



Surrogacy in Nigeria - Prospects, Ethical and Legal Considerations

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Abstract

Surrogacy is gradually gaining acceptance as a reproductive option for men and women who experience infertility, yet in Nigeria, surrogacy has been and remains a legal and ethical dispute. Childbearing is strongly linked with identity, marriage, and cultural acceptance in most societies, and infrequently, infertility therefore attracts stigma, forcing men and women into unsafe and uncontrolled practices. Despite that surrogacy presents a beacon of hope, surrogacy in Nigeria takes place within a legal void, exposing the surrogate mothers, the intended parents, and the resultant children too.

The article examines the prospects for surrogacy in Nigeria, and examines its cultural, moral, and legal dimensions closely. Specifically, it attempts to: assess how acceptable surrogacy is to Nigerian people and the factors that affect people's attitudes towards surrogacy; analyze moral criticisms, and particularly commodification and exploitation; comment upon present gaps in the law; and devise policy frameworks that balance cultural sensitivity and protections for all.

The Research methodology used is doctrinal in nature, comparing statutes, case law, constitutional law, and international conventions. The research study also reviews work on infertility and reproductive ethics and compares South African and Indian regulatory experience. The South African altruistic model explains how regulated oversight can protect parties, while India's transition from commercial to altruistic-only regulation explains the risks of systems that are permissive.

Studies indicated that Nigerian surrogacy finds itself at a crossroads: on the rise in practice yet stalled by resistance at a cultural level and by legal vagueness. The study finds that a strong legal framework is needed to craft parental rights, safeguard. The framework should include prohibition of commercial surrogacy, ensuring informed consent, mandating medical and psychological support, and harmonising statutory, customary, and religious perspectives.

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Introduction

Surrogacy refers to a scenario where a woman who is referred to as the surrogate, willingly accepts to carry a pregnancy and give birth to a child on behalf of another individual or couple who are referred to as the intended parents [1]. Globally, this setup provides an avenue to parenthood to people with infertility or health problems that hinder their ability to bear a child. Regulatory frameworks have been established in the United States, India, and South Africa among others to control the practice, but the specifics and strictness of their policies vary considerably [2]. Certain jurisdictions, including states of the United States of America and Greece, do permit paid and unpaid arrangements, but only under stringent conditions; some countries such as the United Kingdom and Canada expressly prohibit commercial surrogacy practices, permitting only altruistic surrogacy; and explicitly forbids the sale of commercial surrogacy [3,4].

Infertility is a universal health problem, and the social and emotional consequences of the problem are more catastrophic among women in sub-Saharan Africa and Asia due to deeply rooted cultural beliefs. This social construct to have kids, particularly immediately after getting married, may result in extreme stigmatization and social isolation. Childbearing is a strong cultural social imperative in Nigeria, and thus when women cannot bear a child, the pressure is overwhelming to them, which in most cases, causes a lot of emotional and psychological instability. Childlessness has been seen as a personal failure by many women who have some forced to engage in desperate and unregulated methods which include going to illegal baby factories and high-priced surrogacy deals [5]. Such exploitative practices are a direct result of the huge social pressures on having babies and the unavailability of regulated options besides motherhood conception [6].

The high demand of children in society has opened up a market in the informal surrogacy which under normal circumstances (without express laws and regulations) would be a threat and exploit to all concerned parties. This regulatory vacuum answers no one, no matter how hard the questions of legal parentage, whether or not the surrogate had rights or whether or not the child was wellbeing was addressed, not to mention the problem of culture in the country [7].

Surrogacy is emerging as an even stronger trend in Nigeria, and this can be explained by the development of Assisted Reproductive Technologies (ART), the increased incidence of infertility, and alterations in social perspectives on family creation. Nevertheless, the absence of a targeted legal framework of surrogacy has created a regulatory gap. This has led to the provision that the practice has reached a state of ambiguity, that is, the practice is governed by the provisions of the unofficial agreements and the protocols of private organisations instead of being done through a distinct legislation. Stated differently, the laissez-faire approach to the practice in Nigeria is not simply a response to the increasing infertilities rates; it is a complex issue in the interplay of societal pressure on women that makes them resort to unsafe, unregulated solutions in achieving the social duty of bearing a child [8]. This has brought the need to have a strong legal framework to safeguard vulnerable people and create ethical solutions in assisted reproduction.

In the absence of a defined law, the surrogacy transactions place all the parties in jeopardy, especially the surrogate mother, who is prone to exploitation and human rights abuse, increased reproductive risks, inappropriate medical attention, and lack of legal support. It abandons the rights and duties of the surrogate woman, the would-be parents and the unspecified child. This vagueness is the source of

abuse because surrogates may not have access to health services and legal remedies, which makes the reproductive risks of the process inherent. Extensive legislation is thus important to safeguard vulnerable individuals and have ethical practice in assisted reproduction.

Human right infringement is a common occurrence without regulation and the health and well-being of the surrogates is normally jeopardized. Surrogacy in Nigeria has been left with a gap in the law since there is no extensive legal framework on the subject. The inability to develop a proper regulatory system on surrogacy in Nigeria exacerbates the plight of people who are barren and places the women in a very unsafe position when it comes to the practice of making such relations. This requires an urgent action by the legislature in order to protect the rights and interests of both sides.

