



IN AND CROSS-BORDER GESTATIONAL SURROGACY: A BIOETHICAL APPRAISAL AND COMPARATIVE LEGAL PERSPECTIVE OF INDIA AND ABROAD

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ABSTRACT

The present dissertation aims to analyse the interplay between reproductive technologies, reproductive rights, and reproductive justice,¹ particularly in the context of international gestational surrogacy arrangements.² This inquiry is grounded in the recognition that surrogacy exists at the crossroads of multiple evolving factors, including the shifting dynamics of familial relationships shaped by societal changes, the rapid advancements in reproductive technologies, and the emergence of a global market for biological reproductive materials. Together, these elements create a complex and diversified landscape that resists simplistic categorisation and demands a nuanced exploration. Through the lens of embodied feminism³ this dissertation seeks to uncover how reproductive technologies and practices not only transform traditional notions of parenthood and bodily autonomy but also challenge established ethical, social, and legal frameworks. This perspective enables an analysis that prioritises the corporeality and relationality of the individuals involved, highlighting the interconnectedness of reproduction as a deeply personal yet globally significant phenomenon. By situating surrogacy within this multifaceted context, the dissertation aims to contribute to the ongoing dialogue on the ethical and bioethical implications of surrogacy,⁴ offering a foundation for developing frameworks that remain responsive to the ever-changing realities of ART, human rights, and societal evolution.

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¹ Rosalind Petchesky, 'Reproductive Freedom: Beyond "A Woman's Right to Choose"' (1990) 5 Signs 661.

² Susan Golombok and others, 'Families Created through Surrogacy: Mother-Child Relationships and Children's Psychological Adjustment' (2011) 26 Developmental Psychology 143.

³ Margaret Olivia Little, 'Gestation and the Moral Status of Women' (1999) 20 Philosophy & Public Affairs 1.

⁴ Margaret Jane Radin, *Contested Commodities* (Harvard University Press 1996).

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INTRODUCTION

The advent of artificial reproductive technologies (ART) has profoundly altered perceptions and understandings of various facets of human existence. In this field, surrogacy occupies a peculiar place, remaining a subject of enduring public debate since the birth of the first “test tube baby” through in vitro fertilisation in 1978.⁵ Surrogacy stands out as an arrangement within the realm of ART due to the complexity of ethical concerns that surround it. As a practice, gestational surrogacy carries the potential of fragmenting maternal roles,⁶ distinguishing them between the birth mother (the surrogate), the biological mother (the genetic provider), and the social or spiritual mother (the intended parent). This dissection reflects a broader societal and psychological detachment between motherhood based on genetic lineage and motherhood derived from choice and acceptance.

The emergence of ARTs has revolutionised the landscape of family creation, offering new avenues for individuals grappling with infertility. However, alongside their promise, ARTs have sparked intense scrutiny, particularly regarding their disruption of the natural process of childbirth, a deeply entrenched facet of human existence. Such critiques extend beyond mere technological interference, encompassing broader ethical quandaries surrounding the ethics of surrogacy.⁷ agreements and assisted reproductive procedures. Within this expansive discourse, the intricate nexus between reproductive technologies, reproductive rights, and reproductive justice comes sharply into focus, particularly in light of the increasingly transnational nature of gestational surrogacy arrangements. This intersection has garnered attention from the international community, prompting concerted efforts to address the complexities and challenges inherent in surrogacy-related parental relationships. Recent initiatives aimed at establishing cohesive frameworks and standards seek to provide both legal security and ethical guidance for all parties involved in such intricate reproductive processes.

These developments underscore the pressing need for elaborate and comprehensive approaches to navigating the multifaceted terrain of contemporary reproductive practices. Understanding

⁵ R G Edwards, ‘The Conquest of Early Human Embryos’ (1980) 45 *Journal of Reproduction and Fertility* 1.

⁶ Barbara Katz Rothman, *Recreating Motherhood: Ideology and Technology in a Patriarchal Society* (WW Norton 1989).

