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## LEGAL CHALLENGES OF INTERNATIONAL SURROGACY: A PRIVATE INTERNATIONAL LAW PERSPECTIVE

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### Abstract: -

Significant developments have taken place in assisted reproductive technology, which has led to an increase in cross-border surrogacy. The issue of international surrogacy has raised various complex issues in the area of private international law. International surrogacy arrangements involve various international parties such as intended parents and surrogate mothers, and children born out of such surrogacy arrangements. International surrogacy arrangements have raised various conflicts with regard to jurisdiction, recognition of parentage, and determination of the nationality of the child. The absence of an international regulatory framework has led to inconsistent approaches by different countries in dealing with surrogacy arrangements. Therefore, there is an element of uncertainty for all the parties involved in such arrangements.<sup>1020</sup>

In the past, India has become one of the popular destinations for international surrogacy arrangements due to low medical costs and availability of specialized medical services. However, there have been concerns with regard to commercialization of surrogacy arrangements and exploitation of surrogate mothers. The enactment of the Surrogacy (Regulation) Act, 2021 is an attempt by India to deal with the issue of surrogacy by regulating commercial surrogacy and allowing altruistic surrogacy under certain circumstances.<sup>1021</sup>

Judicial decisions have also contributed to the development of the legal framework governing surrogacy. In *Baby Manji Yamada v. Union of India*, the Supreme Court of India addressed issues concerning guardianship and the legal status of a child born through international surrogacy, highlighting the challenges arising from cross-border reproductive arrangements.<sup>1022</sup>

This paper analyses the legal issues surrounding international surrogacy from the perspective of private international law, particularly focusing on jurisdictional conflicts, determination of parentage, and recognition of foreign decisions.

**Keywords:** Private International Law, International Surrogacy, Cross-Border Surrogacy, Jurisdictional Conflicts, Parentage Determination, Citizenship of Surrogate Child, Surrogacy (Regulation) Act, 2021.

<sup>1020</sup> Scott B. Rae, *Ethical Issues in International Surrogacy*, 38 *J. Med. & Phil.* 248, 248-63 (2013), available at <https://www.jstor.org/stable/10.1093/jmp/jht016>

<sup>1021</sup> *Surrogacy (Regulation) Act, 2021*, No. 47 of 2021, India Code, <https://www.indiacode.nic.in/handle/123456789/17102>

<sup>1022</sup> *Baby Manji Yamada v. Union of India*, (2008) 13 S.C.C. 518 (India), <https://indiankanoon.org/doc/854968/>.

## I. Introduction

Advances in assisted reproductive technologies have profoundly impacted how individuals and couples perceive parenthood. Among these advances, surrogacy has become a notable form of assisted reproductive technology for individuals who cannot bear children naturally. International surrogacy, in which intended parents seek a surrogate mother in another country, is becoming increasingly popular. Despite its advantages in facilitating parenthood, international surrogacy is also subject to various legal complexities that involve different jurisdictions.<sup>1023</sup>

International surrogacy involves different jurisdictions, including those of the surrogate mother, intended parents, and child.<sup>1024</sup> The interplay of different jurisdictions in international surrogacy is usually subject to conflicts. Conflicts in international surrogacy involve private international law, also known as conflict of laws, which refers to laws applicable to legal relationships that involve foreign elements.

The lack of a comprehensive international regulatory mechanism has led to different legal approaches in different countries. Some countries allow commercial surrogacy, while others permit altruistic surrogacy. Some countries have even banned the practice of surrogacy. Such different legal approaches have led to ambiguity regarding the recognition of parental rights and the citizenship of the child in the context of international surrogacy arrangements.<sup>1025</sup>

India has been at the centre of the global surrogacy industry in the past. However, in view of the exploitation and commercialization of the

practice of surrogacy and the citizenship of the child in the context of international surrogacy arrangements, the government of India has enacted the Surrogacy (Regulation) Act, 2021, which allows altruistic surrogacy but bans commercial surrogacy.<sup>1026</sup> This paper examines the legal issues in the context of international surrogacy arrangements from the perspective of private international law.

## II. Concept and Types of Surrogacy

Surrogacy is an arrangement wherein an individual agrees to become pregnant and give birth to a baby with the aim of creating a parental relationship with another individual or couple who would become the parents of the child upon birth.<sup>1027</sup> Surrogacy has two types: traditional surrogacy and gestational surrogacy.

