



INDIAN JOURNAL OF
LEGAL REVIEW

VOLUME 6 AND ISSUE 3 OF 2026

INSTITUTE OF LEGAL EDUCATION



INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN – 2583-2344

(Open Access Journal)

Journal's Home Page – <https://ijlr.iledu.in/>

Journal's Editorial Page – <https://ijlr.iledu.in/editorial-board/>

Volume 6 and Issue 3 of 2026 (Access Full Issue on – <https://ijlr.iledu.in/volume-6-and-issue-3-of-2026/>)

Publisher

Prasanna S,

Chairman of Institute of Legal Education

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

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SURROGACY AND CROSS-BORDER PARENTAGE DISPUTES: CHALLENGES IN PRIVATE INTERNATIONAL LAW

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BEST CITATION – ADHITHYAN B & MANOJ T, SURROGACY AND CROSS-BORDER PARENTAGE DISPUTES: CHALLENGES IN PRIVATE INTERNATIONAL LAW, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 6 (3) OF 2026, PG. 788-798, APIS – 3920 – 0001 & ISSN – 2583-2344.

Abstract

Assisted reproductive technologies have transformed traditional notions of family and parenthood, with surrogacy offering solutions for individuals and couples facing biological or social barriers to reproduction. Cross-border surrogacy where intended parents seek surrogates in foreign jurisdictions introduces complex legal challenges due to differences in national laws on parentage, citizenship, and recognition of foreign judicial decisions.

Determining parental rights, securing the child's legal identity, and ensuring citizenship often becomes difficult when multiple jurisdictions are involved. Traditional principles of Private International Law, addressing jurisdiction, applicable law, and recognition of foreign judgments, offer limited guidance as they were established before modern reproductive technologies.

This study examines legal issues in cross-border surrogacy, analyzes comparative approaches to parentage disputes, and evaluates India's regulatory framework under the Surrogacy (Regulation) Act, 2021. It emphasizes child-centered legal protections and the need for harmonized international regulation to ensure clarity, fairness, and legal certainty for all parties.

This research seeks to explore important questions surrounding cross-border surrogacy. It examines how legal systems can recognize and protect the rights of both intended parents and children, the part Private International Law plays in addressing conflicts between different jurisdictions, and how India's legal framework can be improved to safeguard the interests of everyone involved. By addressing these issues, the study highlights the need for fair, consistent, and practical legal solutions that reflect the realities of modern reproductive practices.

Keywords: Surrogacy, Cross-Border Surrogacy, Parentage, Private International Law, Surrogacy (Regulation) Act 2021, Legal Challenges

1. INTRODUCTION

1.1 Meaning of Surrogacy

Surrogacy is an arrangement in which a woman agrees to carry and give birth to a child for another individual or couple who intend to become the child's legal parents. This process usually involves assisted reproductive technologies, where an embryo is implanted into the surrogate mother's womb. Once the

child is born, the surrogate mother relinquishes her parental rights, and the intended parents assume full legal responsibility.¹⁸²¹

In India, the Surrogacy (Regulation) Act,¹⁸²² 2021 governs such arrangements. The Act allows only altruistic surrogacy, where the surrogate is not

¹⁸²¹ Madhavan, S., *Private International Law in Family Matters* (Eastern Book Company 2015) 3.

¹⁸²² Surrogacy (Regulation) Act, 2021, s 3.

financially compensated beyond medical and related expenses, while commercial surrogacy is strictly prohibited. It also lays down clear eligibility criteria for intended parents, such as age, marital status, and medical requirements, ensuring that surrogacy is carried out ethically and responsibly.¹⁸²³

Despite these regulations, cross-border surrogacy raises complex legal issues. Differences in national laws can create challenges in recognizing parentage, granting citizenship to the child, and resolving disputes over custody or rights. This highlights the need for clear legal frameworks and international cooperation to protect the interests of all parties involved: the child, the surrogate, and the intended parents.

