



Policy Analysis

Commercial Surrogacy Across Borders: Rights, Exploitation, and Regulatory Gaps

Johanna Larsen^{1*}, Eszter Georgiou² and Jakub Berg³

¹Department of Bioethics, Tyrrhenian University of Medical Humanities, Italy

²Department of Philosophy, Douro Institute of Bioethics, Portugal

³Department of Philosophy, Douro Institute of Bioethics, Portugal

ABSTRACT

Commercial surrogacy has developed into a transnational market in which intended parents from restrictive, wealthy jurisdictions contract with surrogates in countries offering fewer legal protections and lower cost, producing a persistent asymmetry between the parties that anchors most of the field's ethical debate.

This review examines the central disagreement over whether compensated surrogacy reflects genuine reproductive autonomy or exploitation shaped by economic need, drawing on empirical accounts from the industry's major historical hubs.

It then traces what happened when several of those hubs -- India, Cambodia, Thailand, and Nepal -- restricted or banned commercial surrogacy for foreign nationals, and finds a consistent pattern of displacement to less-regulated jurisdictions rather than resolution of the underlying practice.

A further section considers the resulting harm to children born of cross-border arrangements whose citizenship and legal parentage fall into the gaps between national laws, sometimes leaving them functionally stateless, and reviews the Hague Conference's ongoing effort to draft an international protocol addressing parentage recognition.

We conclude that neither unilateral prohibition nor an unregulated market adequately protects surrogates or children, and that a defensible path forward combines enforceable surrogate protections where the practice remains legal with binding international recognition rules for parentage established abroad.

Keywords: commercial surrogacy; reproductive exploitation; cross-border reproduction; child statelessness; international regulation

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Corresponding Author: Johanna Larsen

E-mail Address: j.larsen@tumh.it

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INTRODUCTION

Commercial surrogacy has, over the past two decades, become a genuinely transnational market

rather than a domestic medical arrangement. Intended parents in wealthy, often restrictive jurisdictions travel to countries where compensated gestational surrogacy is legal, affordable, or simply unregulated, while the surrogates themselves are frequently drawn from populations with far fewer economic options than the families commissioning the arrangement [1]. This asymmetry sits at the center of a bioethical debate that has never fully settled: is a woman who accepts payment to gestate and relinquish a child exercising reproductive autonomy, or is she participating in a transaction whose terms are shaped by need rather than genuine choice [2]? A global-perspective review of the legal frameworks surrounding surrogacy frames the same question in terms of competing rights claims -- the surrogate's right to health and bodily autonomy against the intended parents' reproductive interests and the child's right to dignity -- with no jurisdiction's framework yet balancing all three convincingly [3]. Neither answer disposes of the question cleanly, and the honest position in the literature is that both descriptions can be true of the same arrangement depending on which surrogate, which clinic, and which country one examines.

The cross-border dimension compounds an already difficult question. A surrogacy contract signed in one country, involving gametes sourced from a second, a surrogate resident in a third, and intended parents from a fourth, routes around any single nation's regulatory scheme almost by design [4]. When the resulting child's citizenship, parentage, and right to leave the surrogate's country all depend on how several legal systems that were never written with this scenario in mind happen to interact, the child can end up the one party with no say in the arrangement bearing the largest share of its unresolved risk. This review surveys the ethical case for and against commercial surrogacy as ordinarily practiced, the empirical picture of exploitation and agency documented in the countries most associated with the industry, and the regulatory and private-international-law gaps that leave both surrogates and children exposed when arrangements cross borders. Table 1 summarizes how the industry's balance of protections has shifted across three of the jurisdictions most discussed in this literature, and Figure 1 offers a schematic comparison of the regulatory stringency those jurisdictions have adopted.

THE AUTONOMY AND EXPLOITATION DEBATE

The philosophical core of the disagreement is whether commercial surrogacy, considered simply as an economic transaction between consenting adults, differs in ethically relevant ways from other forms of compensated labor. Defenders of the practice argue that treating a surrogate's choice as inherently suspect, simply because she is poorer than the people she is contracting with, is itself a form of paternalism that

denies her the same presumption of rational agency extended to other workers who take physically demanding jobs for pay [4]. On this view, banning commercial surrogacy in the name of protecting surrogates removes the option that many of the women involved say they actively sought out, and does so without offering them a comparably remunerative alternative.