In traditional surrogacy, the surrogate is genetically related to the baby since her own egg is used in the fertilization process. However, in gestational surrogacy, an embryo is implanted into the womb with the aim of creating a parental relationship with the intended parents or donors. The embryo is not genetically related to the surrogate since her eggs are not used in the fertilization process.<sup>1028</sup> The practice has become popular due to the minimal legal issues surrounding parental rights.

International surrogacy involves the situation where the intended parents travel abroad and hire a surrogate mother. The practice may be motivated by legal prohibitions in the home countries of the intended parents, the cost of surrogacy in another jurisdiction, or the availability of specialized medical services. The practice has been described by various authors as “fertility tourism.” The term is used to emphasize the international mobility of people

<sup>1023</sup> Dr. Veera Saghar, *International Surrogacy Guide: What Global Intended Parents Need to Know*, Indian Egg Donors Blog (Dec. 22, 2025), <https://blog.indianeggdonors.com/international-surrogacy-guide-what-global-intended-parents-need-to-know/>

<sup>1024</sup> Haji Sadeeq, *Legal and Ethical Challenges in Cross-Border Surrogacy and Assisted Reproductive Technologies* (2021), [https://www.researchgate.net/publication/383785907\\_Legal\\_and\\_Ethical\\_Challenges\\_in\\_Cross-Border\\_Surrogacy\\_and\\_Assisted\\_Reproductive\\_Technologies](https://www.researchgate.net/publication/383785907_Legal_and_Ethical_Challenges_in_Cross-Border_Surrogacy_and_Assisted_Reproductive_Technologies)

<sup>1025</sup> Piquee Saxena, Aruhana Mishra & Sonia Malik, *Surrogacy: Ethical and Legal Issues*, 37 *Indian J. Cmty. Med.* 211 (2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3531011/>

<sup>1026</sup> *The Surrogacy (Regulation) Act 2021: An Overview*, LegalOnus (Feb. 25, 2025), <https://legalonus.com/the-surrogacy-regulation-act-2021-an-overview/>

<sup>1027</sup> PMF LAS CA Team, *Surrogacy in India | Surrogacy (Regulation) Act, 2021*, PMF LAS (Oct. 10, 2025), <https://www.pmfias.com/surrogacy-regulation-act/>

<sup>1028</sup> Michelle Tan, *Choosing Between Traditional and Gestational Surrogacy*, *First Fertility IVF* (Apr. 14, 2025), <https://www.firstfertilityivf.com/2025/04/14/choosing-between-traditional-and-gestational-surrogacy/>

seeking fertility services.<sup>1029</sup> However, international surrogacy has raised many ethical and legal concerns. For example, the absence of legal regulations in the countries of origin of the intended parents may create doubts concerning the enforceability of the surrogacy contracts and the status of the children born from the practice.<sup>1030</sup>

### III. Legal Framework for Regulating Surrogacy in India

India has undergone a complicated transition in the regulation of surrogacy. For a long time, India did not have any law regulating surrogacy. Consequently, surrogacy grew exponentially in the country. During this period, the practice of surrogacy in India gained popularity worldwide, with many people from all over the globe coming to the country for the purpose of surrogacy. However, with the growth of surrogacy in the country, many people started raising ethical concerns over the exploitation of poor women in the country who acted as surrogates in the practice of surrogacy. They argued that the practice of surrogacy is unethical and treats the birth of children as a commercial activity.

Therefore, the Indian government has enacted the Surrogacy (Regulation) Act, 2021<sup>1031</sup>. The law has prohibited the practice of commercial surrogacy in the country and only allows altruistic surrogacy. The legislation has also outlined the eligibility criteria for intending parents and surrogate mothers. For example, only married Indian couples who qualify under certain conditions can be allowed to receive surrogacy services, while the surrogate mother has to qualify under certain health and age conditions.<sup>1032</sup> This ensures that surrogate mothers do not suffer any form of exploitation

and that the process of surrogacy is carried out in a responsible manner. Although the Act has sought to regulate the process of surrogacy within India, it has also led to certain issues being raised about its effects on private international law.