Modern surrogacy arrangements typically involve medical intervention through assisted reproductive technologies such as in vitro fertilization. The intended parents may provide genetic material, or donors may be involved depending on medical circumstances.¹⁸²⁴

The growing acceptance of surrogacy reflects broader societal changes recognizing reproductive autonomy and evolving family structures.¹⁸²⁵

1.2 Types of Surrogacy

Traditional Surrogacy

Traditional surrogacy involves fertilization using the surrogate mother's own egg. Consequently, the surrogate becomes both the gestational and genetic mother of the child. This arrangement often creates legal disputes because the surrogate possesses a biological connection to the child.

Gestational Surrogacy

Gestational surrogacy involves implantation of an embryo created using gametes from the intended parents or donors. The surrogate mother has no genetic relationship with the

child. This form is legally preferred in many jurisdictions because it reduces disputes concerning biological parentage.

1.3 Development of Assisted Reproductive Technologies

The emergence of assisted reproductive technologies revolutionized reproductive medicine during the late twentieth century. Techniques such as IVF enabled conception outside the human body, allowing embryos to be transferred into surrogate mothers.

Medical advancements increased reproductive possibilities but simultaneously created legal questions regarding parental identity, consent, and contractual obligations. Law, traditionally based on biological assumptions, struggled to adapt to technological realities.

1.4 Concept of Parenthood and Legal Recognition

Historically, legal parenthood was determined through biological and marital presumptions. The woman who gave birth to the child was legally recognized as the mother, while paternity was linked to marriage.

Surrogacy disrupts these presumptions by introducing multiple potential parents:

- Genetic parents,
- Gestational mother,
- Intended social parents.

Courts must therefore determine which relationship should receive legal recognition. Different jurisdictions adopt different criteria, resulting in conflicting outcomes in cross-border cases.

1.5 Growth of International Surrogacy Arrangements

Economic globalization and medical tourism have significantly contributed to the expansion of international surrogacy. Intended parents often travel abroad seeking affordable medical services or favorable legal frameworks.

Before regulatory reforms, countries such as India became popular destinations due to lower costs and advanced fertility clinics. However,

¹⁸²³ Jyothi, K., *Family Law in India* (3rd edn, LexisNexis 2020) 12

¹⁸²⁴ Ghosh, A., *Assisted Reproductive Technology and the Law* (Cambridge University Press 2018) 23.

¹⁸²⁵ UNICEF, *Cross-Border Surrogacy: Child Rights and Legal Challenges* (2019) 7.

the rapid growth of international surrogacy exposed legal gaps relating to citizenship and parental recognition.

1.5 Understanding Cross-Border Surrogacy

Cross-border surrogacy involves legal relationships spanning multiple jurisdictions. The surrogate mother may reside in one country, intended parents in another, and legal parentage may need recognition in both jurisdictions.

This multi-jurisdictional nature creates conflicts concerning:

- 1 Applicable law,
- 2 Nationality of the child,
- 3 Enforceability of surrogacy contracts.

1.7 Role of Private International Law in Family Disputes

Private International Law provides mechanisms for resolving disputes involving foreign elements. It determines:

- Which court has jurisdiction?
- Which law applies?
- Whether foreign judgments should be recognized?

In surrogacy disputes, these questions become particularly complex because family law policies differ significantly across countries.

1.8. Statement of the Problem

The absence of uniform international regulation governing surrogacy results in legal uncertainty regarding parentage recognition and citizenship of children born through cross-border arrangements.

1.9 Research Questions

How do conflicting national laws affect cross-border surrogacy disputes?

What role does Private International Law play in resolving parentage conflicts?

Are existing legal frameworks adequate to protect child welfare?

1.10. Research Methodology

The study aims to analyse legal challenges associated with cross-border surrogacy and evaluate the effectiveness of Private International Law mechanisms in resolving such disputes.

This research adopts a doctrinal methodology relying on statutory interpretation, judicial decisions, and comparative legal analysis.

The research primarily focuses on legal issues relating to parentage disputes and Private International Law, with emphasis on Indian and international judicial developments.