⁷ Guido Pennings, ‘Ethical Issues of Surrogacy’ (2017) 31 *Bioethics* 636.

the ethical terrain of surrogacy requires a deep and nuanced reflection on the very concept of pregnancy itself. Surrogacy, as a unique manifestation of pregnancy from a metaphysical standpoint, challenges conventional ontological understandings of pregnancy and the relationship between the foetus and the gestational mother. Thus, interrogating foundational assumptions about pregnancy reframes perceptions of surrogacy, underscoring the need to reconsider previously unquestioned ontological conceptions.

As traditional notions of family structures continue to evolve alongside shifting social norms and values, there arises a need to critically examine the intricate intersections between these changes and their impact on reproduction and parenthood. Moreover, the rapid advancement of reproductive technologies has introduced novel possibilities and ethical dilemmas, prompting reflections on the implications of technological interventions in human reproduction. In parallel, the commodification of biological reproductive materials on a global scale introduces additional layers of complexity, raising questions about equity, access, and the ethical dimensions of commercialising human biological resources. Thus, the convergence of these intertwined phenomena underscores the urgency of thorough investigation and analysis to elucidate their implications for individuals, families, and society at large. Therefore, the interplay of those factors, namely the evolving landscape of familial dynamics influenced by societal changes, the advancements in reproductive technologies, and the emergence of a global market for biological reproductive materials, presents a complex and diversified context ripe for scholarly inquiry. The questions that have guided the writing of this dissertation, which tries to encapsulate crucial issues in the field of bioethics and reproductive rights, are:

How can the practice of surrogacy be theorised from a bioethical perspective to be relevant to the human rights issues connected to it? What are the best approaches to tackle the impact of reproductive technologies in the context of a reproductive market? How effective are the present and proposed regulations on the subject?

To lay a comprehensive foundation for addressing these inquiries, recourse has been given to various instruments. Firstly, a bioethical examination delves into the rights and statuses implicated by artificial reproductive technologies, with a specific focus on surrogacy. Secondly, ethical scrutiny dissects the principal arguments supporting and opposing surrogacy practices through the diversified perspectives of feminist approaches to bio-law. Thirdly, a metaphysical lens is applied to surrogacy, providing insights into the ontological underpinnings of the mother foetus relationship. Through these analyses, the bioethical inquiry furnishes the

requisite tools for a normative assessment of reproductive rights, elucidating the ethical considerations underpinning the delicate balance of interests inherent in such practices.

Lastly, critical scrutiny is directed towards the proposals advanced by international organisations for regulating the parental relationships engendered by surrogacy. This approach is aimed at ensuring a comprehensive exploration of the ethical, philosophical, and normative dimensions surrounding surrogacy and its regulation. The research underpinning this dissertation reveals that the discourse surrounding surrogacy predominantly adopts either a child-centred perspective or an intended parent-centred perspective. Examining surrogacy from the first standpoint emphasises the focus on the surrogate-born child's best interest, often framing the desire to become parents through such. An arrangement is an ethically contentious claim. The "best interest of the child" is the principle that, as it will emerge from the last Chapter of this dissertation, is the one driving the International jurisprudence resolution of disputes in cases related to the recognition and establishment of parenthood following international surrogacy arrangements, in line with Article 24(2) of the Charter of Fundamental Rights of the European Union and Article 3 of the United Nations Convention on the Rights of the Child. From a bioethical perspective, this view rests on the assertion that individuals do not possess an unrestricted right to parenthood by any means and critiques surrogacy for insufficiently addressing the moral status and rights of children involved.

