

Surrogacy on trial: Exploring the ethical maze of enforceability in commercial arrangements

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In Nigeria, the concept of surrogacy is gradually gaining traction as couples seek alternatives to achieve parenthood. However, this rise also brings forth a labyrinth of ethical and philosophical questions, particularly around the enforcement of surrogacy agreements. With commercial surrogacy involving financial transactions, the debate intensifies. Should contractual agreements in surrogacy be legally binding? This article explores the complex ethical considerations and potential legal frameworks surrounding surrogacy in Nigeria, aiming to spark a conversation on its moral and societal implications within our unique cultural and legal context.

Surrogacy involves a woman carrying a child for another person or couple. In traditional surrogacy, the surrogate is inseminated and is the biological mother. In gestational surrogacy, the surrogate carries an embryo from IVF and has no genetic ties to the child.

The Baby Cotton case was a well-known UK legal case from the 1980s, concerning Kim Cotton, who served as a surrogate and was paid to carry a baby for an American couple. After the hospital where Kim gave birth notified authorities, the baby was placed under court protection. Kim complied with handing over the baby. The public disclosure of the surrogacy agreement sparked widespread debate over its ethical and legal implications.

The ambiguity surrounding surrogacy laws at the time led to substantial legal and public scrutiny, and a court ultimately awarded custody to the American couple. The case ignited a nationwide debate about commercial surrogacy and the rights of surrogate mothers. It highlighted complex legal and ethical issues such as unclear parentage, the potential for surrogates to change their minds, commercial exploitation, and the challenge of safeguarding child welfare. The case also illustrated difficulties in enforcing surrogacy agreements and managing international surrogacy arrangements. As a result, it motivated the passage of the 1985 Surrogacy Arrangements Act, which prohibited commercial surrogacy agencies in the UK.

India had for many years allowed international surrogacy



until the 2021 Surrogacy (Regulation) Bill banned commercial surrogacy, mainly due to growing concerns about the exploitation of poor women, ethical concerns about commodifying women's bodies, regulatory gaps risking safety and legal clarity, high-profile cases of abandoned children, arguments for traditional family values, health risks, and complex citizenship issues. Today, only altruistic surrogacy is allowed for Indian couples married for a specified period and without profit, aiming to ensure ethical and safer practices.

On Monday, September 1, 2003, The Guardian newspaper of Nigeria published an editorial about the birth of Nigeria's first baby through surrogacy. The article praised Bridge Clinic for its ethical approach to handling the complex surrogacy process. Notably, the clinic secured approval from an ethics committee comprising lawyers, gynaecologists, Christian and Muslim clerics, sociologists, and women representatives. The committee sought advice from the UK-based COTS (Childlessness Overcome Through Surrogacy), following its protocols for supporting both the commissioning couples and the surrogate. In this altruistic arrangement, the surrogate was a relative of the couple.

The philosophical and ethical aspects of surrogacy bring out key concerns such as true autonomy and informed consent for surrogates, the risk of reducing bodies and reproduction to contractual transactions, consideration of the rights and welfare of the child, and debates about altruistic versus commercial arrangements. It also addresses legal and moral dilemmas when contracts and individual rights conflict, and notes that cultural perspectives greatly influence whether surrogacy is seen as empowerment or exploitation. Overall, the focus is on whether ethical concerns and societal values should determine if surrogacy contracts exist in their current form—not just if they are legally enforceable.



Surrogacy in Nigeria is unregulated by national law, making its status and related agreements legally uncertain. Agreements often depend on general contract law, but their enforceability varies, and court outcomes are unpredictable. Cultural and religious beliefs shape public attitudes, usually leading to scepticism and ethical debates around surrogacy. Key legal issues include parental rights, the child's citizenship, and compensation, all of which lack clear legal direction. While there are ongoing discussions about clarifying regulation, progress is slow due to conflicting social, ethical, and legal perspectives. Legal counsel is essential before pursuing surrogacy in Nigeria.

Surrogacy contracts are enforceable in some countries due to specific laws and regulations that clearly define the roles and rights of all parties involved. These contracts are legally binding due to detailed terms, judicial oversight, and ethical safeguards for surrogates. Legal parentage is determined by law, and penalties for non-compliance ensure adherence. Court-issued orders, whether made before or after birth, further establish the intended parents' rights. Countries with strong legal frameworks and cultural support, like some U.S. states, the UK, and Canada, offer clear enforceability for surrogacy arrangements.

The debate over whether surrogacy arrangements should be regulated by law centres on balancing the protection, rights, and welfare of all parties involved with concerns over autonomy, exploitation, and complex emotions. Proponents argue that legal enforcement provides certainty and protects the interests of parents, surrogates, and children. Opponents highlight risks to surrogate autonomy, potential for exploitation, and the limits of law in addressing emotional and unforeseen circumstances. The ethics of enforcement depend on creating balanced, thoughtful laws that reflect societal values and safeguard the vulnerable.



The crux of the matter lies in respecting the autonomy of all parties while safeguarding the rights of the surrogate, the intended parents, and the child.

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In navigating the complex terrain of surrogacy, it's clear that the legal and ethical landscapes are as varied as the cultural contexts in which they exist. The journey of surrogacy law from the Baby Cotton case in the UK to the outright ban on commercial arrangements in India, juxtaposed with Nigeria's unregulated market, portrays a global spectrum of approaches—each informed by unique societal values and legal traditions.

In more legally mature jurisdictions, the enforceability of surrogacy agreements is often bolstered by robust contract laws. Yet, this legal certainty introduces another layer of ethical complexity: should the courts enforce these intimate agreements? The crux of the matter lies in respecting the autonomy of all parties while safeguarding the rights of the surrogate, the intended parents, and the child.

Surrogacy raises profound questions about human dignity, autonomy, and the right to family. As countries grapple with these issues, it becomes essential to strike a delicate balance between legal enforceability and ethical

permissibility. The legal system should serve as a protective framework rather than a coercive force, ensuring that all parties enter arrangements with informed consent and mutual respect.

Ultimately, any legal framework for surrogacy must honour the sanctity of personal agency. It should prioritise ethical guidelines that respect the rights of individuals over mere contractual obligations. By doing so, we ensure that surrogacy remains a compassionate and equitable choice for all involved—a reflection of our shared humanity and commitment to personal dignity.

This balance requires ongoing dialogue and reflection, fostering a surrogacy practice that accommodates diverse perspectives while safeguarding the rights and well-being of the most vulnerable. It is essential to embrace nuanced understandings and compassionate solutions that reinforce the values central to human dignity and agency.

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