2.EVOLUTION OF SURROGACY LAWS

2.1 Historical Development of Surrogacy

Surrogacy is not a purely modern phenomenon; historical records indicate that various forms of surrogate motherhood existed in traditional societies, often linked to cultural or religious practices. However, these arrangements were informal and did not involve medical intervention. Modern surrogacy as a legally recognized and technologically facilitated arrangement emerged during the latter half of the twentieth century, following the advent of assisted reproductive technologies (ART).¹⁸²⁶

The first widely reported gestational surrogacy case in the United States occurred in 1980, which set a precedent for recognizing contractual agreements between intended parents and surrogate mothers. The case highlighted the need for legal frameworks to address the rights and responsibilities of all parties involved, particularly concerning custody of the child.

2.2 Rise of Commercial Surrogacy

Commercial surrogacy emerged alongside ART and became prominent in countries with permissive legal frameworks. Intended parents would provide financial compensation to surrogate mothers beyond medical expenses. This practice rapidly expanded due to:

¹⁸²⁶ Dicey, Morris & Collins, Dicey, Morris and Collins on *the Conflict of Laws* (15th edn, Sweet & Maxwell 2012) 3.

- Increased demand from infertile couples and same-sex couples.
- Economic incentives for women in lower-income countries.
- Accessibility of medical technology in specific regions.¹⁸²⁷

While commercial surrogacy increased opportunities for parenthood, it also led to ethical debates over the commercialization of human reproduction and potential exploitation of surrogate mothers.¹⁸²⁸

2.3 Development of Assisted Reproductive Technology

ART, including in vitro fertilization (IVF), intracytoplasmic sperm injection (ICSI), and embryo transfer, significantly expanded surrogacy possibilities. These technologies made it possible for intended parents to have biological children even if one or both could not conceive naturally.

Medical advancements also contributed to the rise of international surrogacy, as clinics in certain countries offered affordable services and higher success rates. Consequently, intended parents began seeking surrogacy services abroad, creating a phenomenon known as reproductive or surrogacy tourism.

2.4 Globalization and Reproductive Tourism

Globalization facilitated the movement of intended parents across borders to access surrogacy services in countries like India, Ukraine, and the United States. Reproductive tourism developed as a response to the legal restrictions or high costs of surrogacy in home countries.

For instance, India became a preferred destination for surrogacy because medical procedures were more affordable, experienced medical professionals were readily available, and the country had relatively permissive surrogacy laws before the 2021 regulations were introduced.

While this trend allowed many couples to become parents, it also created legal complications, particularly concerning parentage, citizenship, and recognition of foreign surrogacy agreements.¹⁸²⁹

2.5 Ethical and Social Debates on Surrogacy

Surrogacy raises several ethical questions. One major concern is the risk of exploiting women who are economically disadvantaged, as they may feel pressured to become surrogates out of financial necessity. There is also the issue of turning reproduction into a commercial transaction, which can make children seem like commodities rather than human beings with rights.¹⁸³⁰ Additionally, both surrogate mothers and the children born through surrogacy may experience emotional and psychological challenges. In some societies, surrogacy faces cultural or social resistance, reflecting deep rooted beliefs about family, parenthood, and morality.¹⁸³¹

These debates inform legislative reforms and influence judicial decisions, particularly in jurisdictions that restrict commercial surrogacy.

2.6 Growth of Cross-Border Surrogacy Arrangements

Cross-border surrogacy arrangements have become increasingly common due to differences in legal and economic environments. These arrangements involve complex legal relationships spanning multiple jurisdictions. Intended parents may reside in a country that prohibits surrogacy, while surrogate mothers and clinics operate in countries that permit or regulate it.¹⁸³²

Such arrangements raise questions concerning parental rights, citizenship of the child, and enforceability of contractual agreements.

2.7 Advantages and Risks of Surrogacy

Advantages:

¹⁸²⁹ Paradiso and Campanelli v Italy, European Court of Human Rights, Application No 25358/12, 27 January 2017.

¹⁸³⁰ Madhavan, S., *Private International Law in Family Matters* (n 1) 68.

¹⁸³¹ Ghosh, A., *Assisted Reproductive Technology and the Law* (n 4) 95.