While these arguments are grounded in a robust ethical foundation, they also underscore the surprising ideological convergence between feminist scholars critical of surrogacy and traditionally conservative thinkers, highlighting the complexity and diversity of the debate. Conversely, an intended parent-centred perspective often overlooks the inherent power imbalances within surrogacy arrangements, particularly regarding the rights and agency of the person deciding to act as a surrogate. This perspective tends to emphasise the contractual rights of intended parents and their entitlement to parental claims based on the surrogate's decision to relinquish her parental role. However, as will be illustrated in the following Chapters, a conversation on surrogacy cannot exclude an adequate examination of the gendered context and the unique power dynamics inherent in pregnancy and reproduction.

These bioethical considerations will be further examined within the context of the international reproductive market, following an analysis of its defining characteristics and broader impacts. This approach facilitates a critical reassessment of the current debate on artificial reproduction, which often remains confined to a binary focus on legitimacy versus illegitimacy. By

transcending this dichotomy, the discussion shifts towards a more nuanced, qualitative framework that addresses not whether surrogacy should be regulated but how it can be regulated in a manner that is both effective and ethical. Subsequently, the analysis of international jurisprudence will shed light on the reasoning employed by courts in addressing cross-border recognition of parenthood in cases involving international surrogacy arrangements. This reasoning, shaped by bioethical pre-assumptions, reflects an ontological understanding of pregnancy and a prioritisation of genetic connections in parenthood recognition cases. Against this backdrop, the examination of proposed international instruments will provide insights into the direction the international community is taking and critically assess whether and how these frameworks succeed in centring the lived experiences and agency of surrogate women.

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Language, when gender was not a relevant factor in the specific context, was about gender identity, irrelevant to the capacity of having a pregnancy, to underscore the biological and gestational contribution, and, importantly, to refrain from ascribing the intimate and psychological connotations of motherhood. While this dissertation inevitably leaves some aspects of this complex practice unexplored – given the vast bioethical and normative

dimensions of surrogacy and ARTs – it aspires to contribute to the ongoing discourse by critically engaging with its key themes and raises questions for further inquiry.

LITERATURE REVIEW

Art Legal and Ethical Challenges: ART, which includes methods like IVF, gamete donation, and embryo transfer, provides hope in the face of infertility while igniting regulatory discussions. Inadequate informed consent procedures⁸ privacy violations in gamete donation and the dangers of multiple gestations in the absence of national guidelines are among the ethical challenges faced by practitioners in Ghana. Due to the lack of a specific regulatory body, facilities are forced to adopt international standards from organisations like ESHRE or ASRM,⁹ which may not be in line with local sociocultural contexts, like religious objections to donor gametes. Studies highlight how high costs (\$4,000–\$7,000 per cycle) marginalise low-income groups and call for context-specific legislation to prevent quackery and protect vulnerable clients. Globally, ethics require striking a balance between beneficence and autonomy. For example, preimplantation genetic testing raises eugenics concerns,¹⁰ and across-species reviews categorise ARTs into imperative uses (e.g., semen cryopreservation for cancer patients), debatable uses (e.g., IVF in older donors), and rarely justifiable uses (e.g., cloning due to welfare harms like placental abnormalities). The lack of frameworks increases the risk of exploitation in developing environments, highlighting. The deontological requirements for uniform consent and data security.

Surrogacy Regulation & Dilemmas: The rights of intended parents are pitted against the autonomy of surrogates in surrogacy, a gestational arrangement through ART. Critics claim that India's Surrogacy (Regulation) Act, 2021,¹¹ violates Article 21 privacy¹² by requiring infertility proofs and limiting eligibility, thereby reinforcing patriarchal norms. The Act prohibits commercial surrogacy and requires altruistic arrangements (e.g., relatives only) to curb exploitation. The Act fixes the previous "baby factory" problems caused by the 2002 ICMR guidelines' laxity, but it leaves procedural gaps, such as the lack of licensed intermediaries, which puts familial surrogacy at risk of emotional coercion.

⁸ World Health Organization, *Ethical Issues in Assisted Reproductive Technologies* (WHO 2003).

⁹ European Society of Human Reproduction and Embryology (ESHRE), *Good Practice Guidelines* (latest edn).