This study examines ethical, and prospects of surrogacy in Nigeria, both in the Nigeria culturally oriented society and touching on important ethical and legal issues. A doctrinal research methodology is used, the existing literature is reviewed, and stakeholders, such as medical practitioners, legal experts, and people who have undergone the surrogacy processes include activities in the study.

Background

Childbearing plays a significant cultural role in the life of the Nigerian society and is deeply integrated in the social and family structure. Society has given immense importance to procreation, which in most times is equated with the capability of bearing children to the performance of a role by an individual to the family and the community. Nigeria is a multicultural African community, and marriage and procreation are deeply-regarded institutions. In this respect, bearing a child is not merely a personal achievement, but even in many ways, it can be considered a pillar of marital stability and a source of great pride to women. The gestational capability tends to be viewed as the power of the feminine fertility and it is glorified in terms of her purpose in the family and the society. The cultural focus on childbearing is ingrained, making the social pressure on procreation heavy, and connects it with the identity of a woman, the security of marriage,

and the social approval [9].

This is notably so in the case of women, who are conventional as the main bearers to the next generation. Consequently, there is a high level of stigmatization of infertility, as it has serious social and psychological ramifications on the affected persons and especially women [10]. It is this ruthless pressure that causes some women to act in desperate and uncontrolled ways such as visiting illegal baby factories, which are known to violate human rights. This crisis is enhanced by the fact that surrogacy in Nigeria is unregulated [11]. Lack of an elaborate legal framework is a risky situation, and every player is susceptible [12].

Surrogacy is a major trend in Nigeria whose use is on the rise due to the escalating infertility rates [13]. Nevertheless, this has led to unsafe conditions in which all stakeholders have been placed, especially surrogate mothers since there is no legal framework. Without regulation, abuse of human rights is a common occurrence and surrogate well-being is frequently undermined. Surrogacy in Nigeria has a high-risk environment due to the legal vacuum created. Absence of the proper regulatory structure of surrogacy in Nigeria adds to the problems of infertile couples and puts women with such arrangements in an unstable condition. This requires the need to immediately intervene through legislation in an effort to safeguard the rights and interests of all stakeholders [14].

Research Methodology

The research method used in this study is doctrinal research, as it will examine statutes, case law and provisions of the constitution in Nigeria, which are applicable to surrogacy, and it will critically review scholarly literature on surrogacy. This review brings out the ethical, cultural issues as well as the socio-legal issues of surrogacy in the Nigerian culture. In order to broaden the discussion, the paper will employ a comparative methodology in analyzing the regulation of surrogacy in South Africa and India. These jurisdictions offer guidelines in terms of dealing with ethical issues, protecting participants, and organizing surrogacy contracts.

The Surrogacy Concept

Surrogacy is a business agreement where a surrogate mother has permission to have a child and give birth to a child on behalf of the prospective parents. It has become one of the major fertility solutions especially in Africa even though there are no stringent regulations in most of the countries. The idea of surrogate parenthood is connected to the biblical times, which could be illustrated by the relation between Jacob, Rachel, Leah, Bilhah and Zilpah as well as the four sons born in their marriage [15].

Surrogate is a Latin word *surrogatus* which means a substitute or a person assigned to the place of another. The very meaning of this etymological root is that of a surrogate in a reproductive arrangement, to act as a proxy parent in place of a real parent [16]. The main ethical issues that usually surround the debate on the acceptability of surrogacy are whether surrogacy could be exploitive of the surrogate mothers and whether surrogacy is commercializing children. The countries have consequently taken different regulatory strategies [17].

In certain countries, a total ban on any type of surrogacy has been established and in others a ban on all types of surrogacy is imposed, but non-commercial (altruistic) surrogacy is legalized only [18]. A third category of states permits and controls any types of surrogacy, including commercial ones, while some do not have any form of legislation on this. The consent of the surrogate mother is an important ethical standard in the societies where the practice of surrogacy is allowed [19]. Nevertheless, the differences in the level of regulation across the world indicate that there is no consensus on the best way to ensure that reproductive rights are maintained, prevent exploitation and the well-being of all the parties involved in a surrogacy arrangement [20]. In other countries, such as Nigeria, surrogacy has been placed entirely outside the jurisdiction, which has led to a jurisdictional vacuum.

Types of Surrogacies

There are two main types of surrogacy according to the genetic connection between the surrogate and the child. Classical surrogacy requires the fertilization of the egg of the surrogate mother and hence she becomes the biological mother of the baby [21].

This is usually conducted through intrauterine insemination (IUI) by the use of sperm of the planned father or that of a donor. Because of the genetic connection formed between the surrogate and the baby, such an approach leads to serious legal and emotional issues, as the former has to file a formal termination of her parental rights. Gestational surrogacy is on the other hand a more widespread procedure in which the surrogates are not related to the child in any genetic manner. A zygote (embryo containing the genetic material of the targeted parents or donors), is implanted into the womb of the surrogate generated in in vitro fertilization (IVF). This arrangement makes parenting of a child less complex and is, in most cases, desirable due to the lesser emotional and legal issues [22].