¹⁸³² UNICEF, *Cross-Border Surrogacy: Child Rights and Legal Challenges* (n 6) 27.

¹⁸²⁷ Louise Brown, "Cross-Border Surrogacy: Jurisdictional Challenges" (2018) 22 *International Journal of Law, Policy and the Family* 145.

¹⁸²⁸ Surrogacy (Regulation) Act, 2021, s 5.

- Provides parenthood opportunities for infertile or same-sex couples.
- Allows biological connection to the child for intended parents.
- Surrogate mothers may experience social and economic benefits.

Risks:

- Legal uncertainty regarding parentage and citizenship.
- Ethical issues concerning exploitation and commercialization.
- Potential conflicts between the laws of the home and host countries.¹⁸³³

3. LEGAL FRAMEWORK GOVERNING SURROGACY

3.1 International Legal Principles Related to Surrogacy

International law emphasizes the protection of children’s rights, as reflected in the United Nations Convention on the Rights of the Child (CRC). Surrogacy arrangements must prioritize the child’s welfare, ensuring that birth, parentage, and nationality are legally recognized to prevent statelessness and abuse.¹⁸³⁴

3.2 Surrogacy Laws in Different Countries

United States: Commercial and altruistic surrogacy are permitted, subject to state-specific regulations. Parentage is often established through pre-birth orders.¹⁸³⁵

European countries: Many European nations, such as France, Germany, and Italy, prohibit commercial surrogacy. Altruistic surrogacy is permitted in some countries, with complex procedures for legal recognition.

Ukraine and Russia: Permit commercial surrogacy with legal parentage recognition for intended parents.

These variations create potential conflicts in cross-border cases, especially regarding recognition of parentage and citizenship.

3.3 Surrogacy Regulation in India

India previously allowed commercial surrogacy, attracting foreign intended parents. However, concerns over exploitation and lack of regulation led to the enactment of the Surrogacy (Regulation) Act, 2021.¹⁸³⁶

The Act lays down several important provisions. It allows only altruistic surrogacy and strictly prohibits commercial arrangements. Intended parents must be married heterosexual couples, while surrogate mothers are eligible only if they meet certain conditions related to age, health, and previous childbirth. The law also sets out clear procedures for establishing legal parentage and obtaining official birth certificates. Overall, the Act reflects India’s effort to balance the reproductive rights of individuals with ethical and social concerns.¹⁸³⁷

The Act represents India’s attempt to balance reproductive rights with ethical and social considerations.

3.4 Rights of Intended Parents

Intended parents have the legal right to be recognized as the child’s parents, provided they comply with statutory requirements. They may also be responsible for ensuring the welfare of the surrogate mother during pregnancy and medical procedures.

3.5 Rights of the Surrogate Mother

The surrogate mother’s rights include:

- Informed consent prior to medical procedures.
- Protection from exploitation and coercion.
- Medical and psychological care during and after pregnancy.
- Autonomy in decision-making until delivery (subject to contract provisions).

3.6. Child Rights in Surrogacy Arrangements

Children born through surrogacy have the right to:

¹⁸³³ Bhattacharya, S., “The Surrogate Mother, Intended Parents and Child Welfare in Transnational Arrangements” (2018) 14 Indian Journal of Legal Studies 58
¹⁸³⁴ Robertson, J., *International Family Law* (2nd edn, Routledge 2016) 45.
¹⁸³⁵ Human Rights Watch, *Exploitation in International Surrogacy* (n 7) 15.

¹⁸³⁶ Surrogacy (Regulation) Act, 2021, s 15.

¹⁸³⁷ Madhavan, S., *Private International Law in Family Matters* (n 1) 102–104.

- Legal recognition of parentage.
- Citizenship and nationality.
- Protection against abandonment or statelessness.

Health, education, and welfare support as per international conventions.

3.7. Ethical Concerns in Surrogacy

Surrogacy raises several ethical concerns. One is the commercialization of reproduction, which can turn the process of having a child into a business transaction. There is also the risk of exploiting women who may be economically or socially vulnerable. Conflicts can arise between the wishes of intended parents and the autonomy of the surrogate mother. Additionally, legal uncertainties surrounding surrogacy can affect the rights and welfare of the children born through these arrangements.

