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Cite this as: *BMJ* 2024;386:e079542

<http://dx.doi.org/10.1136/bmj-2024-079542>

Published: 05 August 2024

Surrogacy needs to be regulated, not prohibited

Evidence shows that surrogacy is not inherently exploitative, and ethical practice can best be ensured by a legal framework argue **Lavanya Fischer and colleagues**

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Criticism of surrogacy—in which a woman carries a child for parents who cannot do so themselves—has become increasingly vocal and fierce in recent years. In response to the Law Commissions' recent consultation, opponents described surrogacy as an “exploitation of women and commodification of their bodies” and a “fragmentation of motherhood.”¹ In March 2023, 100 lawyers, doctors, and psychologists signed the Declaration of Casablanca demanding the universal abolition of surrogacy,² and in 2024 the Italian prime minister proposed legislation to make it a universal crime on a par with genocide and child trafficking.³

It is true that some surrogacy arrangements fail to adequately protect surrogates' rights,⁴ and some intermediaries have operated unethically by trafficking women,⁵ engaging in unsafe practices such as multiple embryo transfer,⁶ or brokering surrogacy in war zones.⁷ However, empirical evidence does not support the claim that surrogacy is inherently harmful. Rather, it suggests that well regulated surrogacy can be positive for all involved.

As a group of lawyers from the UK, US, and India (all countries in which surrogacy is—or has been—practised) we have substantial experience of dealing with surrogacy agreements. Our legal perspective is that whether surrogacy is good or bad depends on how it is conducted. Healthy, safe, ethical surrogacy is both achievable and most likely when surrogacy is practised openly and regulated by laws designed to minimise risks and avoid harms. Laws which seek to restrict or prohibit surrogacy tend to produce the opposite outcome.

Evidence on surrogacy outcomes

Research into surrogacy outcomes does not support the claim that acting as a surrogate necessarily has a negative effect on women. A longitudinal study of 34 women from the UK who had acted as surrogates in 2003 found that their psychological wellbeing had not changed 10 years later and that every one of those interviewed remained positive about their experience.⁸ A detailed study of women acting as gestational surrogates in the US found they had experienced creating families as both extremely rewarding and pleasurable.⁹ A systematic review of 47 studies conducted across 12 countries investigated the experiences of predominantly gestational surrogacies in a commercial setting and found that the experiences of both parties were largely satisfactory and often resulted in positive ongoing relationships.¹⁰ A 2018 study found close positive relationships between surrogates and parents

enduring after the birth in most surrogacy arrangements (including 95% of US and UK surrogacy cases).¹¹

Nor does the evidence show that surrogacy has a negative effect on children. A longitudinal UK study in which 42 surrogacy families were seen at seven time points over 20 years found that outcomes in respect of psychological adjustment, parental attachment, and wellbeing for children born through surrogacy were consistently as good, if not better, than those of other children.¹² Another study involving focus groups with 25 children who were born through surrogacy or whose mothers had acted as surrogates found that children reflected positively on their experiences of surrogacy.¹³

Some studies, often involving unregulated transnational surrogacy in low and middle income countries, report less positive outcomes.¹⁴ For example, ethnographic research with Indian surrogates in the early 2000s found that some women reported having been coerced into becoming surrogates or not being fully in control of decisions about their pregnancies (box 1).^{17 18} Interviews with Russian surrogates in the 2010s found that they were often subject to considerable control and surveillance, with payments often tied to “success” and “good behaviour.”¹⁹

Box 1: India's attempt to confine surrogacy to domestic and altruistic surrogacy

India was until 2015 a popular global surrogacy destination. Its commercial surrogacy model, based on contract law, offered surrogacy to foreign parents, managed by intermediaries. There were well documented cases of abuse and hardship involving Indian surrogates, within a context of wider issues of ethnic and wealth inequality and exploitation. There were also high profile cases in which children born through surrogacy were abandoned in India.^{15 16}

In 2016, foreign couples were prevented from accessing surrogacy in India, with legislation passed five years later. The Surrogacy (Regulation) Act 2021 and its associated rules permitted only Indian origin heterosexual married couples to access surrogacy, with strict age limits. Surrogates could no longer be compensated and were allowed to act as a surrogate only once, and only if they were married, had already had a child, were not using their own eggs, and were genetically related to one of the intended parents. This created a narrow set of circumstances in which surrogacy became permissible.