In other forms of surrogacy, there is the compensation-based one. There is no monetary compensation to the surrogate in the altruistic surrogacy set-up except the cost (medical and other pregnancy-related costs) paid to the surrogate. Commercial surrogacy involves remuneration of the surrogate on her services, time and the burden and inconvenience of pregnancy [23]. In certain countries, commercial surrogacy is legalized and permitted; in others, it is prohibited due to the problems of moral considerations of the potential exploitation and the commodification of the female body.

Besides genetic relation and compensating, the surrogacy contracts can also be distinguished by levels of support and geographic distribution. In the agency-mediated surrogacy, the parties are guided and supervised by experts, whereas in the independent surrogacy, the parties are bilaterally arranged. Also, the contracts might be local or foreign surrogacy, and the second one involves one more degree of legal, logistical and moral uncertainty due to the dissimilar law and regulation across nations.

The trend of surrogacy is on the increase in Nigeria especially in the urban areas where fertility clinics and Assisted Reproductive Technology (ART) are more affordable. This tendency indicates the change in the attitude of society as more and more people are becoming more receptive towards using ART as a means of dealing with infertility [24]. This rise in acceptance and awareness on surrogacy is partly

contributed by the media coverage and also the effects of the international practices. In addition, a 2025 report by The Guardian Nigeria also mentions that surrogacy and In Vitro Fertilization (IVF) are also being promoted as effective ways to deal with infertility [25].

Nigeria Cultural Acceptance and Societal Attitudes to Surrogacy

A part of the objectives of the research is to test the sociocultural acceptability of surrogacy in Nigeria and the most significant aspects that influence the perception of the citizens about this reproductive technology. There is limited acceptance which is at times antagonistic due to the traditional beliefs, strong religious beliefs, the stigma of infertility, and the increasing awareness of assisted reproductive technologies. In spite of the fact that surrogacy is being more discussed as a possible solution to childlessness, there is still doubt in the society. Its non-existence of a clear legal framework combined with the power of cultural and religious actors makes it more difficult to accept and creates the tension between the ever-increasing demand and the continuing opposition. These are some of the attitudes of the society that influence surrogacy in Nigeria.

Stigma of Infertility and Prominence on Procreation in the Society.

In Nigeria, a childless marriage is considered to be incomplete and it has a lot of pressure on couples especially women to bear children. It is a social need that introduces a demand of reproductive solutions which include surrogacy. Nonetheless, this neediness to have a child does not necessarily translate into a free acceptance of the process in question. The pervasive infertility stigma forcefully drives couples into finding other possible ways of obtaining fertility yet the process that was necessary to reach such a status remains more of a secret because there is an overriding suspicion towards anything that does not qualify as natural conception.

Religious Beliefs and Doctrines: Nigeria is a very religious nation where Christianity and Islamic religions prevail and their opinions regarding surrogacy are diverse and even conflicting. Some of the religious leaders criticize it as a way of interfering in divine will, whereas others consider gestational

surrogacy as an act of mercy. The Catholic Church does not consider children as something that is a right but a gift of God. It still asserts that procreation ought to be a product of the conjugal love that exists in a marriage. In this light, conceiving a child through a third party, say a surrogate is a great sin as this arrangement by God is violated [26]. The Church is also of the opinion that surrogacy is against the dignity of the child as it regards him or her as a commodity that can be purchased and not a gift that should be given to the child through natural processes. Both religions think from an extremely negative perspective regarding commercial surrogacy because of the implications of commodification of human life and the potential damages that it may cause to the normal family constructions.

The Contrasts between Traditional Practices and Modern Surrogacy

However, unlike some early traditions, such as the Igbo tradition of a woman marrying another woman so as to have children, which shows a historic trend of non-traditional reproductive methods; they hardly compare to modern medical surrogacy [27]. The new medicalized, commercially commodified, and often anonymous surrogacy can come into conflict with the older conceptions of lineage and unplanned procreation and, therefore, it is highly limited in its acceptability.

Socio-Economic Factors and Concerns on Exploitation.

Living in poverty is a common trend in Nigeria, and as such, vulnerable women are exposed to the traps of commercial surrogacy, and as such, all of them have fears of being exploited and violating human rights. This is made worse by the fact that there are illegal baby factories and this cast a dark shade over all things that are related to assisted reproduction [28]. One of the major obstacles to the increased and overall acceptance of surrogacy is the fear of exploitation.

Absence of Lawful and Regulatory Systems

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Surrogacy Ethical and Sociocultural Implication in Nigeria.

The stakes of Assisted Reproductive Technologies (ART) and globalization opened up new opportunities to barren women but made the ethical, religious, legal, and social matters more difficult. Surrogacy would be a potential solution in Nigeria, where the morally depreciated infertile people are subjected to cultural pressure when it comes to bearing a child. This notwithstanding, it is not broadly accepted, informed by the moral issues, socio-economic differences, and absence of a good law [29].