¹⁰ Julian Savulescu, 'Procreative Beneficence: Why We Should Select the Best Children' (2001) 15 *Bioethics* 413.

¹¹ Surrogacy (Regulation) Act 2021 (India).

¹² *K S Puttaswamy v Union of India* (2017) 10 SCC 1.

In terms of ethics, FIGO¹³ places a strong emphasis on child welfare, including origin knowledge rights, informed consent, and surrogate health prioritisation (such as reducing multiples). The literature highlights exploitation in low-resource areas where poverty drives participation and warns of commodification, with global variations— legal in California and Ukraine, prohibited in parts of Europe. Reproductive justice frameworks see surrogacy as an intersection of gender injustices and support structural measures such as psychological support and anti-coercion measures.

Abortion & Bodily Autonomy: Under rights like India's Article 21¹⁴ abortion is framed as a matter of privacy and represents fundamental conflicts with bodily autonomy. *Suchita Srivastava v. Chandigarh*¹⁵ Administration upholds the dignity-linked nature of women's reproductive choices, including carrying to term. However, laws like the Medical Termination of Pregnancy Act, which balance maternal risks with foetal viability, apply differently to surrogacy. Similar to discussions surrounding prenatal diagnosis, UK analyses criticise the Abortion Act's requirements for medical approval,¹⁶ claiming they compromise self-determination. Ethically, maternal-foetal tensions arise: the foetus as "patient" depends on viability/maternal intent, demanding equal weighting of risks in interventions. Human rights law obliges safe access, countering stigma that disrupts autonomy; self-managed. Medical abortion is safe yet restricted in many jurisdictions. Recent physiology-focused views stress embodiment, where pregnancy burdens justify termination over foetal interests.

Adoption Intersections and Rights: Adoption implicates autonomy across birth/adoptive parents and children, less directly tied to ART but overlapping in surrogacy disputes. Shabnam Hashmi recognises adoption as fundamental,¹⁷ yet bodily autonomy governs relinquishment. Ethical reviews stress privacy in records and anti-discrimination,¹⁸ paralleling surrogacy child rights mandates. In surrogacy adoption hybrids, legal parentage defaults to commissioning parents, but gaps expose disputes. India's Act mandates birth certificates list intents, protecting legitimacy. Literature calls for harmonised laws to prevent emotional harm arising from kinship ambiguities.

¹³ International Federation of Gynecology and Obstetrics (FIGO), Ethical Guidelines on Surrogacy (2019).

¹⁴ Constitution of India 1950 art 21.

¹⁵ *Suchita Srivastava v Chandigarh Administration* (2009) 9 SCC 1.

¹⁶ Sally Sheldon, *Beyond Control: Medical Power and Abortion Law* (Pluto Press 1997).

¹⁷ *Shabnam Hashmi v Union of India* (2014) 4 SCC 1.

¹⁸ United Nations Committee on the Rights of the Child, General Comment No 14 (2013).

RESEARCH GAPS

Despite extensive academic engagement with assisted reproductive technologies (ARTs) and Surrogacy, significant gaps remain in existing literature. First, much of the scholarship adopts fragmented analytical lenses, treating reproductive rights, reproductive justice, and reproductive technologies as distinct domains rather than examining their interconnectedness operation, particularly in international gestational surrogacy. Second, dominant discourses tend to privilege either the “best interests of the child” or the contractual autonomy of intended parents, while comparatively under-theorising the embodied, lived experiences and agency of surrogate women, especially within transnational reproductive markets.

Third, existing legal and bioethical analyses often rely on formal equality frameworks, insufficiently engaging with structural inequalities, global economic asymmetries, and gendered power relations that shape cross-border surrogacy arrangements. Fourth, while international jurisprudence increasingly resolves parentage disputes, there remains a lack of normatively coherent regulatory models that reconcile human rights principles with rapidly evolving reproductive technologies. Lastly, limited attention has been paid to the ontological and metaphysical dimensions of pregnancy, particularly how surrogacy disrupts traditional understandings of motherhood, bodily autonomy, and relational identity.