The legislation also tried to protect surrogates' interests by requiring written informed consent in the surrogate's language, providing insurance for her, and giving her the right to withdraw consent before embryo transfer.

The circumstances in which surrogacy can be practised lawfully in India are now so limited that Indian intended parents are increasingly travelling overseas for surrogacy. In practice, legislation which was intended to protect surrogates has pushed surrogacy underground or overseas, where there is a risk that women will be less well protected.

Concerns about surrogacy

There are, of course, legitimate concerns about surrogacy, and it is important that it is conducted responsibly— including ensuring that women are not exploited or coerced, that medical practice is safe, and that children’s welfare is safeguarded. However, critics who object to all surrogacy are unpersuaded by the possibility of any positive outcomes, and that impedes constructive discussion about how to achieve them.

For example, some critics say that surrogacy is by definition exploitative, making it impossible to give informed consent to act as a surrogate.^{20–23} Others say that the risks of pregnancy make valid consent impossible.²⁴ The risk of a lack of informed consent is likely to be greatest in situations where there is a large imbalance of wealth and power, but not accepting the possibility of informed consent in any circumstances disregards safeguards such as screening and careful support that can help protect women. Surrogates in both wealthy and poor countries report frustration with those who assume they are incapable of making a rational choice to carry a child for someone else.^{25–27}

A further objection is that intended parents who seek surrogacy rather than adoption are selfish.²⁸ However, it is unclear why an obligation to adopt applies only to those who cannot carry a pregnancy: the need for assistance makes the otherwise normal human desire to conceive a child no less legitimate.

A more specific objection, mainly centred on commercial surrogacy, is that surrogacy commodifies reproduction, childbirth, and therefore children.^{29–30} Yet fertility doctors do not work for free, and altruistic surrogacy—in which lawyers and healthcare professionals are paid while the women who invest the most time and effort are not—still involves substantial cost.³¹

Varying global approaches to surrogacy

Legal approaches to surrogacy vary globally. Some jurisdictions, including the US, Ukraine, and parts of Mexico, allow the remuneration of surrogates and permit surrogacy arrangement services for profit (commercial surrogacy). Other countries prohibit surrogacy altogether (eg, France, Italy, Germany); permit only altruistic surrogacy, prohibiting payment to surrogates or intermediaries (eg, Canada, India, most of Australia, New Zealand, UK, and Ireland); or criminalise parents who pay for surrogacy overseas (eg, Hong Kong and parts of Australia).³²

National legal restrictions which seek to prohibit all surrogacy or limit it to altruistic or domestic forms—are not enough to ensure good practice. Creating ethical surrogacy is more complex and nuanced. For example, the form of commercial surrogacy available in most US states offers a structured process through which both surrogates and intended parents are supported by a team of regulated professionals operating within a clear legal framework. By contrast the largely unregulated commercial surrogacy in countries such as Kenya and Kazakhstan, when combined with large imbalances of wealth, culture, and language between surrogates and foreign intended parents, carries much greater risk of unethical practice, as was seen in India (box 1).³³

Similarly, restricting payment of surrogates does not resolve concerns about exploitation in an absence of regulation that

supports surrogate and child welfare. In altruistic familial arrangements, which are incentivised in environments where commercial surrogacy is restricted, women may be subject to emotional pressure to act as a surrogate.³⁴ In addition, since domestic restrictions on paying surrogates tend to create shortages, intended parents are driven overseas and so ultimately merely export the risk of exploitation.³⁵ In the UK, for example, statistics from the Child and Family Court Advisory and Support Service show that between 2016 and 2023, 51% of surrogacy births took place outside the UK, despite altruistic surrogacy being permitted in the UK.³⁶ Ultimately, restrictive national surrogacy laws are ineffective in actually limiting the risk of exploitation.

Practical ways to make surrogacy work well

While the specifics should be determined locally to be appropriate to the political, social, and cultural context, surrogacy regulation should consider safety, informed consent, adequate support, and long term implications.