Critics respond that the relevant comparison is not to ordinary labor but to conditions under which consent is structurally compromised -- where a narrow set of options, asymmetric information about medical risk, and a power imbalance between clinic and surrogate combine to make "choice" a thin description of what is happening [2]. Ethnographic accounts of surrogacy arrangements in India describe surrogates housed together in dormitories for the duration of the pregnancy, subject to clinic-directed medical decisions, and paid a fraction of what intermediary agencies charge intended parents, a gap that critics argue is itself evidence the "market" is not functioning as a fair exchange between equals [5,6]. An intersectional reading of these arrangements goes further, arguing that race, nationality, and economic class combine to determine whose reproductive labor gets commodified and whose does not, a pattern that a purely individual-consent framework tends to obscure [7].

A recent integrative review of the empirical literature found genuine support for both positions depending on the population studied: some surrogates describe the experience in terms of earned income, pride, and even a form of gift-giving, while others describe coercion, inadequate aftercare, and regret, and the review's authors caution against generalizing from either group to the practice as a whole [8]. That heterogeneity is itself an important finding -- it means policy built on a single stylized picture of "the surrogate," whether victim or empowered entrepreneur, will misdescribe a meaningful share of real arrangements. Commentary aimed at a general bioethics audience has made a similar point in more accessible terms, arguing that framing commercial surrogacy as simply good or simply exploitative forecloses the harder work of identifying which specific contractual and clinical practices need reform [9].

NATIONAL BANS AND THE DISPLACEMENT PROBLEM

Several of the countries that once anchored the international surrogacy industry have since restricted or banned commercial arrangements for foreign intended parents, and the sequence is instructive. India, for years the most prominent destination for cross-border surrogacy, moved first to bar foreign nationals in 2015 and then passed a 2021 law restricting surrogacy to altruistic arrangements involving Indian citizens only [10]. Cambodia, Thailand, and Nepal each imposed similar restrictions

after high-profile controversies, including cases in which surrogates were left uncertain about payment or custody after intended parents withdrew mid-pregnancy [11].

The consistent pattern documented afterward is displacement rather than resolution: demand does not disappear when a jurisdiction restricts supply, it relocates to the next country willing to accommodate it, often with weaker regulatory infrastructure than the one just exited [12]. Reporting following India's restriction found agencies and clinics adapting through informal workarounds -- relocating surrogates to neighboring jurisdictions for delivery, or restructuring contracts to obscure the foreign national's involvement -- rather than the market simply contracting [11]. A 2025 human-rights submission argued that this displacement effect means unilateral national bans, however well-intentioned, function poorly as an ethical response to a genuinely transnational practice, since the jurisdiction imposing the ban rarely has the power to prevent its own citizens from commissioning surrogacy abroad [13]. Commentary specifically on the ethics-versus-legalization question in this literature has increasingly concluded that neither prohibition nor an unregulated market performs well against the exploitation concerns both sides claim to care about, which is part of what has pushed attention toward international, rather than purely domestic, regulatory instruments [14].

CITIZENSHIP, PARENTAGE, AND THE STATELESS CHILD

The clearest casualty of regulatory fragmentation is the child born of a cross-border arrangement whose citizenship and legal parentage the relevant countries cannot agree on. A child born to a surrogate in a country that assigns citizenship by descent (*jus sanguinis*) rather than by birthplace, to intended parents whose home country does not recognize the surrogacy contract as establishing their legal parenthood, can end up satisfying neither country's definition of a citizen -- stateless from birth, in some documented cases for months or years while courts and immigration authorities work out an *ad hoc* resolution [15]. Advocacy organizations have compiled multiple such cases in which intended parents were unable to bring a surrogate-born child home because the child held no recognized nationality and no passport-issuing authority would act without one [16].

UNICEF's guidance on children's rights and surrogacy frames the core problem plainly: existing international children's-rights instruments were not drafted with surrogacy in mind, and applying them by analogy leaves basic questions -- who the child's legal parents are, what nationality the child holds, whether the child has a right to know their genetic or gestational origins -- dependent on which country's courts happen to hear the case first [17]. A children's-rights-centered reading of the practice argues that the child's interests are

structurally under-weighted in surrogacy contracts, which are negotiated and signed before the child exists and cannot, by definition, include the child as a party whose consent or preferences matter [18]. Legal scholarship on parentage more broadly has argued that genetics, gestation, and intent are all doing conflicting work across different jurisdictions' surrogacy statutes, and that no single principle currently commands enough international agreement to resolve conflicts when they collide [19]. A review of documented cross-border cases describes the resulting situation for affected families as a genuine "booming baby business" operating well ahead of the legal infrastructure needed to protect the children it produces, with intended parents sometimes stranded abroad for months while parentage and exit-visa questions are resolved case by case [20].