RESEARCH QUESTIONS

1. How can international gestational surrogacy be theorised through a bioethical and a reproductive justice framework that meaningfully incorporates the embodied experiences of surrogate women?
2. In what ways do current national and international regulatory regimes inadequately address power imbalances and commodification within the global reproductive market?
3. How effective are existing legal responses and international jurisprudence in safeguarding the rights of children, surrogate women, and intended parents simultaneously?
4. To what extent do prevailing regulatory approaches reflect ontological assumptions about pregnancy, genetics, and parenthood, and what ethical consequences follow from such assumptions?

HYPOTHESIS

This study proceeds on the hypothesis that existing legal and regulatory frameworks governing international surrogacy are normatively incomplete, as it prioritises genetic parenthood and child-centric outcomes while marginalising the embodied autonomy and relational agency of surrogate women, thereby perpetuating gendered and global inequalities within the reproductive market.

OBJECTIVES OF THE STUDY

1. To critically analyse the intersection of reproductive technologies, reproductive rights, and reproductive justice in international surrogacy.
2. To examine surrogacy through bioethical, feminist, and metaphysical perspectives.
3. To evaluate the effectiveness of national laws and international jurisprudence regulating surrogacy.
4. To identify structural and normative deficiencies in existing regulatory frameworks.
5. To propose ethically responsive and rights-based approaches for future regulation.

METHODOLOGY

Doctrinal Legal Analysis: At its core, the study employs doctrinal research to analyse primary legal sources, including constitutional provisions, national statutes, international conventions, and judicial precedents governing assisted reproductive technologies (ARTs) and surrogacy. Indian legal materials, such as Article 21 of the Constitution of India, the Surrogacy (Regulation) Act, 2021, and decisions of the Supreme Court and High Courts, are examined alongside international human rights instruments, including the United Nations Convention on the Rights of the Child.¹⁹ (UNCRC) and the Charter of Fundamental Rights of the European Union.²⁰

Judicial reasoning is analysed to identify how courts conceptualise parenthood, bodily autonomy, and the best interests of the child, particularly in transnational surrogacy disputes. This doctrinal inquiry enables an assessment of how legal systems respond to evolving

¹⁹ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

²⁰ Charter of Fundamental Rights of the European Union [2012] OJ C326/391.

reproductive practices and whether existing jurisprudence adequately safeguards the rights of all stakeholders.

Normative and Bioethical Inquiry: Beyond doctrinal analysis, the study incorporates a normative bioethical framework to evaluate the moral assumptions underpinning surrogacy regulation. Drawing upon feminist bioethics and reproductive justice scholarship, the research interrogates dominant ethical narratives that frame surrogacy either as an expression of individual autonomy or as an inherently exploitative practice.

This approach critically examines concepts such as informed consent, commodification of reproductive labour, and the moral status of gestation. Particular attention is paid to embodiment theory, which challenges abstract, contract-based interpretations of surrogacy by foregrounding the physical, emotional, and relational dimensions of pregnancy. This normative inquiry allows the study to move beyond binary pro- and anti-surrogacy positions toward a more context-sensitive ethical evaluation.

Interdisciplinary Qualitative Analysis: Recognising that surrogacy cannot be fully understood through legal analysis alone, the study adopts an interdisciplinary lens incorporating insights from sociology, philosophy, and gender studies. Scholarly literature accessed through peer-reviewed journal articles, academic books, and policy reports is systematically reviewed to understand how global inequalities, gendered labour dynamics and market forces shape surrogacy practices.

Comparative analysis is employed to examine regulatory approaches across jurisdictions, such as India, the United States, Ukraine, and selected European countries. This comparative dimension highlights how cultural, economic, and political contexts influence regulatory choices and ethical priorities.