- **Safety**—Regulatory requirements should minimise risk—for example, through requirements for appropriate medical and mental health screening to ensure that surrogates can carry a pregnancy safely, and regulatory oversight of medical practices such as the number of embryos transferred.
- **Informed consent**—Examples of pre-conception safeguards which support this include requiring each party having independent legal advice, a clear written agreement with guaranteed key rights, and preparation counselling (see box 2). In some contexts, additional protections may be needed, such as requiring documents to be in a language the surrogate understands, or additional checks to ensure there is no coercion from relatives and the surrogate is not financially vulnerable.
- **Adequate support**—Surrogacy is a lengthy and emotional process, and all involved need access to appropriate professional, medical, and psychological support during the process and afterwards. How this is delivered will depend on the wider social context, including the level of state funded healthcare available.
- **Long term implications**—Records should be retained for children born through surrogacy who want to know more about their genetic and gestational origins. Again, the specifics will depend on the country’s existing mechanisms for healthcare, birth registration, and public records.

Box 2: New York’s bill of rights for surrogates

New York State’s 2021 Child-Parent Security Act (CPSA) provides a model for regulating compensated surrogacy. After a long ban on surrogacy, a review by New York State Task Force on Life and the Law during 2012–17 concluded that compensated surrogacy should be permitted with mandatory protections.³⁷ As a result the CPSA was implemented, setting out detailed eligibility criteria³⁸ and a “surrogates’ bill of rights” that cannot be abridged.³⁹

- All surrogates must have previously given birth, have a comprehensive medical evaluation to determine whether they can safely gestate a child, and provide informed consent to all medical procedures
- Surrogates are given an absolute right to make all medical decisions affecting their health and the pregnancy.
- They must be given independent legal counsel, a life insurance policy and medical insurance until 12 months after birth, and access to mental health counselling, all at the intended parents’ expense. Their compensation must be safeguarded in a third party (escrow) account.
- Surrogacy matching programmes must be licensed by the New York Department of Health, to comply with statutory record keeping obligations, financial solvency, and the CPSA.

- Children born to surrogates have the right to access the identity of their surrogate and any gamete donors.

The New York model rigorously protects the surrogate's right to control and autonomy while also ensuring transparency and certainty for intended parents and protecting children's identity rights. Although New York's commercial surrogacy model is still in its infancy, the statute's unique requirements that surrogacy matching programmes be licensed by the state and that surrogates be provided with a copy of the surrogate's bill of rights, is a topic of much interest and discussion among professionals practising in this field across the United States.⁴⁰

These core principles can be enforced in various ways through legal regulation. Parents applying for a court order to ratify their surrogacy arrangement (before either conception or birth) can be required to show they have followed prescribed steps, such as those set out in New York's bill of rights (box 2). Regulatory bodies can use licensing to control the practice of clinicians, surrogacy agencies, lawyers, and other professionals. Such measures produce a robust ethical surrogacy pathway designed to reduce risk and to increase the prospect of the positive long term outcomes.

There are, of course, limitations. No regulation can eliminate all risk. If safeguards increase costs, there are also issues of equity and access, and a risk that intended parents will continue to be driven to less well regulated countries. Nonetheless, the focus of local laws should be on encouraging intended parents to enter into safe, regulated surrogacy arrangements in their home country and provide a clear alternative to potentially less well regulated surrogacy elsewhere.

Everyone involved in the surrogacy process—not only surrogates and intended parents, but also doctors, nurses, midwives, surrogacy agencies, lawyers, counsellors, and regulators—should work together within regulated systems to safeguard good ethical surrogacy practice. Compelling evidence shows that well managed surrogacy can be a positive experience for all involved, resulting in the birth of loved and wanted children who thrive in the long term. The best way to address concerns about surrogacy's potential to be unethical or exploitative is not prohibition or restriction, but robust regulation.

Key messages

- Evidence shows that surrogacy is not inherently harmful and can produce good outcomes for all those involved
- Good outcomes are more likely to be achieved when surrogacy is practised openly and regulated by laws which ensure that everyone is safe, supported, and fully informed
- Restrictive national surrogacy laws are ineffective in preventing exploitation and drive intended parents to seek unregulated options elsewhere

Contributors and sources: All authors made equal contributions to devising and writing the article, drawing on their experience of the regulation of surrogacy in different jurisdictions.