Among the major ethical concerns are that there is commodification of reproduction in which case reproductive services and even children could be commoditized and exploited. This is also driven by the fact that there are so-called baby factories, which, although not the same as surrogacy, make people meditate that assisted reproduction will help to exploit people [30]. Payment outside of medical expenses in the commercial arrangements is commonly perceived as commercializing women bodies, an issue which is quite ingrained on cultural and religious beliefs that considered childbearing as sacred instead of a transaction [31].

There is also a high risk of women exploitation. Without the regulatory provisions, the economic vulnerability of the women might be pressured by poverty into surrogacy which demeans the voluntariness of consent. In the absence of proper medical care, surrogates are at greater risk of developing health issues in the course of pregnancy and birth, whereas lack of proper legal safeguards puts them at the risk of unjust treatment by birth parents or brokers [32].

The other difficulty is the psychological and emotional cost of surrogacy. Surrogates might have difficulties connecting with the child, postnatal separation, and stigma in their respective communities. These problems are further worsened by the absence of

systematic counselling or emotional support in Nigeria. Surrogates, the intended parents, and children are deprived of legal rights or protections as well as the emotional impact of the situation [33]. Disputes over payment, medical liability, or parental liability tend to be unresolved. Surrogates, the intended parents, and children are not subject to legally enforceable rights and protections in the absence of a clear law, so that the legal standing and citizenship of children is unclear [34].

These concerns highlight the fact that the moral aspect of surrogacy in Nigeria is enormous. Commodification of reproduction, exploiting of vulnerable women, and legal vacuum under which the act is carried out are all major causes of them.

Surrogacy Nigeria: Legal Loopholes, New Reforms and Case Law

Currently, Nigeria lacks a unified statutory framework of the surrogacy governing the practice. Federal law does not define or even allude to the issue of surrogacy, and its legality is therefore doubtful. The lack of the law that could thoroughly cover the practice makes the process of finding out the rights and responsibilities of children, intended parents, and surrogate mothers very problematic. Consequently, there is still a high difficulty in resolving the disagreements and defining the rights and duties between surrogate mothers, intended parents, and children. Legal parenthood and custody issues are disputed, and according to the Nigerian laws, the legal mother is the birth mother, which is rather contrary to the nature of surrogacy contracts.

The legal status of the child is one of the major issues that arise due to the lack of legal framework. Under the Nigerian family law, the mother bearing a child is the legal mother. *Mater semper certa est* (the mother is always certain) is a doctrine that complicates gestational surrogacy in which the surrogate does not have any genetic relationship with the child [35]. The absence of a law regulating the transfer of parental rights would place the potential parents in serious problems of proving parenthood, as there is a possible conflict and legal uncertainty on the part of the child [36]. Considering that there are no stipulations in the laws to control surrogacy in Nigeria, all the artificial reproduction technology clinics in Nigeria are operating in

accordance with the United Kingdom Human Fertilization and Embryology Authority Guidelines. However, the Nigerian Law Reform Commission proposed that in case a child is conceived by a woman through artificial insemination or when an embryo is implanted to the body of a woman during marriage, the child should be regarded as the child of the husband [37]. The Commission also recommends that where a child is born as a result of a surrogacy arrangement, the commissioning parents must formally adopt the child although the biological child may be one of the offspring of the commissioning parents. The rationale of this suggestion is so that the reoccurrence of the surrogate mother to take possession of the child is avoided.

Currently, the surrogacy agreements can be considered as a private contract according to the contract law in Nigeria. Nevertheless, they are not always enforceable and can be struck down by courts on the basis of a policy of the people, or where the life of the child is jeopardized [38]. Although the National Health Act 2014 outlaws cloning, the practice of surrogacy is not directly governed, and so the practice is neither approved nor criminal [39]. In the same way, the Child Rights Act 2003 (CRA) which favors the best interests of the child, makes no express reference to children born in surrogacy and is not codified in a number of states, providing patchy protection throughout the federation.

The state of Lagos has also achieved a significant milestone in 2019 with its Assisted Reproductive Technology (ART) Guidelines that give the clinical and ethical standards of ART procedures, including surrogacy. At the federal level, the Assisted Reproductive Technology (Regulation) Bill 2016 attempted to create enforceable surrogacy arrangements but was not passed. In more recent times, (as the Surrogacy (Regulation) Bill 2024 is pending the National Assembly) it is proposed to establish a Nigeria Surrogacy Regulatory Commission, register an agency, ban profit-seeking surrogacy, and medically and psychologically screen surrogates. The same can be said of the Health and Well-being of Women in Relation to Surrogacy Bill 2025 [40].

Surrogacy is still not widely recognized by the courts

The *AB v EF* (2021) case was a landmark ruling in which the court issued a gestational surrogacy contract as valid and enforceable and the intended parents as the legal parents and confirmed the principle that the best interests of the child should inform such decisions [41]. This ruling, as convincing, but not binding across the country, is an indication of potential court readiness to consider surrogacy agreements under the Nigerian law as legitimate.

Surrogacy in Nigeria, India, and South Africa Comparative Legal Framework.