ANALYTICAL FRAMEWORK

The analytical framework of the study rests on three interrelated pillars:

Reproductive Rights: Focusing on Autonomy, Privacy, and Decisional Freedom.

Reproductive Justice: Emphasising structural inequalities, access, and social conditions shaping reproductive choices.

Bioethical and Ontological Analysis: Interrogating assumptions about pregnancy, motherhood, and genetic relatedness.

By synthesising these approaches, the methodology ensures a holistic examination of surrogacy that is legally grounded, ethically informed, and socially contextualised.

ANALYSIS

Fragmentation of Motherhood and Ontological Tensions: Assisted reproductive technologies have fundamentally disrupted traditional notions of motherhood by separating genetic, gestational, and social roles. Legal systems, however, continue to privilege genetic connections in determining parenthood, reflecting an ontological Bias that equates biology with identity.²¹ This bias is evident in international jurisprudence, where Courts often prioritise genetic parentage to resolve cross-border disputes, even when doing so marginalises the gestational role of surrogate women.

From a bioethical standpoint, pregnancy cannot be reduced to a mere service or vessel-like function. Feminist philosophers argue that gestation involves continuous bodily labour, emotional investment, and health risks that are inseparable from the surrogate's personhood. Contractual models of surrogacy fail to adequately capture this embodied reality,²² resulting in ethical blind spots within regulatory frameworks.

Power Imbalances and the Global Reproductive Market: The internationalisation of surrogacy has given rise to a global reproductive market characterised by stark economic inequalities. Intended parents from wealthier nations often engage surrogates from economically disadvantaged backgrounds, particularly in the Global South. While consent is formally obtained, reproductive justice scholars caution that consent under conditions of poverty and limited alternatives may amount to structural coercion.

India's experience before the Surrogacy (Regulation) Act, 2021, illustrates this concern. The absence of robust regulation facilitated the emergence of commercial surrogacy hubs, where Women's reproductive labour was commodified with minimal long-term protections. Although the 2021 Act seeks to curb exploitation by banning commercial surrogacy, its restrictive

²¹ Janet Dolgin, 'Defining the Family: Law, Technology, and Reproduction in an Uneasy Age' (1997) 23 Law & Medicine 345.

²² Iris Marion Young, 'Pregnant Embodiment: Subjectivity and Alienation' (1984) 16 Journal of Medicine and Philosophy 45.

approach raises concerns about reproductive autonomy and the exclusion of single persons, LGBTQ+ individuals and foreign nationals.

Child-Centric Approaches and Their Limitations: International courts frequently invoke the “best interests of the child” principle to justify recognising parentage in surrogacy cases. While child welfare is undeniably crucial, an exclusively child-centric framework risks overshadowing the rights of surrogate women and legitimising ethically problematic arrangements post hoc.

Moreover, child-centric reasoning often assumes that legal recognition of intended parents automatically serves the child’s best interests, without adequately considering the circumstances under which the child was conceived and born. This approach may inadvertently reinforce exploitative practices by insulating intended parents from accountability.

Regulatory Dilemmas: The analysis reveals a regulatory dilemma between prohibition and permissive commercialisation. Absolute bans risk driving surrogacy underground, while unregulated markets exacerbate exploitation. Neither extreme adequately addresses the ethical complexities of surrogacy. What emerges as necessary is a regulated, rights-based model that balances autonomy, protection, and accountability.

LANDMARK CASE LAWS

Baby Manji Yamada v. Union of India (2008) 13 SCC 518:²³ A Japanese couple entered into a commercial surrogacy agreement in India. During the pregnancy, the couple divorced, and the commissioning mother refused to accept the child. Legal uncertainty arose regarding custody and citizenship.

Issue: Whether the child born through surrogacy was entitled to Indian citizenship, and who held parental responsibility.

Judgment: The Supreme Court allowed the child to leave India with the grandmother, highlighting the regulatory vacuum in surrogacy law.