Competing interests: We have read and understood BMJ policy on declaration of interests and declare that all authors work in reproductive law. LRF is a lawyer and works in the areas of international law and family law, with experience of working on surrogacy cases. NG is founder and director of Brilliant Beginnings, a non-profit surrogacy agency. KH is a member of Surrogacy UK ethics committee and was a member of its working group on surrogacy law reform. She is also an advisory board member of My Surrogacy Journey. EJ was a member of the Human Fertilisation and Embryology Authority's legislative reform advisory group. DES was one of the principal drafters of the New York Child Parent Security Act. She is on the board of New York Attorneys for Adoption and Family Formation and on the emeritus board of Family Equality Council. She was previously on the board of the Academy of Adoption and Assisted Reproduction.

Provenance and peer review: Commissioned; externally peer reviewed.

- 1 Law Commissions of England and Wales and Scotland. Building families through surrogacy: a new law (full final report). 2023. <https://cloud-platform-e218f50a4812967ba1215eae-cede923f.s3.amazonaws.com/uploads/sites/30/2023/03/2-Surrogacy-full-report.pdf>
- 2 Declaration of Casablanca. 2023. <https://declaration-surrogacy-casablanca.org/>
- 3 Nadeau BL, Lamb C. Italy's prime minister says surrogacy 'inhuman' as party back steeper penalties. *CNN* 13 Apr 2024. <https://edition.cnn.com/2024/04/13/world/italian-prime-minister-says-surrogacy-inhuman-intl/index.html>
- 4 Das S, Bowers S, Politzer M. Global surrogacy agency accused of putting women at risk with "unethical" medical procedures. *Observer* 2022 Dec 18. <https://www.theguardian.com/society/2022/dec/18/global-surrogacy-agency-accused-of-putting-women-at-risk-with-unethical-medical-procedures#>
- 5 Neofytou K. Eight arrested in Crete over surrogacy and IVF fraud. *BioNews* 2023; 1204. <https://www.progress.org.uk/eight-arrested-in-crete-over-surrogacy-and-ivf-fraud/>
- 6 Tanderup M, Reddy S, Patel T, Nielsen BB. Reproductive ethics in commercial surrogacy: decision-making in IVF clinics in New Delhi, India. *J Bioeth Inq* 2015;12:501. doi: 10.1007/s11673-015-9642-8 pmid: 26133889
- 7 König A. Reproductive entanglements in times of war: transnational gestational surrogacy in Ukraine and beyond. *Med Anthropol* 2023;42:92. doi: 10.1080/01459740.2023.2201682 pmid: 37093888
- 8 Jadva V, Imrie S, Golombok S. Surrogate mothers 10 years on: a longitudinal study of psychological well-being and relationships with the parents and child. *Hum Reprod* 2015;30:9. doi: 10.1093/humrep/deu339 pmid: 25527614
- 9 Jacobson H. *Labor of love: gestational surrogacy and the work of making babies*. Rutgers University Press, 2016.
- 10 Kneebone E, Beilby K, Hammarberg K. Experiences of surrogates and intended parents of surrogacy arrangements: a systematic review. *Reprod Biomed Online* 2022;45:30. doi: 10.1016/j.rbmo.2022.06.006 pmid: 35909052
- 11 Jadva V, Gamble N, Prosser H, Imrie S. Parents' relationship with their surrogates in cross-border and domestic surrogacy arrangements. *Fertil Steril* 2018;111:70. doi: 10.1016/j.fertnstert.2018.11.029 pmid: 30827525
- 12 Golombok S, Jones C, Hall P, Foley S, Imrie S, Jadva V. A longitudinal study of families formed through third-party assisted reproduction: mother-child relationships and child adjustment from infancy to adulthood. *Dev Psychol* 2023;59:73. doi: 10.1037/dev0001526 pmid: 37053391
- 13 Wade K, Horsey K, Mahmoud Z. Children's voices in surrogacy law: phase one preliminary report. 2023. <https://bpb-eu-w2.wpmucdn.com/blogs.bristol.ac.uk/dist/8/1027/files/2023/10/CVSL-PHASE-ONE-Preliminary-Report-2023.pdf>
- 14 Scherpe JM, Fenton-Glynn C, Kaan T. *Eastern and western perspectives on surrogacy*. Intersentia, 2019doi: 10.1017/9781780688633 .
- 15 Betigeri A. Where is Dev, the child born through surrogacy but left behind by his parents? *ScrollIn* 2016 Sep 29. <https://scroll.in/pulse/817116/where-is-dev-the-child-born-through-surrogacy-but-left-behind-by-his-parents>
- 16 Rohit PS. Biological parents disown surrogate mom, baby. *The Hindu* 2017 Jul 26. <https://www.thehindu.com/news/cities/Hyderabad/biological-parents-disown-surrogate-mom-baby/article19360377.ece>
- 17 Pande A. *Wombs in labor: transnational commercial surrogacy in India*. Columbia University Press, 2014 doi: 10.7312/pand16990
- 18 Rudrappa S. *Discounted life: the price of global surrogacy in India*. NYU Press, 2015doi: 10.18574/nyu/9781479879489.001.0001.
- 19 Siegl V. *Intimate strangers: commercial surrogacy in Russia and Ukraine and the making of truth*. Cornell University Press, 2023: doi: 10.1515/9781501769931 .
- 20 Davies M, ed. *Babies for sale? Transnational surrogacy, human rights and the politics of reproduction*. Bloomsbury, 2017.
- 21 Corea G. *The mother machine: Reproductive technologies from artificial insemination to artificial wombs*. Harper & Row, 1985.
- 22 Gugucheva M. *Surrogacy in America*. Council for Responsible Genetics, 2010.
- 23 Annas, GJ. Fairy tales surrogate mothers tell. *Law, Medicine and Healthcare* 1988; 16; 27-33. 40 Klein R. Surrogacy: a human rights violation. Spinifex Shorts, 2017.
- 24 Lozanski K, Shankar I. Surrogates as risk or surrogates at risk? The contradictory constitution of surrogates' bodies in transnational surrogacy. *Soc Theory Health* 2019;17:56doi: 10.1057/s41285-018-0066-5
- 25 Horsey K. Surrogacy in the UK: myth busting and reform. Report of the Surrogacy UK working group on surrogacy law reform, 2015.
- 26 Horsey K, Aran-Schad M, Macklon N, et al. UK surrogates' characteristics, experiences, and views on surrogacy law reform. *Int J Law Policy Fam* 2022;36:ebac030doi: 10.1093/lawfam/ebac030.
- 27 Jacobson H, Rozee V. Inequalities in (trans)national surrogacy: A call for examining complex lived realities with an empirical lens. *Int J Comp Social* 2022;63:303. doi: 10.1177/00207152221098336.
- 28 Pollitt K. *Reasonable creatures: essays on women and feminism*. Vintage Books, 1995.
- 29 Radin M. Market inalienability. *Harv Law Rev* 1987;100:937. doi: 10.2307/1341192
- 30 Ekman, K.E. *Being and being bought: prostitution, surrogacy and the split self*. Spinifex Press, 2014.
- 31 Jackson E, Millbank J, Karpin I, Stuhmcke A. Learning from cross-border reproduction. *Med Law Rev* 2017;25:46.pmid: 28073821
- 32 Fenton-Glynn C, Scherpe J. *Surrogacy in a globalised world: comparative analysis and thoughts on regulation*. Cambridge University Press, 2019.