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### IV. Jurisdictional Conflicts in International Surrogacy

Another major legal issue in international surrogacy is the question of jurisdiction of the courts in the event of any conflict arising out of the surrogacy arrangement. Jurisdictional conflicts in international surrogacy often occur when the surrogate mother, the intended parents, and the child are all from different jurisdictions.<sup>1034</sup>

For instance, the surrogacy arrangement may have taken place in one jurisdiction, the surrogate mother may be from another jurisdiction, and the child may have been born in a third jurisdiction. In these cases, the question of which jurisdiction should be followed in the event of any conflict concerning the surrogacy arrangement is very complicated.

<sup>1029</sup> Fertility Tourism, Wikipedia, [https://en.wikipedia.org/wiki/Fertility\\_tourism](https://en.wikipedia.org/wiki/Fertility_tourism)

<sup>1030</sup> Bobi Eggum, *Global Legal Challenges of Cross-Border Surrogacy: A Comparative Analysis of Surrogacy Tourism* (Sept. 2024), [https://www.researchgate.net/publication/384458007\\_Global\\_Legal\\_Challenges\\_of\\_Cross-Border\\_Surrogacy\\_A\\_Comparative\\_Analysis\\_of\\_Surrogacy\\_Tourism](https://www.researchgate.net/publication/384458007_Global_Legal_Challenges_of_Cross-Border_Surrogacy_A_Comparative_Analysis_of_Surrogacy_Tourism)

<sup>1031</sup> *The Surrogacy (Regulation) Act, 2021*, No. 47 of 2021, India Code (2021), [https://www.indiacode.nic.in/bitstream/123456789/17046/1/aa\\_A2021-47.pdf](https://www.indiacode.nic.in/bitstream/123456789/17046/1/aa_A2021-47.pdf)

<sup>1032</sup> Piyush Verma, *The Surrogacy (Regulation) Act: Reshaping Parenthood in India*, Sharad Nagpal & Assocs., <https://www.advocatesharad.com/post/the-surrogacy-regulation-act-reshaping-parenthood-in-india> (last visited Mar. 9, 2026).

<sup>1033</sup> LegalKart Editor, *Understanding Surrogacy Laws in India: A Comprehensive Guide*, LegalKart (Jan. 2, 2026), <https://www.legalkart.com/legal-blog/understanding-surrogacy-laws-in-india-a-comprehensive-guide>

<sup>1034</sup> Susanna Marinelli, Francesca Negro, Maria Cristina Varone, Lina De Paola, Gabriele Napoletano, Alessandra Lopez, Simona Zaami & Giuseppe Basile, *The Legally Charged Issue of Cross-Border Surrogacy: Current Regulatory Challenges and Future Prospects*, *Eur. J. Obstetrics & Gynecology & Reprod. Biology* (2024), <https://www.sciencedirect.com/science/article/pii/S0301211524003439>

Private international law has established various principles that help in the determination of jurisdiction in international disputes. However, in the absence of universally accepted principles in international laws regarding surrogacy, courts in different jurisdictions have been making conflicting decisions.<sup>1035</sup> This has caused delays in the determination of disputes in surrogacy matters. Various authors have pointed out that jurisdictional disputes in international surrogacy matters usually arise because of the different policies pursued by various nations in relation to surrogacy. While some nations allow commercial surrogacy, others allow altruistic surrogacy or do not allow it at all.

#### V. Determination of Parentage

Another significant legal issue associated with international surrogacy involves the determination of the parentage of the child. Different countries have adopted diverse approaches to determining the rights of the parent in a surrogacy arrangement.<sup>1036</sup>

In some countries, the surrogate mother of the child automatically becomes the mother of the child at birth, irrespective of her genetic relationship with the child. In some other countries, the intended parents of the child may be accorded parent status of the child if a valid surrogacy arrangement was entered into.<sup>1037</sup> The diverse approaches to determining the rights of the parent to a surrogate child have led to conflicts for intended parents of a surrogate child who seek to have their rights to parent status acknowledged in their country of origin.

The determination of parent status in international surrogacy has been complicated by the fact that the status of the child may differ

depending on the country involved in the surrogacy arrangement.<sup>1038</sup> In some instances, the intended parents of a surrogate child may find it difficult to have their parent status acknowledged, even if the surrogacy arrangement was valid in the country where it was entered into.