TOWARD INTERNATIONAL REGULATION

The regulatory gap most directly targeted at this problem is the absence of any binding international instrument governing the recognition of parentage established through cross-border surrogacy. The Hague Conference on Private International Law (HCCH) has worked on a Parentage/Surrogacy Project for over a decade, and by the early 2020s had drafted a proposed protocol specifically addressing the recognition of legal parentage established through international surrogacy arrangements [21]. The draft protocol's basic aim is narrower than a full harmonization of surrogacy law -- it does not attempt to make surrogacy legal or illegal anywhere, but instead to give states a common set of rules for recognizing parentage once a child has already been born, precisely the gap that produces statelessness and custody disputes [22].

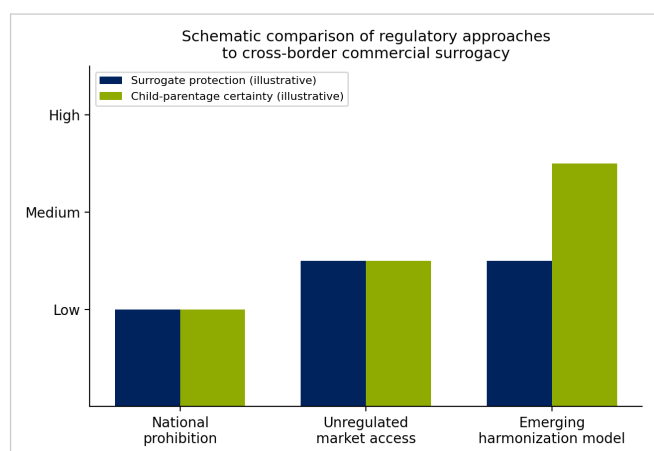
The proposal has drawn criticism from multiple directions. Groups opposed to surrogacy on principle argue that any instrument focused on recognizing parentage after the fact effectively legitimizes and smooths the path for arrangements they consider inherently exploitative, regardless of the protocol's stated neutrality on legality [23,24]. Others argue the draft does not go far enough on surrogate protection, since a private-international-law instrument concerned with parentage recognition is not the same as a labor or human-rights instrument concerned with the surrogate's working conditions, pay, and aftercare, and the two sets of concerns risk being treated as substitutes for one another [25]. Comparative legal analysis of how jurisdictions currently handle conflicts -- some recognizing foreign surrogacy-based parentage outright, some refusing recognition regardless of the child's resulting statelessness, and a growing middle group applying a best-interests-of-the-child override on a case-by-case basis -- illustrates why proponents of the HCCH process argue that continued fragmentation is the worse alternative, even though the proposed protocol addresses only part of the underlying ethical dispute

[26,27]. Table 1 lays out how three representative approaches -- prohibition, unregulated market access, and the emerging harmonization model -- compare on the dimensions of surrogate protection and child-parentage certainty, and Figure 1 presents the same comparison schematically.

Table 1. Three representative regulatory approaches to cross-border commercial surrogacy, compared by surrogate protection and child-parentage certainty.

Approach	Representative jurisdictions/model	Surrogate protection	Child-parentage certainty
National prohibition	India (post-2021), Cambodia, Thailand, Nepal	None for arrangements displaced abroad; strong only for citizens covered by domestic altruistic-only law	Low -- displaced arrangements fall outside the prohibiting state's oversight entirely
Unregulated/lightly regulated market access	Historic commercial hubs prior to restriction	Highly variable; dependent on individual clinic practice rather than law	Low to moderate -- parentage often contested once the child leaves the birth country
Emerging harmonization model	HCCH Parentage/Surrogacy Project (proposed protocol)	Not directly addressed -- protocol is limited to parentage recognition, not labor conditions	Moderate to high -- aims specifically to resolve cross-border recognition of parentage

Figure 1. Schematic comparison of surrogate protection and child-parentage certainty across three regulatory approaches discussed in this review (illustrative relative ratings drawn from the qualitative literature, not derived from a single quantitative study).



CONCLUSION

Commercial surrogacy across borders resists the kind of single ethical verdict that would make regulation straightforward, because the practice genuinely produces both autonomy-affirming outcomes and

exploitative ones, often within the same national market and sometimes within the same clinic. What the recent literature makes clearer than it once was is that national prohibition, on its own, does not eliminate the underlying tension so much as export it to a jurisdiction with weaker safeguards, and that the resulting statelessness and parentage disputes fall almost entirely on children who had no part in negotiating the arrangement that produced them. A defensible path forward likely requires two things working together rather than either alone: enforceable labor and health protections for surrogates in the countries where the practice remains legal, and an international instrument -- along the lines the Hague Conference has been developing -- that resolves parentage and citizenship questions before, rather than after, a child is born into legal limbo.