- 33 Blaxall K. *Concerning shifts in the shrinking world of global surrogacy*. Bionews, 2023: .
- 34 Rudrappa S. The impossibility of gendered justice through surrogacy bans. *Curr Social* 2021;69:-99doi: 10.1177/0011392120972419.
- 35 Fenton-Glynn C. Outsourcing ethical dilemmas: regulating international surrogacy arrangements. *Med Law Rev* 2016;24:-75. doi: 10.1093/medlaw/fww044 pmid: 26785890
- 36 Cafcass. Response to FOI inquiry from Kirsty Horsey, ref Gov/CAF23-31530, 28.11.23
- 37 New York State Task Force on Life and the Law. Revisiting surrogate parenting: analysis and recommendations for public policy on gestational surrogacy. 2017. https://rotenberglaw.co.il/_Uploads/dbsAttachedFiles/surrogacy_report.pdf
- 38 New York State Department of Health. Child-Parent Security Act. nysenate.gov/legislation/laws/FCT/A5-C
- 39 New York State. Gestational surrogates' bill of rights. https://health.ny.gov/community/pregnancy/surrogacy/surrogate_bill_of_rights.htm
- 40 Butler K. Protecting all parties in compensated gestational surrogacy agreements: adopting the New York State (of mind) approach. *Wis L Rev* 2023;381:-427. https://wlr.law.wisc.edu/wp-content/uploads/sites/1263/2023/04/H_14-Butler-Camera-Ready-381%E2%80%93428-PDF.pdf