy laws, which banned paid surrogacy contracts, was among the most restrictive in the nation. The "Child-Parent Security Act" (CPSA), which legalized paid surrogacy and established a regulatory framework for surrogacy agreements, was approved by the state in 2020 (Dodge). Washington, D.C., the state used to have restrictions on surrogacy. But in 2017 the "Collaborative Reproduction Amendment Act", which permits paid surrogacy (commercial surrogacy) under certain conditions was passed by the District of Columbia in 2017 ("Gestational Surrogacy Law in Washington, D.C.") .And Michigan, while they were indeed the first state to legalize surrogacy in 1980, its regulations are recognized for being more restrictive compared to other states. While the " Surrogacy Parenting Act", does indeed allow surrogacy, it introduces a number of conditions and limitations on the procedure (Drake) .

Spain

No form of surrogacy is legal in Spain. The "non-commodification" of the human body is a concept that Spain stands by, thus surrogacy and other reproductive services are seen as exploiting and commercializing the female body. Spain's equality minister, Irene Montero (a Podemos MP), has stated that in Spain it is legally recognized as a form of violence against women (Kassam). Spain's recent sexual and reproductive law, the "ley de abortos" recognizes surrogacy as a form of violence against women.

France



France is another country where surrogacy is illegal. Surrogacy as a practice has been against the law since 1994. The prohibition of surrogacy is justified by two different public policies. One of them being, the principle of the human body, that no part of it can be treated like property. The second one is the nonavailability of status principle, which states that the prospective parents and the surrogate mother cannot decide the unborn child's status in a single instance (Madanamoothoo).

Ukraine

Ukraine finds the act of surrogacy for several reasons. One of them is that it allows people and couples facing struggles with infertility to accomplish their dream of having a child. Additionally, the economic benefits of surrogacy are from the money that foreign intended parents pay for surrogacy services. Ukraine is an increasingly popular choice for international surrogacy, with an estimation of 1,000 surrogacy births per year. This is because of its clear legal guidelines, renowned clinics, affordable costs, and high success rate (over 70%). For intended parents and surrogates, the country provides established regulations and protections (<https://www.facebook.com/neelam.chhagani>). Thus, surrogacy is generally viewed in Ukraine to promote family formation, the economy, and medical excellence in the nation.

The United Kingdom

Even if the intending parents have a documented agreement with their surrogate and have covered their costs, surrogacy agreements are not enforceable under UK law. In the UK, the intended parents are not allowed to pay a surrogate other than to cover their reasonable costs ("Surrogacy: Legal Rights of Parents and Surrogates". The surrogate could choose to keep the child at any time before a parental order is granted ("FAQs on Surrogacy Law in the UK").

India

Surrogacy is legal in India for married couples who are citizens of the country. However, the Assisted Reproductive Technology Act (ART) makes married couples, live-in partners, single women, and foreigners eligible (Mahawar). Due to its compared low costs and accessibility of surrogate mothers, India used to have a reputation for being a popular choice for commercial surrogacy. There were concerns about weak regulations and poor surrogate protections. India introduced tighter laws in 2015 that restricted surrogacy to married heterosexual Indian couples only and prohibited commercial surrogacy for foreigners (Rozée et al.).



Timeline of Key Events

Date	Description of event
1976	Lawyer, Noel Keane created the very first legal surrogacy arrangement
July 25th 1978	The first baby named Louise Brown, conceived through in vitro fertilization (IVF) is born. Taking place in the United States Of America
1985	The first ever successful gestational surrogacy occurred, in which the gestational carrier carried a child with no genetic relation to her
1986	The Baby M case in the US draws attention to the ethical and legal risks of surrogacy on a global scale and leads to calls for regulation.
1990	a significant legal turning point for gestational surrogacy. A gestational carrier who had agreed to serve as a surrogate for the intended parents made the choice that she wanted to keep the child. Johnson v. Calvert ruling demonstrated that a gestational surrogacy arrangement was a binding contract that would be upheld by the courts, establishing the Intended Parents as the biological parents.
2002	India is becoming an increasingly popular choice for commercial surrogacy because there are affordable services and weak restrictions.
2004.	The Surrogacy Arrangements Act, which creates legal guidelines and surrogacy protections, is introduced in the United Kingdom.
2008	The Indian government establishes surrogacy regulations, recognizing the practice as legitimate and creating rules to protect the interests of every individual involved.
2015	Due to ethical and legal issues, the government decided to ban commercial surrogacy when Nepal became a well-liked surrogacy location.
2015	India imposed more rigid laws that restrict commercial surrogacy to married heterosexual Indian couples and outlaw it entirely for foreign citizens.
2018.	According to the European Court of Human Rights, France's surrogacy restriction does not violate human rights.



UN involvement, Relevant Resolutions, Treaties, and Events

The World Health Organisation (WHO) has provided recommendations and guidance regarding to surrogacy practices (Patel et al.). Such as ethical considerations, the WHO emphasized respecting moral standards regarding surrogates is crucial. This entails safeguarding informed consent, avoiding exploitation, and upholding the autonomy and rights of each person involved (Marway). The WHO also stated the importance of medical and psychological screening. That can help identify any potential risks for participation in surrogacy. The WHO emphasizes the requirement for transparent and legitimate legal frameworks that safeguard the rights and interests of all individuals involved in surrogacy. Matters that include parenthood, custody, and financial agreements are included in this.

- Report on the Sale and sexual exploitation of children, including child prostitution, child pornography, and other child sexual abuse material, 15 January 2018 (A/HRC/37/60)

Previous Attempts to solve the Issue

In 2010 at the Hague Conference on Private international law, they did indeed address the topic of surrogacy and aimed to establish a legal framework for international surrogacy. The conference identified the need to address the rights and protection of the children born through surrogacy, including the rights and physical and emotional well-being of the surrogate mothers and the intended parents. The goal of the conference was to develop guidelines or even an international treaty that would assist in providing consistency and more transparency for surrogacy practices across countries. But due to complexities and a variety of different opinions and stances surrounding surrogacy, which included cultural, legal, and ethical differences. It resulted in to be extremely challenging to establish guidelines or an international treaty (“HCCH | Parentage / Surrogacy - 2010 and Prior”).

Possible Solutions



The creation of a subcommittee under the World Health Organization (WHO) to handle international surrogacy legislation and make sure moral behavior is in line with human rights This subcommittee would function as an interface for global cooperation, information exchange, and the formulation of regulations to support ethical and just surrogacy operations everywhere.

The subcommittee would serve as a focal point for nations to interact, exchange knowledge, and create an extensive regulatory framework. The subcommittee would promote a vigorous debate among stakeholders, including policymakers, legal specialists, healthcare workers, surrogates, intended parents, and human rights organisations, through conferences.

The subcommittee would actively work with current projects and organisations engaged in the surrogacy space, such as non-governmental organisations (NGOs).

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