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Conflict of Interest

The authors declare no conflicts of interest relevant to this work.

Author Contributions

Johanna Larsen conceived the review, coordinated the literature synthesis, and drafted the manuscript. Eszter Georgiou developed the sections on national bans and citizenship/parentage and critically revised the manuscript. Jakub Berg contributed the analysis of international regulatory instruments and prepared the comparative table and figure. All authors read and approved the final manuscript.

Ethics Statement

As a literature review synthesizing previously published, publicly available research and policy analysis, this article did not involve new data collection from human participants and did not require institutional ethics committee approval.

Data Availability

No new data were generated or analyzed for this review. All sources discussed are cited in the reference list and are publicly available through their respective publishers.

REFERENCES

1. Mohapatra S (2012) Stateless babies and adoption scams: a bioethical analysis of international commercial surrogacy. Berkeley Journal of

International Law.

2. Wilkinson S (2016) Exploitation in international paid surrogacy arrangements. *Journal of Applied Philosophy*, DOI:[10.1111/japp.12138](https://doi.org/10.1111/japp.12138).
3. Bioethical issues and legal frameworks of surrogacy: a global perspective about the right to health and dignity (2021) *European Journal of Obstetrics and Gynecology and Reproductive Biology*.
4. Panitch V (2013) Global surrogacy: exploitation to empowerment. *Journal of Global Ethics*, DOI:[10.1080/17449626.2013.818390](https://doi.org/10.1080/17449626.2013.818390).
5. Rudrappa S (2015) *Discounted Life: The Price of Global Surrogacy in India*. New York University Press.
6. Pande A (2014) *Wombs in Labor: Transnational Commercial Surrogacy in India*. Columbia University Press.
7. Intersectionality and the ethics of transnational commercial surrogacy. *International Journal of Feminist Approaches to Bioethics*.
8. Commercial surrogacy: landscapes of empowerment or oppression explored through integrative review (2024) *Issues in Mental Health Nursing*, DOI:[10.1080/07399332.2024.2303520](https://doi.org/10.1080/07399332.2024.2303520).
9. Commercial surrogacy in India: a bioethical debate (2021) *Exploring Bioethics*.
10. New laws ban commercial surrogacy in India (2020) *Nature Biotechnology*, PMID:32216696.
11. India outlawed commercial surrogacy -- clinics are finding loopholes (2018) *The Conversation*.
12. Das S, Routray D (2021) The ethical quandaries of commercialized surrogacy in India and its regulation. *Journal of International Women's Studies*.
13. Policy submission: the human rights and ethical issues of commercial surrogacy (2025) Office of the High Commissioner for Human Rights.
14. Commercial surrogacy between ethics and legalization (2020) *Gavin Journal of Clinical Medical Images*.
15. Su X (2025) Statelessness of surrogate-born children in jus sanguinis countries: a human rights perspective on legal challenges and solutions. SSRN.
16. The increase in foreign surrogacy agreements is leaving babies stateless (2022) *Live Action News*.
17. Key considerations: children's rights and surrogacy (2022) UNICEF.
18. Children's rights and surrogacy. *Humanium*.
19. Tueller J (2025) On parentage, genetics, and surrogacy. *Georgia Law Review*.
20. A booming baby business: international surrogacy arrangements and the children left behind. *New York University Journal of International Law and Politics*.
21. HCCH Parentage/Surrogacy Project (2022) *Hague Conference on Private International Law*.
22. Regulating international surrogacy arrangements: state of play (2016) *European Parliament Policy Department, Directorate-General for External Policies*.
23. Analysis of the Hague protocol for the recognition of legal parentage established following an international surrogacy contract (2023) *Coalition for the Abolition of Surrogate Motherhood*.
24. A surrogacy convention or a protocol on parentage: why we need to watch closely what HCCH is doing (2023) *Center for Bioethics and Culture Network*.
25. Proposing an international instrument to address issues arising out of international surrogacy arrangements. *Georgetown Journal of International Law*.
26. Cross-border surrogacy law: when domestic prohibition meets permissive jurisdictions (2024) *Gestlife Surrogacy*.
27. Cross-border reproductive care and the regulation of international surrogacy. *Journal of Law and Public Policy*, University of Florida.