The three countries (Nigeria, India and South Africa) have quite different legal and judicial interpretations of surrogacy; this is due to decisions made by legislations, judicial interpretation and cultural beliefs.

Nigeria

Surrogacy in Nigeria is very much in a juridical vacuum. No law is specifically enacted to control the practice and the arrangements are mainly controlled by the rules of contract law. The Code of Medical Ethics (2004) offers some light of allowing gestational surrogacy under informed consent, medical appropriateness, and outlawing commercialization. But these are only professional guidelines that have no force of the law.

In this regard, the 2024 Nigeria Surrogacy Regulatory Commission (Establishment) Bill and the 2025 Bill to Protect the Health and Well-being of Women, Particularly in Relation to Surrogacy were added to fill this gap. They all suggest that a regulatory body is created, requiring agencies and agreements to be registered, commercial surrogacy be outlawed, and surrogates and their fitness requirements and criminal sanctions against violations [42]. In its ruling, judicial pronouncements do not specifically deal with surrogacy, but indicate how a case concerning surrogacy can be handled by the Nigerian court. In *Okwueze v Okwueze*, the Supreme Court pointed out the importance of the child welfare and that substantial justice had to triumph over formalities [43]. In the same case, *Madu v Madu*, the Court of Appeal emphasised that it was crucial to review family arrangements based on the consideration of the policy and child welfare to the society [44]. When these principles are considered in relation to surrogacy, they indicate that the judiciary would have a preference in terms of maximizing interests of the child rather than

strict contractual formalism.

India

India has one of the developed but restrictive statutory regimes. The practice came to be gradually curtailed after it first became a commercial surrogacy haven in the world [45]. India has made a now inflexible system of altruism only legal, and on previous judicial acknowledgment of the validity of surrogacy in *Baby Manji Yamada* [46]. The reason why surrogacy is thriving in India is that since 2008, commercial surrogacy has been legalized in India by the ratio decision of the case of *Baby Manji Yamada v. Union of India*. After the *Baby Manji* case in 2008, the Supreme Court of India made the ruling of *Baby Manji Yamada v. Commercial surrogacy* was legalized in a way that was effective in Union of India. The decision that permitted the issuance of the child with traveling documents legalized surrogacy agreements and made India a new hub of reproductive tourism in the world. Although the ruling was hailed as safeguarding the interest of the child, it was largely criticized in that it did not consider the rights and vulnerable state of surrogate mothers, not to mention the larger regulatory gap that contributed to the exploitation [47].

This pragmatic, although restricted, action of the Supreme Court had provided a *laissez-faire* spirit that an otherwise unregulated commercial surrogacy business could thrive in. This growth came with some serious ethical issues, especially on matters of health and well-being of poor and often illiterate Indian women. The case did not give sufficient protection to surrogates and that is now where the necessity of the extensive legislation was revealed. In another response, the Indian Parliament adopted the *Surrogacy (Regulation) Act of 2021*, which in turn prohibited commercial surrogacy and relocated to a scheme of altruistic surrogacy. This was a great step in the direction of a more regulated approach to the rights-based approach instead of a profit-driven industry [48].

Surrogacy (Regulation) Act 2021 now only allows altruistic surrogacy, and restricts eligibility to heterosexual couples who have been married a minimum of five years (and in some instances, widowed or divorced women), and sets tough age

and medical requirements on surrogates [49]. The legislation has made commercial surrogacy and failure to observe the procedures safeguards a criminal offense, punishable by a jail term of up to ten years.

This framework has been shaped by the Indian jurisprudence. In *Baby Manji Yamada v Union of India*, they acknowledged that surrogacy is a recognised method of assisted reproduction, which will end a dispute about international commissioning parents. Although the Court did not disregard ethical dilemmas, it declared surrogacy as legal, which provided the basis to further legislative actions. This ruling indicates how the courts contributed to legalizing surrogacy in India, when Parliament subsequently shifted towards an anti-liberal altruistic-only practice.

South Africa

The *Children Act of 38 of 2005* is one of the most extensive laws on surrogacy in South Africa, which is monitored by the court [50,51]. The surrogacy arrangements shall be in writing and should be endorsed by the High Court before conception (without the confirmation, the surrogate parent shall be the legal parent); Surrogacy should not be reimbursement based, yet medical and maternity and lost income settlement is permissible. The Act also stipulates that one of the parents who commissioned to do so must be able to donate a gamete and the surrogate must have already given birth to a live child [52].

These provisions have been judged in the South African law. In *AB v Minister of Social Development*, a case that overturned the decision in the case of *YC v Minister of Social Development*, the Court of Constitutional Affairs threw its support to the requirement of genetic link based on it being in the best interests of the child [53]. In as much as this decision has been criticized as another way of limiting access of individuals who are unable to provide gametes, it is an expression of the will of the Court to explain the decision using child-based reasons. Similarly, in *Ex Parte KAF 2*, High Court also considered the emotional and psychological readiness of surrogates and their families before granting an arrangement, again putting into consideration the watchdog role of the court over the welfare of involved parties [54].