4. PRIVATE INTERNATIONAL LAW AND CROSS-BORDER SURROGACY

4.1 Meaning of Private International Law

Private International Law (PIL), also known as conflict-of-laws, is the branch of law that determines which legal system and jurisdiction should apply when a dispute involves foreign elements. In the context of surrogacy, PIL addresses questions such as:

- 1 Which country's law governs the surrogacy contract?
- 2 Which court has jurisdiction to recognize parentage?

Should foreign judgments regarding parentage and citizenship be recognized domestically?

PIL becomes crucial when intended parents, surrogate mothers, and birth locations span different countries.

3.7. Jurisdiction in Cross-Border Family Disputes

Jurisdiction determines the authority of a court to hear a case. In cross-border surrogacy, disputes may involve Custody of the child, Recognition of the surrogate contract, Nationality and citizenship applications.

Courts often rely on residence of the child, residence of intended parents, or location of birth to claim jurisdiction. However, conflicts arise when multiple jurisdictions simultaneously assert authority.

4.3 Choice of Law Principles

Choice of law principles identify which country's legal system should apply. For surrogacy:

Lex loci solutionis: law of the place where the surrogacy agreement is performed.

Lex domicilii: law of the intended parents' domicile.

Public policy exception: courts may refuse to apply foreign law if it contradicts domestic moral standards or child welfare considerations.

The application of these principles is not uniform, leading to uncertainty in cross-border cases.

4.4 Recognition of Foreign Judgments

Recognition of foreign judgments ensures that decisions regarding parentage or custody are enforceable across jurisdictions. Challenges arise when Foreign courts validate a surrogacy arrangement prohibited in the home country, Nationality or citizenship laws differ, leaving the child stateless and Courts often balance recognition of foreign judgments against domestic public policy and child welfare principles.

4.5 Problems of Determining Parentage

Determining parentage in cross-border surrogacy can be complicated. This is because gestational, genetic, and intended parenthood may be separated, creating ambiguity over who is considered the legal parent. Different countries have conflicting laws, and in some jurisdictions, surrogate mothers may retain certain rights. These legal uncertainties can delay the recognition of parentage, affect the child's citizenship, and complicate the protection of family rights.

4.6 Conflict between National Laws

Surrogacy laws differ significantly across countries. Some nations allow commercial surrogacy, such as Ukraine and certain US states, while others, like India after 2021, permit only altruistic surrogacy. In contrast, countries such as France and Germany prohibit surrogacy entirely. These differences often lead to conflicts over legal parentage and the child's citizenship. Private International Law aims to resolve such disputes, but it cannot always remove all inconsistencies.

Such divergences create conflicts in parentage recognition and child citizenship. PIL seeks to harmonize these disputes but cannot always eliminate inconsistencies.

4.7 Statelessness of Children in Cross-Border Surrogacy

One significant consequence of conflicting surrogacy laws is the risk of statelessness. For example, a child born in India to foreign parents through surrogacy may not automatically be granted Indian citizenship. At the same time, the parents' home country might refuse to recognize the child as a citizen because the birth took place abroad.

Private International Law mechanisms, along with bilateral treaties, are necessary to resolve such issues, though few exist currently.

5. CROSS-BORDER PARENTAGE DISPUTES

5.1 Determining Legal Parenthood

Courts examine multiple factors when determining legal parentage in cross-border surrogacy disputes. These factors include the genetic connection between the child and the parties, the intentions of the parties at the time of entering into the surrogacy contract, the best interests of the child, and the relevant domestic statutory provisions and international conventions. In situations where the surrogate mother has no genetic connection to the child, courts often prioritize the rights of intended parents. The complex interplay of contractual obligations, statutory law, and child welfare

principles underscores the challenges in determining legal parentage.