#### V. Citizenship and Nationality Issues

International surrogacy arrangements often raise issues concerning the citizenship and nationality of the children born out of such practices.<sup>1039</sup> The rules concerning nationality differ from country to country, some countries granting citizenship based on the principle of *jus soli*, i.e., the place of birth, whereas others consider the nationality of the parents in granting citizenship, i.e., *jus sanguinis*.<sup>1040</sup> If the home countries of the intended parents do not allow the practice of surrogacy, the children born out of international surrogacy arrangements may face problems in acquiring citizenship. In some cases, the children may become stateless, i.e., no country will acknowledge their citizenship. Researchers have argued that international surrogacy arrangements often raise serious issues concerning the nationality, parentage, and legal rights of the children.

Such practices raise serious human rights issues, as the human right of the child to have an identity and nationality is compromised on the grounds of conflicts in the laws of the two countries.<sup>1041</sup>

#### VI. Judicial Approach in India

Indian courts have also addressed the issue of surrogacy disputes. In this regard, the most notable case is the *Baby Manji Yamada v. Union*

<sup>1035</sup> Dr. Ramesh Kumar, *Surrogacy: Impact of the New Laws in India*, 20 *Ilkogretim Online – Elementary Educ. Online* 8316 (2021).

<sup>1036</sup> *The Identification of Legal Parentage in International Surrogacy*, 4 *J. Soc. Sci. & Human.* 43 (2022), [https://www.bryanhonspub.org/src/static/pdf/IJSSH-2022-4-4\\_43.pdf](https://www.bryanhonspub.org/src/static/pdf/IJSSH-2022-4-4_43.pdf)

<sup>1037</sup> Adrian Ellenbogen, Dov Feldberg & Vyacheslav Lokshin, *Surrogacy – A Worldwide Demand: Implementation and Ethical Considerations*, 2 *Gynecological & Reprod. Endocrinology & Metabolism* 66 (2021), <https://grenjournal.com/journal/02-2021/surrogacy-a-worldwide-demand-implementation-and-ethical-considerations/>

<sup>1038</sup> *Parentage / Surrogacy Project*, Hague Conference on Private International Law (HCCH), <https://www.hcch.net/en/projects/legislative-projects/parentage-surrogacy>

<sup>1039</sup> Sanoj Rajan, *Ending International Surrogacy-Induced Statelessness: An International Human Rights Law Perspective*, 58 *Indian J. Int'l L.* 111 (2018), <https://doi.org/10.1007/s40901-018-0092-9>

<sup>1040</sup> *Blood (Jus Sanguinis) vs Land (Jus Soli) Based Rules for Citizenship*, Brilliant Maps (May 20, 2024), <https://brilliantmaps.com/blood-jus-sanguinis-vs-land-jus-soli-based-rules-for-citizenship/>

<sup>1041</sup> *The Child's Right to a Nationality and Childhood Statelessness: A Toolkit for Child Rights Actors*, ReliefWeb, <https://reliefweb.int/report/world/childs-right-nationality-and-childhood-statelessness-toolkit-child-rights-actors>

of India case involving a child born to a Japanese couple through surrogacy in India.<sup>1042</sup>

In this case, the parents had already separated when the child was conceived through surrogacy. This led to a complex situation regarding the citizenship status of the child. The child was unable to leave India as she was not a citizen either of India or Japan. However, the Supreme Court directed the issuance of travel documents for the child to enable her to move to Japan to join her parents. This case pointed to the fact that there was a lack of proper legislation on the issue of surrogacy in India.<sup>1043</sup>

The Delhi High Court also addressed surrogacy-related issues in *Union of India v. Baby Manisha* (2015). The case involved a child born through surrogacy to foreign parents. The primary issue before the court concerned the issuance of travel documents and the legal recognition of the child. The court emphasized the need to protect the welfare and rights of children born through surrogacy and recognized the challenges created by cross-border reproductive arrangements.<sup>1044</sup>

Additionally, in *P. Geetha v. Kerala Livestock Development Board* (2014), the Supreme Court dealt with the question of maternity benefits for commissioning mothers. The Court held that a woman who becomes a mother through surrogacy cannot automatically claim maternity leave benefits because she did not undergo pregnancy or childbirth. This decision highlighted the legal gaps in employment and welfare laws regarding parents who use surrogacy arrangements.<sup>1045</sup>

More recently, courts have also addressed eligibility issues under the Surrogacy (Regulation) Act, 2021. For example, the Telangana High Court ruled that a woman with

Complete Androgen Insensitivity Syndrome (CAIS) could not be denied access to surrogacy solely on the basis of her chromosomal condition.<sup>1046</sup> The court emphasized that the objective of the Surrogacy Act is to assist couples facing medical infertility and that restrictive interpretations should not defeat this purpose.