Future of Surrogacy in Nigeria

The future of surrogacy in Nigeria is a promise that is very full and a challenge that is very full. The demand of surrogacy is being driven by high levels of excess infertility, deeply held cultural beliefs to bear children and increased opportunities to access Assisted Reproductive Technologies (ART). Fertility clinics that offer surrogacy services already exist in the urban cities such as Lagos, Abuja and Port Harcourt, and social acceptance of ART is progressively improving with the growing awareness of the same via the media, medical activism and globalization. This implies that surrogacy would continue to grow as a reproduction technique particularly among the middle- and upper-class Nigerians, who are able to afford it [55].

In line with the foregoing, the most significant hurdle to the development of safe surrogacy in Nigeria is still the absence of an appropriate legal framework. Simultaneously, the lack of a set of legislation is the strongest hindrance to the safe establishment of surrogacy in Nigeria. The existing exposure of prospective parents, surrogate mothers and children to exploitation, lawsuits, and doubts about parentage and citizenship is caused by the current dependence on individual contracts and ad hoc policies. The Surrogacy (Regulation) Bill 2024 and the proposed Health and Well-being of Women in Relation to Surrogacy Bill 2025 are an indication of a new openness by legislators to grapple with these questions. Provided that it is enacted, such legislation may offer all the parties the much-needed clarity, standardization, and protection.

Other jurisdictions, including South Africa, which have been most restrictive of surrogacy with the Children's Act 2005, in place, have shown that Nigeria can get the balance between cultural sensitivities and protection by creating enforceable surrogacy arrangements, compulsory medical and psychological testing, and judicial supervision. In addition, the implementation of national ethics, such as the Lagos State ART Guidelines of 2019, may also eliminate exploitation and make the relationship uniform throughout the federal system of Nigeria.

Finally, surrogacy in Nigeria will only have a future with a proactive legal reform, cultural intervention,

and institutional control. An effective national system that would unite the statutory, customary, and religious views would not only legalize surrogacy but would also ensure the rights of the vulnerable women were not abused and the rights of the surrogacy born children were upheld. As the lawmakers push towards that, Nigeria has a high chance of moving surrogacy out of the grey-zone it is in at the moment, to a regulated / ethical component of reproductive health care.

Conclusion

Surrogacy in Nigeria is in a crossroad. Their increasing use in urban cities due to the rampant cases of infertility, the increased use of Medical Technology of Assisted Reproductive Technologies (ART), and the strong desires to bear children, however, still keep surrogacy in a void in the law. The absence of an adequate framework has put the surrogate mothers, commissioning parents, and children at risk of being exploited, having a conflict of contract, and parental rights and citizenship ambiguity. Such exploitative practices as the so-called baby factories or uncontrolled adoptions are still located in this legal vacuum, which indicates the dangers of not subjecting surrogacy to any type of regulation that would be formal.

Lessons in comparison show the evils of laissez-faire and the merits of good regulation. The recent case of unregulated commercial surrogacy in India suggests the potential outcome of liberalization in the form of exploitation and reproductive tourism, only to be revoked by the restrictive reform. The case of South African Childrens Act 2005 shows how enforceable surrogacy contracts, judicial control and legislative protection can offer a balanced approach that ensures reproductive autonomy and child welfare. Nigeria therefore finds itself at a crossroads of decision: to proceed with indecision or to proceed with a rights-based culturally acceptable paradigm of legitimizing but regulating surrogacy and protecting the stakeholders at risk.

Nigerian surrogacy is a matter of life and death to those who cannot have children and a colossal ethical and legal issue. In the absence of the reform, it is bound to augment the commodification of reproduction and exploitation of women. However, under appropriate controls, it can become a lawful, moral, and acceptable pathway to creation of families,

introducing reproductive justice and ensuring the safety of children.

Recommendations

In an effort to address the rapidly emerging issues and establish a more acceptable and rightful system of surrogacy in Nigeria, the following paper presents a set of recommendations, which revolves around the legislative, policy and cultural change.

Passing a Comprehensive Legislation

Nigeria should have an overall legal framework that will cover surrogacy. It must be a federal law that applies to the country and outlaw's commercial surrogacy but also guard the interests and right of all the parties. It must be able to offer informed consent, medical and psychological care and minimum age limit thereby protecting vulnerable populations such as girls who are below the age of 18 years. Child rights act also needs to be revised to cover children born of surrogacy in an attempt to protect their welfare, inheritance, and rights citizenship.

There is need of clear laws in an attempt to prevent exploitation. The law may protect the surrogate mothers by limiting them to pay, health care, and consent, so that the mothers are not exploited and abused. Also, the parental rights and legal status of children born under surrogacy would be explained in such a manner that would prevent tensions, but still offer a valid alternative to illegal activities of the baby factories and illegal adoptions.

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Formulation of Culturally Receptive Policies

At the same time, policies, which should be culturally responsive, have to be built and lobbied. This ought to be done in consultation with religious leaders, community leaders, traditional leaders, to enlighten masses on surrogacy as a medical practice and not

a disgraceful condition. In other words, awareness campaigns to help overcome the stigma of that which is infertile and surrogacy, promote a dialogue with the population, which transcends traditional norms. It is also advisable to recommend ethical ways of doing things, notably an age restriction that would not allow young girls below the age of 18 years to become surrogates and, hence, to avert exploitation.