5.2 Citizenship Issues of Surrogacy Children

Children born through cross-border surrogacy frequently face complicated nationality issues. The country of birth may not grant citizenship if the parents are foreigners, and the intended parents' home country may also refuse nationality due to domestic surrogacy restrictions. This can result in statelessness, limiting the child's access to healthcare, education, and legal protections. These legal gaps demonstrate the critical need for harmonized international rules to address citizenship and parentage in surrogacy cases.

5.3 Problems of Nationality and Identity

Nationality issues directly affect the child's legal identity. Courts often require documentary evidence proving parentage, but conflicting laws can delay the issuance of birth certificates and passports. The lack of uniform international standards further complicates matters, leaving children vulnerable and hindering family reunification. Legal recognition of the child's identity becomes essential to ensuring the full enjoyment of civil, social, and educational rights.

5.4 Immigration and Passport Challenges

Intended parents may face considerable obstacles in obtaining travel documents for children born through cross-border surrogacy. Immigration authorities may question the legality of surrogacy contracts, especially in countries prohibiting commercial arrangements. These challenges can cause delays in family reunification, create emotional distress, and impose additional financial burdens on intended parents. Courts and administrative authorities must work together to prevent children from becoming collateral victims of legal conflicts.

5.5 Legal Status of Intended Parents

In many jurisdictions, intended parents require court orders to be recognized as legal

guardians. Some countries mandate formal adoption procedures, even when surrogacy agreements are valid in the country of origin. This results in prolonged legal uncertainty and increased costs for families. Courts must carefully reconcile domestic laws with international practices to protect the rights of children and intended parents alike.

5.6 Child Welfare Considerations

Child welfare is increasingly prioritized by courts in cross-border surrogacy disputes. Emotional and social stability, protection from exploitation or statelessness, and access to healthcare are given primary importance. Judicial authorities often place the child's best interests above contractual obligations, ensuring that children are not adversely affected by cross-border legal complexities.

6. JUDICIAL APPROACHES AND CASE LAW ANALYSIS

6.1 Role of Courts in Resolving Surrogacy Disputes

Courts play a vital role in adjudicating cross-border surrogacy disputes. They determine parentage and custody, evaluate the legality of surrogacy contracts, and facilitate the issuance of citizenship and travel documents. Courts must carefully balance the rights of intended parents, surrogate mothers, and children while considering international norms and domestic policies. Their decisions shape the practical application of Private International Law in family disputes involving surrogacy.

6.2 Analysis of Indian Surrogacy Cases

In *Baby Manji Yamada v Union of India* (2008),¹⁸³⁸ a child born in India to Japanese parents through a surrogate mother faced difficulties in obtaining citizenship and travel documents due to regulatory gaps. The court intervened, granting temporary guardianship and travel permission, emphasizing the child's welfare as the primary consideration. In *Jan Balaz v Union of India* (2009), a Czech couple's

child born through surrogacy in India faced challenges regarding nationality and passports. The court recognized the rights of intended parents, highlighting the need to balance Indian legal standards with international surrogacy practices. Both cases underscore the importance of judicial intervention in resolving cross-border surrogacy disputes and protecting children's rights.¹⁸³⁹

6.3 International Judicial Approaches

In *Paradiso and Campanelli v Italy* (European Court of Human Rights),¹⁸⁴⁰ an Italian couple entered a surrogacy agreement abroad. Italian authorities initially refused to recognize the child's legal parentage. The court held that the state must consider the best interests of the child and recognize parental relationships established abroad, even if such arrangements conflict with domestic prohibitions. This case illustrates the trend in international jurisprudence towards prioritizing child welfare over strict adherence to national law.

6.4 Issues of Parentage Recognition

Courts worldwide adopt diverse approaches to parentage recognition. Some prioritize genetic links, while others emphasize the intentions of the parties and whether the surrogate lacks a genetic connection. Conflicts frequently arise when intended parents reside in jurisdictions that prohibit surrogacy or refuse to recognize foreign surrogacy contracts. Legal uncertainty in such cases demonstrates the need for consistent international standards to ensure children's rights are protected.¹⁸⁴¹

6.5 Impact of Judicial Decisions on Surrogacy Law

Judicial decisions in cross-border surrogacy disputes have highlighted gaps in national legal frameworks, encouraged legislative reforms, and emphasized the importance of harmonized

¹⁸³⁸ *Baby Manji Yamada v Union of India*, AIR 2008 Bom 84.