These judicial decisions demonstrate that Indian courts have consistently prioritized the welfare of children born through surrogacy and the protection of parental rights. At the same time, the cases highlight the legal complexities arising from cross-border surrogacy arrangements and the absence of uniform international regulations. Judicial interventions in such disputes ultimately contributed to the development of a statutory framework governing surrogacy in India, culminating in the enactment of the Surrogacy (Regulation) Act, 2021.<sup>1047</sup>

## VII. Need for International Regulation

Considering that international surrogacy is a cross-border issue, it cannot be fully dealt with by individual laws of different countries. Several scholars have suggested that an international legal code be framed, which offers uniform guidelines for dealing with issues of surrogacy.<sup>1048</sup> International organizations as well as legal scholars have stressed the need to bring uniformity in dealing with laws of different countries in relation to surrogacy. Without this, conflicts of laws will continue to be a cause of confusion in international surrogacies.<sup>1049</sup>

An international convention or treaty dealing with international surrogacies could be useful in dealing with issues of parentage, nationality, as

<sup>1042</sup> *Baby Manji Yamada v. Union of India*, (2008) 13 SCC 518.

<sup>1043</sup> *Bombay High Court Directs Issuance of Passport to Minor Despite Parental Dispute: Emphasizes Right to Travel Abroad Under Article 21 and Invalidates Arbitrary Refusal Based on Father's Consent*, Raw Law (Jan. 18, 2025), <https://rawlaw.in/bombay-high-court-directs-issuance-of-passport-to-minor-despite-parental-dispute-emphasizes-right-to-travel-abroad-under-article-21-and-invalidates-arbitrary-refusal-based-on-fathers-consent/>

<sup>1044</sup> *Dr. Manisha Singh Vs. Union of India and 4 Ors.*

<sup>1045</sup> *P. Geetha v. Kerala Livestock Dev. Bd.*, W.P.(C) No. 20680 of 2014 (Ker. H.C. June 18, 2014), <https://indiankanoon.org/doc/28343729/>

<sup>1046</sup> TG Naidu, *Telangana High Court Allows Couple's Plea for Surrogacy*, *The New Indian Express* (Mar. 8, 2026), <https://www.newindianexpress.com/states/telegana/2026/Mar/08/telegana-high-court-allows-couples-plea-for-surrogacy>

<sup>1047</sup> Anushka Sharma, *Surrogacy Law in India: Navigating Complexities Amidst Legal and Ethical Concerns*, *LiveLaw* (June 8, 2025), <https://www.livelaw.in/articles/surrogacy-law-in-india-294525>

<sup>1048</sup> Noelia Igarada González, *Legal and Ethical Issues in Cross-Border Gestational Surrogacy*, 113 *Fertil. & Steril.* 916 (2020), [https://www.fertstert.org/article/S0015-0282\(20\)30248-X/fulltext](https://www.fertstert.org/article/S0015-0282(20)30248-X/fulltext)

<sup>1049</sup> Jakub Valc, *Towards an International Consensus on Cross-Border Surrogacy: The Role of the European Court of Human Rights?*, 33 *Med. L. Rev. fwa*029 (2025), <https://pmc.ncbi.nlm.nih.gov/articles/PMC12349916/>

well as jurisdiction, in order to avoid conflicts of laws.

### VIII. Conclusion

International surrogacy is an intricate phenomenon that involves various aspects of reproductive technology, family laws, and private international laws. Surrogacy is an opportunity that presents many challenges to individuals and couples seeking parenthood.

Some of the key challenges associated with surrogacy include jurisdictional disputes, determination of parentage, citizenship of surrogate children, and the enforcement of foreign court judgments. The Indian government has enacted the Surrogacy (Regulation) Act, 2021, which aims to govern surrogacy practices in the country. It further aims to prevent the exploitation of surrogate mothers. However, it is an indication that surrogacy practices present many challenges. Therefore, it is imperative that laws adapt to changing reproductive technologies. International cooperation in surrogacy laws is necessary to ensure that the rights of surrogate children, surrogate mothers, and intended parents are protected.