Future Research Directions

More studies are needed to get a true picture of the impacts of surrogacy in Nigeria in the long run. One of the Major areas of the future research is the cultural and legal interface. It requires a full review on how the traditional, religious, and legislative laws can be reconciled in such a manner that they offer a cohesive legal system in regard to surrogacy.

References

1. Ogunwande O, Ozuru G (2020) Socio-Legal Issues of Surrogacy in Nigeria: A Quagmire. African Journal of Law and Human Rights 4: 43-44.
2. Thaldar D (2023) Performing IVF for surrogacy before confirmation of the surrogacy agreement by the court: a critical analysis of recent case law in South Africa. Humanities and Social Sciences Communications 10: 1-7.
3. Surrogacy Arrangements Act 1985; Assisted Human Reproductive 2004.
4. Nweze SO, Ezenwaeze MN, Onyekpa JI (2022) Absence of a Legal Framework, a Limitation to the Practice of Surrogacy in Nigeria. International Journal of Research and Review 9: 359-364.
5. Ilesan Ayodeji Makinde, Olalekan Olaleye, Olufunmbi Olukemi Makinde, Svetlana S Huntley, Brandon Brown (2017) Baby Factories in Nigeria: Starting the Discussion Toward a National Prevention Policy. Trauma, Violence & Abuse 18: 98.
6. Adedokun OS (2018) The concept of surrogacy in Nigeria: Issues, prospects and challenges. African Human Rights Law Journal 18: 605-624.
7. Ogunwande O, Ozuru G (2020) Socio-Legal Issues of Surrogacy in Nigeria: A Quagmire. African Journal of Law and Human Rights 4: 43-44.

8. Nweze SO, Ezenwaeze MN, Onyekpa JI (2022) Absence of a Legal Framework, a Limitation to the Practice of Surrogacy in Nigeria. *International Journal of Research and Review* 9: 359-364
9. Adelakun OS (2018) The concept of surrogacy in Nigeria: Issues, prospects and challenges. *African Human Rights Law Journal* 18: 605-624
10. Ibid
11. Ibid.
12. Ogunwande O, Ozuru G (2020) Socio-Legal Issues of Surrogacy in Nigeria: A Quagmire. *African Journal of Law and Human Rights* 4: 43.
13. Olanike Sekinat Adelakun, 'A Comparative Human Rights Approach to Surrogacy Arrangements: A Study of India, South Africa and Nigeria (PhD thesis, University of South Africa 2023).
14. Olanike Sekinat Adelakun, 'A Comparative Human Rights Approach to Surrogacy Arrangements: A Study of India, South Africa and Nigeria (PhD thesis, University of South Africa 2023).
15. Genesis 16:1-16, Genesis 30: 1-13.
16. Nweze SO, Ezenwaeze MN and Onyekpa JI, *ibid*.
17. Alfred Oluropo Filani and Tolulope Omolola Fateropa (2023) An Examination of the Legal Framework for Surrogacy in Nigeria. *International Journal of Law* 9: 143.
18. *Ibid*.
19. *Ibid*.
20. Olanike Sekinat Adelakun (2023) A Comparative Human Rights Approach to Surrogacy Arrangements: A Study of India, South Africa and Nigeria (University of South Africa PhD thesis.
21. Elaine A Auret (2023) Surrogate Motherhood and Assisted Reproduction in South Africa: An Analysis of Selected Constitutional and Medico-Legal Issues (University of South Africa LL-thesis 2023) https://ir.unisa.ac.za/bitstream/handle/10500/30205/thesis_auret_e.pdf?sequence=1&isAllowed=y.
22. *Ibid*.
23. W Cheng, SH Liu, CY Chen (2025) Legalization of Surrogacy? Opinions from More than 7700 Residents in Taiwan. *Journal of Public Health Policy* 46: 303.
24. Bello FA, Akinajo OR, Olayemi O (2014) In-vitro fertilization, Gamete Donation and Surrogacy: Perceptions Of Women Attending An Infertility Clinic in Ibadan, Nigeria. *African Journal of Reproductive Health* 18: 127.
25. Ijeoma Nwanosike (2024) Group advocates IVF, surrogacy to curb rising infertility. (The Guardian Nigeria, 16 May 2024) <https://guardian.ng/features/health/group-advocates-ivf-surrogacy-to-curb-rising-infertility/>.
26. Ogunwande O, Ozuru G (2020) Socio-Legal Issues of Surrogacy in Nigeria: A Quagmire. *African Journal of Law and Human Rights* 4: 43.
27. Mercy A Agugua, Emeka Ozoani SAN Co, Obianuju C Agu (2025) Traditional Surrogacy in Igbo Culture: An Appraisal of Ethical Issues. *Journal of Customary and Religious Law (JOCARL)* 2: 15.
28. Olanike Adelakun (2018) The Concept of Surrogacy in Nigeria: Issues, Prospects and Challenges. *African Human Rights Law Journal* 18.
29. Bello FA, Akinajo OR, Olayemi O (2014) In-vitro fertilization, Gamete Donation and Surrogacy: Perceptions Of Women Attending An Infertility Clinic in Ibadan, Nigeria. *African Journal of Reproductive Health* 18: 127.
30. Lesi OA, Ashiru OA (2024) Gestational surrogacy: case report from Nigeria. *Nigerian Medical Journal* 146 49. Group advocates IVF, surrogacy to curb rising infertility. The Guardian Nigeria (Lagos, 26 March 2025) <https://guardian.ng/features/health/group-advocates-ivf-surrogacy-to-curb-rising-infertility/>.
31. Lesi OA, Ashiru OA, 'Gestational surrogacy: case report from Nigeria. (2024) *Nigerian Medical Journal* 146 49. Group advocates IVF, surrogacy to curb rising infertility' The Guardian Nigeria (Lagos, 26 March 2025) <https://guardian.ng/features/health/group-advocates-ivf-surrogacy-to-curb-rising-infertility/>.
32. Re H (anonymous surrogacy) (2025) Royal Courts of Justice, London, Case No: WD23P70497.
33. Re H (anonymous surrogacy) (2025) Royal Courts of Justice, London, Case No: WD23P70497.
34. Enobong Mbang Akpambang, Olufunmilayo Esther Rotimi-Aremu (2023) Determining Legal Parentage and Nationality of a Child Born Through Assisted Reproductive Technology: A Comparative Perspective. *International Journal of*