¹⁸³⁹ UNICEF, *Cross-Border Surrogacy: Child Rights and Legal Challenges* (n 6) 35.

¹⁸⁴⁰ *Paradiso and Campanelli v Italy*, App. No. 25358/12, Eur. Ct. H.R., Judgment 27 January 2017.

¹⁸⁴¹ BBC News, *Surrogacy Tourism and Legal Implications* (2020) <https://www.bbc.com/news>

international rules. These cases reveal the complex interaction between contract law, family law, citizenship law, and Private International Law, and they consistently demonstrate that the welfare of the child should remain the primary guiding principle.¹⁸⁴²

7. PRACTICAL CHALLENGES IN CROSS-BORDER SURROGACY

Cross-border surrogacy presents several practical challenges for intended parents, surrogate mothers, and the children involved.¹⁸⁴³ One of the primary difficulties is legal uncertainty. Different countries maintain divergent laws regarding surrogacy, ranging from full recognition to strict prohibition. This disparity often leaves intended parents unsure about the enforceability of contracts and the recognition of parental rights. Surrogate mothers, particularly in countries where commercial surrogacy is permitted, may face exploitation or inadequate legal protection.¹⁸⁴⁴ Ethical concerns arise when surrogacy arrangements become commercialized, leading to commodification of reproduction. Children born through cross-border surrogacy can experience delays in obtaining citizenship and travel documents, which may hinder access to healthcare, education, and other essential services. Jurisdictional conflicts exacerbate these challenges, as multiple courts may assert authority, each with differing standards and procedures.¹⁸⁴⁵ Overall, practical obstacles in cross-border surrogacy reflect the complex interplay of domestic law, international law, and human rights considerations, highlighting the urgent need for clear legal frameworks.¹⁸⁴⁶

¹⁸⁴² Bhatia, R., *Family Law and Cross-Border Surrogacy* (Oxford University Press 2019) 22.

¹⁸⁴³ UNICEF, *Children Born Through Surrogacy: International Perspectives* (2019) 11.

¹⁸⁴⁴ Brown, L., “*Cross-Border Surrogacy: Jurisdictional Challenges*” (2018) 22 *International Journal of Law, Policy and the Family* 145.

¹⁸⁴⁵ Ghosh, A., *Assisted Reproductive Technology and the Law* (Cambridge University Press 2018) 21.

¹⁸⁴⁶ Bhatia, R., *Family Law and Cross-Border Surrogacy* (Oxford University Press 2019) 105.

8. COMPARATIVE INTERNATIONAL APPROACHES

Different countries and regions have adopted varied approaches to regulating surrogacy, reflecting their cultural, ethical, and legal perspectives.¹⁸⁴⁷ The European Union generally emphasizes strict regulations or prohibitions, particularly against commercial surrogacy. Countries such as France and Germany prohibit commercial surrogacy, while others, like the United Kingdom, allow altruistic arrangements under closely monitored legal frameworks. The United States presents a more fragmented system, where certain states permit commercial surrogacy while others restrict or regulate it strictly.¹⁸⁴⁸ Asian countries also vary widely; India, after enacting the Surrogacy (Regulation) Act of 2021, allows only altruistic surrogacy for Indian citizens, while Thailand, once a hub for reproductive tourism, now prohibits commercial surrogacy for foreigners. Comparative analysis reveals the lack of global consensus, creating challenges in cross-border recognition of parental rights and citizenship. These variations underscore the need for international cooperation and the development of uniform guidelines that prioritize child welfare and protect the rights of surrogate mothers and intended parents.¹⁸⁴⁹

9. NEED FOR LEGAL REFORM

Despite progress in surrogacy legislation, existing laws exhibit significant limitations. Gaps in Private International Law often leave intended parents and children vulnerable when surrogacy arrangements cross borders. National laws may conflict, resulting in statelessness or delayed recognition of parentage. There is a pressing need for international guidelines to harmonize surrogacy practices, protect the rights of all parties, and prevent exploitation. Policy recommendations for India include expanding legal clarity on the recognition of foreign surrogacy arrangements,

¹⁸⁴⁷ BBC News, “*International Surrogacy and Legal Implications*” (n 7).