Significance: Exposed the absence of statutory regulation and catalysed legislative debate on surrogacy.

²³ Baby Manji Yamada v Union of India (2008) 13 SCC 518.

Jan Balaz v. Anand Municipality (2009 SCC OnLine Guj 722):²⁴ Children born to an Indian surrogate for German parents were denied Indian passports.

Judgment: The Gujarat High Court recognised the genetic parents as legal parents and directed the issuance of passports.

Significance: Prioritised genetic parenthood and child welfare in international surrogacy.

Suchita Srivastava v. Chandigarh Administration (2009) 9 SCC 1: Concerned reproductive autonomy of a mentally challenged woman.

Judgment: The Supreme Court held that reproductive choices are a part of personal liberty under Article 21 of the Constitution.

Relevance: Forms the constitutional basis for bodily autonomy in surrogacy discourse.

FINDINGS

1. Current surrogacy regulations disproportionately centre child and intended parent interests.
2. Surrogate women's autonomy is often reduced to formal consent, ignoring structural coercion.
3. Prohibitive models (e.g., India's Surrogacy Act, 2021) risk driving practices underground.
4. International jurisprudence lacks consistency, producing legal uncertainty.
5. Ethical debates inadequately integrate embodiment and relational autonomy.

WAY FORWARD

1. Development of internationally harmonised surrogacy standards grounded in human rights.
2. Shift from prohibitionist approaches to regulated, rights-based frameworks.
3. Mandatory psychological, medical, and legal support for surrogate women.
4. Recognition of gestational labour in parentage determinations.
5. Adoption of reproductive justice frameworks in policymaking.

²⁴ Jan Balaz v Anand Municipality 2009 SCC OnLine Guj 722.

CONCLUSION

The rapid advancement of assisted reproductive technologies has fundamentally transformed the landscape of human reproduction, family formation, and parenthood. Among these technologies, international gestational surrogacy occupies a uniquely complex and contested position, situated at the intersection of biomedical innovation, market forces, gendered labour, and human rights. This research set out to critically analyse surrogacy through the integrated lenses of reproductive technologies, reproductive rights, and reproductive justice, with particular emphasis on the ethical, legal, and ontological questions raised by cross-border surrogacy arrangements. The findings of this study demonstrate that while surrogacy offers new possibilities for family creation, existing regulatory and jurisprudential responses remain insufficiently equipped to address its multidimensional implications.

One of the central conclusions of this study is that prevailing legal frameworks governing surrogacy are normatively fragmented. Legal discourse has largely oscillated between two dominant paradigms: a child-centred approach prioritising the “best interests of the child,” and an intended parent-centred approach emphasising contractual autonomy and genetic parenthood. Although both perspectives raise legitimate concerns, neither is capable, in isolation, of providing a comprehensive ethical or legal response to surrogacy. The child-centric model, while essential for protecting vulnerable children born through surrogacy, often treats the surrogate woman as a peripheral actor whose role concludes at birth. Conversely, the intended parent-centred approach risks commodifying pregnancy by reducing gestation to a service governed primarily by contract law. In privileging these perspectives, regulatory systems frequently marginalise the lived, embodied experiences of surrogate women.

This marginalisation is particularly evident in international surrogacy arrangements, where profound socio-economic disparities shape reproductive choices. The globalisation of surrogacy has created a transnational reproductive market in which women from economically disadvantaged backgrounds, especially in the Global South, provide gestational labour for intended parents from wealthier nations. While such arrangements are often defended based on consent and autonomy, this research underscores that consent cannot be meaningfully assessed without attention to structural conditions such as poverty, lack of healthcare access, and limited economic alternatives. Reproductive justice scholarship persuasively demonstrates²⁵ that

²⁵ Loretta Ross and Rickie Solinger, *Reproductive Justice: An Introduction* (University of California Press 2017).

formal consent obtained under conditions of systemic inequality may conceal coercion rather than reflect genuine choice.