- Multidisciplinary Research and Analysis 6: 604.
35. AOC Solicitors (2025) Surrogacy in Nigeria: Legal Framework, Challenges, and the Need for Regulation' (AOC Solicitors, 6 August 2025) <https://aocsolicitors.com.ng/surrogacy-in-nigeria-legal-framework-challenges-and-the-need-for-regulation/>.
 36. Chukwuma-Agbodike C (2024) Surrogacy Practice in Nigeria: Navigating the Current Legal Landscape. *Irish International Journal of Law, Political Sciences and Administration* 5.
 37. The "Law Reform Commission 'Reform of Nigerian family law' is a Nigerian Law Reform Commission (NLRC) draft bill proposing the reform of the Marriage Act and other family laws for the enhancement of family stability in Nigeria.
 38. Eko Solicitors (2020) Enforceability of Surrogacy Contract in Nigeria: What You Need to Know' (Eksolicitors.com, 12 June 2020) <https://ekosolicitors.com/enforceability-of-surrogacy-contract-in-nigeria-what-you-need-to-know/>.
 39. National Health Act 2014, s 38.
 40. Lagos State Ministry of Health, Assisted Reproductive Technology (ART) Guidelines 2019; Assisted Reproductive Technology (Regulation) Bill 2016 (Nigeria) [Bill not passed]; Nigeria Surrogacy Regulatory Commission (Establishment) Bill 2024, HB 1655 (Second Reading, Federal House of Representatives).
 41. Unreported.
 42. Exclusive News - House of Representatives Makes Move to Prohibit Commercial Surrogacy, Presents New Regulatory Bill' (ExclusivNews, 27 May 2025) <https://exclusivenews.com.ng/house-of-representatives-makes-move-to-prohibit-commercial-surrogacy-presents-new-regulatory-bill/>.
 43. (2010) 9 NWLR (Pt 1198) 1 (SC) (2008) 6 NWLR (Pt 1083) 296 (CA).
 44. (2010) 9 NWLR (Pt 1198) 1 (SC) (2008) 6 NWLR (Pt 1083) 296 (CA).
 45. Kashish Vaishnavi (2025) Critical Analysis of Surrogacy Regulation Act 2021. *The International Journal of Enhanced Research (TIJER)* www.tijer.org.
 46. (2008) 13 SCC 518 (SC).
 47. Pooja Yadav (2018) Law and Policy on Surrogacy: A Comparative Study of India and Other Countries. *International Journal of Scientific Research in Science and Technology (IJSRST)* 4.
 48. Kashish Vaishnavi. *Critical Analysis of Surrogacy Regulation Act* *ibid*.
 49. The Surrogacy (Regulation) Act, 2021 India Code.
 50. Elaine A Auret (2023) Surrogate Motherhood and Assisted Reproduction in South Africa: An Analysis of Selected Constitutional and Medico-Legal Issues (University of South Africa LL-thesis 2023) https://ir.unisa.ac.za/bitstream/handle/10500/30205/thesis_auret_e.pdf?sequence=1&isAllowed=y.
 51. Children's Act 38 of 2005 (South Africa).
 52. Olanike Sekinat Adelakun (2023) A Comparative Human Rights Approach to Surrogacy Arrangements: A Study of India, South Africa and Nigeria (University of South Africa PhD thesis).
 53. (2016) (2) SA 27 (CC).
 54. (2019) (2) SA 510 (GJ).
 55. Bello FA, Akinajo OR, Olayemi O (2014) In-vitro fertilization, Gamete Donation and Surrogacy: Perceptions Of Women Attending An Infertility Clinic in Ibadan, Nigeria. *African Journal of Reproductive Health* 18: 127.