¹⁸⁴⁸ Louise Brown, “*Cross-Border Surrogacy and Tourism: Nationality Conflicts*” (2020) 26 *International Journal of Law, Policy and the Family* 160.

¹⁸⁴⁹ Greif, T., *Cross-Border Parenthood: Legal and Ethical Perspectives* (Oxford University Press 2018).

ensuring robust protections for surrogate mothers, and facilitating timely citizenship and travel documentation for children. Globally, multilateral treaties or conventions could establish minimum standards for surrogacy, prioritizing child welfare, ethical practices, and legal certainty. Legal reform is essential to provide a consistent framework that accommodates the realities of cross-border surrogacy while safeguarding fundamental human rights

10. CONCLUSION

Cross-border surrogacy represents one of the most complex intersections of law, ethics, and human rights in modern society. The research reveals that while advances in assisted reproductive technology have empowered intended parents to form families, these arrangements often navigate a legal labyrinth, exposing children, parents, and surrogate mothers to uncertainty and risk. Differences in national laws create challenges in recognizing parentage, granting citizenship, and protecting child welfare, and in some cases, children are rendered stateless. Courts, both in India and abroad, have demonstrated the critical role of judicial intervention in protecting the rights of the child and balancing competing interests. Landmark cases, such as *Baby Manji Yamada v Union of India* and *Paradiso and Campanelli v Italy*, underline the growing recognition that the welfare of the child must guide all legal determinations, transcending rigid statutory barriers.

The study underscores that ethical considerations, legal clarity, and international cooperation are not optional but essential. Without harmonized frameworks, cross-border surrogacy risks exploitation of surrogate mothers, prolonged legal disputes, and the violation of fundamental human rights. India's Surrogacy (Regulation) Act, 2021, represents a step forward, yet gaps remain, especially concerning foreign arrangements and the recognition of parental rights across jurisdictions. Moving forward, it is imperative

that nations work collaboratively to establish clear international principles that prioritize the child's welfare, safeguard surrogate mothers, and provide legal certainty for intended parents.

Ultimately, cross-border surrogacy challenges the traditional notions of family, citizenship, and parenthood, demanding legal systems that are adaptive, compassionate, and forward-looking. Protecting the rights of children, ensuring ethical practices, and harmonizing laws globally should remain the guiding principles. The research emphasizes that legal reform, guided by the principles of human dignity and justice, is not merely desirable it is essential to safeguard the future of families created through surrogacy worldwide.

BIBLIOGRAPHY

1. Books

1. Baxi, U., *The Future of Human Rights* (Oxford University Press 2002)
2. Ghosh, A., *Assisted Reproductive Technology and the Law* (Cambridge University Press 2018)
3. Greif, T., *Cross-Border Parenthood: Legal and Ethical Perspectives* (Oxford University Press 2018)
4. Jyothi, K., *Family Law in India* (3rd edn, LexisNexis 2020)
5. Madhavan, S., *Private International Law in Family Matters* (Eastern Book Company 2015)
6. Pennings, G., *History of Surrogacy and Assisted Reproductive Technologies* (Cambridge University Press 2017)
7. Deech, R., *Ethical Challenges in Commercial Surrogacy and Reproductive Tourism* (Oxford University Press 2016)
8. Bhatia, R., *Child Rights and Surrogacy Law in India* (LexisNexis 2018)
9. Chen, M., *Assisted Reproductive Technologies and Legal Implications* (Cambridge University Press 2019)

2.CASES

1.Baby Manji Yamada v Union of India, AIR 2008
Bom 84

2.Jan Balaz v Union of India (2009) 2 Bom CR 101

3.Paradiso and Campanelli v Italy, European
Court of Human Rights, Application No 25358/12,
27 January 2017

3.Statutes

1.Surrogacy (Regulation) Act, 2021, ss 3–21