The Indian experience with surrogacy provides a particularly instructive case study in this regard. Before the enactment of the Surrogacy (Regulation) Act, 2021, India emerged as a global hub for commercial surrogacy due to permissive guidelines, low costs, and limited oversight. While this regulatory vacuum facilitated reproductive opportunities for intended parents, it also exposed surrogate women to exploitation, inadequate medical care, and legal insecurity. The 2021 Act represents a legislative attempt to rectify these abuses by prohibiting commercial surrogacy and restricting eligibility to altruistic arrangements. However, this study finds that the Act, while well-intentioned, introduces new ethical and constitutional concerns.

By severely limiting access to surrogacy based on marital status, sexuality, and nationality, the law constrains reproductive autonomy and reinforces heteronormative and patriarchal family models. Another significant conclusion of this research relates to the ontological assumptions embedded in legal reasoning on surrogacy. Courts and legislatures often operate on implicit understandings of pregnancy that separate gestation from motherhood, privileging genetic connection as the primary determinant of parenthood. This ontological framework enables the legal transfer of parental status while simultaneously erasing the moral and relational significance of gestation. Feminist bioethical perspectives challenge this abstraction by emphasising pregnancy as an embodied, relational, and temporally extended experience that cannot be fully captured through contractual or genetic logic. The failure to engage with this dimension contributes to regulatory models that inadequately protect surrogate women's dignity and agency.

Judicial responses to international surrogacy disputes further reveal the limitations of existing frameworks. Indian and international courts have frequently resolved such cases by invoking child welfare considerations and recognising genetic parentage to prevent statelessness and legal limbo. While these decisions often produce pragmatic outcomes, they also risk normalising ethically questionable practices by focusing on post-birth remedies rather than addressing systemic harms. The reliance on judicial discretion in the absence of coherent international regulation leads to inconsistent outcomes and legal uncertainty for all parties involved.

This study also concludes that prohibitionist approaches to surrogacy, though framed as protective, may be counterproductive. Absolute bans on commercial surrogacy risk driving the practice underground, thereby exacerbating exploitation and reducing oversight. At the same time, laissez-faire commercial models fail to address power imbalances and commodification. The analysis, therefore, supports a middle path: a regulated, rights-based framework²⁶ that acknowledges reproductive autonomy while instituting robust safeguards against abuse. Such a framework must be grounded in reproductive justice, recognising not only the right to reproduce but also the right to do so under fair, safe, and dignified conditions.

Importantly, this research highlights the need to reconceptualise surrogacy regulation beyond narrow national boundaries. Given the inherently transnational nature of modern surrogacy arrangements, isolated domestic laws are insufficient. The absence of harmonised international standards creates opportunities for regulatory arbitrage and undermines the protection of surrogate women and children. International cooperation, guided by human rights principles, is therefore essential for developing ethical and effective regulatory mechanisms.

In conclusion, international gestational surrogacy presents a profound challenge to existing legal, ethical, and social paradigms. This research demonstrates that surrogacy cannot be adequately governed through simplistic binaries of legality versus illegality or autonomy versus exploitation. Instead, it requires a nuanced, interdisciplinary approach that integrates bioethics, feminist theory, reproductive justice, and human rights law. By foregrounding the embodied experiences of surrogate women, critically examining power structures within the reproductive market, and questioning entrenched ontological assumptions about pregnancy and parenthood, this study contributes to a more comprehensive understanding of surrogacy and its regulation.

As reproductive technologies continue to evolve, the law must move beyond reactive and fragmented responses toward proactive, ethically grounded frameworks that respect the dignity, agency, and rights of all individuals involved. Only through such an approach can international surrogacy be governed in a manner that is just, inclusive, and responsive to the complex realities of contemporary reproduction.

²⁶ United Nations Special Rapporteur on the Sale and Sexual Exploitation of Children, Report on Surrogacy (2018).