
REGULATING SURROGACY IN NIGERIA: CULTURAL ACCEPTANCE, EXPLOITATION RISKS, AND LESSONS FROM SOUTH AFRICA AND INDIA*

Abstract

The increasing use of assisted reproductive technologies has contributed to the growing practice of surrogacy in Nigeria, yet the country lacks a comprehensive legal framework to regulate the rights and obligations of surrogate mothers, intended parents, donors, fertility clinics, and children born through such arrangements. The absence of specific legislation has created significant legal uncertainty regarding parentage, contractual enforceability, child welfare, reproductive autonomy, and protection against exploitation. This article examines the legal, ethical, cultural, and socio-religious dimensions of surrogacy in Nigeria with a view to identifying existing regulatory deficiencies and proposing an appropriate legal framework. Adopting a doctrinal methodology complemented by comparative legal analysis, the study analyses relevant constitutional provisions, statutes, judicial decisions, policy instruments, and scholarly literature, while drawing comparative lessons from India and South Africa. The study finds that Nigeria's current reliance on private contractual arrangements, professional medical guidelines, and fragmented statutory provisions is inadequate to address the complex legal and ethical issues arising from surrogacy. It further reveals that cultural values, religious beliefs, and societal perceptions significantly influence the acceptance and regulation of surrogacy, making the transplantation of foreign regulatory models unsuitable without contextual adaptation. Comparative analysis demonstrates that while India's restrictive altruistic model and South Africa's court-supervised statutory framework provide valuable regulatory lessons, neither model adequately reflects Nigeria's plural legal system and socio-cultural realities. The article argues that the effective regulation of surrogacy in Nigeria requires more than the enactment of legislation; it requires the development of a culturally responsive, rights-based federal regulatory framework that integrates constitutional principles, child welfare, reproductive rights, ethical safeguards, and Nigeria's cultural and religious values. It recommends the enactment of a comprehensive Assisted Reproductive Technology and Surrogacy Act establishing clear rules on legal parentage, enforceability of surrogacy agreements, informed consent, counselling, regulatory oversight, dispute resolution, and the protection of all parties. The study contributes to the existing literature by advancing an integrated regulatory model that reconciles international best practices with Nigeria's unique constitutional, legal, and socio-cultural context.

Keywords: Surrogacy, Comparative Surrogacy Law, Legal Parentage, Exploitation, Legal Pluralism, Nigeria

1. Introduction

Surrogacy refers to an arrangement in which a woman (the surrogate) agrees to carry and deliver a child on behalf of another individual or couple (the intended parents). Globally, surrogacy has become an increasingly important reproductive option for individuals and couples facing infertility or medical conditions that prevent gestation. In response, different jurisdictions have developed diverse regulatory approaches to govern the practice.¹ Infertility remains a significant global health concern, but its social and psychological consequences are particularly severe in Nigeria, where cultural expectations strongly associate womanhood and marital stability with childbearing.² In Nigeria, procreation is deeply embedded in social identity, and childlessness often attracts stigma, emotional distress, and social exclusion, especially for women. As a result, many individuals resort to alternative reproductive options, including surrogacy, often within informal and unregulated settings. In extreme cases, this has contributed to the rise of exploitative practices such as illegal 'baby factories' and unregulated surrogacy arrangements, driven by the increasing demand for children and the absence of safe, lawful alternatives.

Despite its increasing use, surrogacy in Nigeria operates within a significant regulatory gap. In practice, fertility clinics and intended parents often rely on informal contracts or foreign medical protocols. These arrangements lack statutory force under Nigerian law, leaving critical questions unanswered: legal parentage remains uncertain, surrogacy agreements remain susceptible to challenges on grounds of public policy and children face identity or citizenship issues—especially in cross-border cases. Without intervention, human rights abuses and exploitation will continue to undermine the well-being of surrogate mothers and intended families. This paper argues that the Nigerian surrogacy landscape reflects a complex intersection of cultural expectations, ethical concerns, and legal uncertainty. It contends that the current laissez-faire approach is inadequate to address the realities of the increasing use of surrogacy and the associated risks. Accordingly, there is an urgent need for a coherent legal

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¹ Countries such as the United States and Greece permit both commercial and altruistic surrogacy under strict conditions, while others, including the United Kingdom and Canada, prohibit commercial surrogacy and allow only altruistic arrangements. Similarly, jurisdictions such as India and South Africa have adopted more structured legal frameworks, though with varying degrees of restriction and oversight.

²² Obadina, IA, Regulating Surrogacy in Nigeria: Issues, Challenges and the Role of Culture. *Journal of African Law*. 2026;70(2):363-380.

framework that safeguards the interests of all parties while remaining sensitive to Nigeria's plural legal and cultural context.

2. Concept of Surrogacy

Surrogacy is an arrangement in which a woman (the surrogate mother) agrees to conceive, carry, and give birth to a child on behalf of another individual or couple (the intended parent(s)). Depending on the applicable legal framework,³ such arrangements may be altruistic or commercial.⁴ Surrogacy has become an increasingly important assisted reproductive option globally, including in several African countries, although many jurisdictions continue to operate without comprehensive regulatory frameworks. Although modern surrogacy is facilitated by advances in assisted reproductive technology, the concept of surrogate parenthood can be traced to biblical narratives, particularly the relationships involving Jacob, Rachel, Leah, Bilhah, and Zilpah, where childbearing occurred through another woman on behalf of an intended mother.⁵

There are two main types of surrogacies according to the genetic connection between the surrogate and the child. Traditional surrogacy requires the fertilization of the egg of the surrogate mother, making her the child's genetic and gestational mother.⁶ Due to the genetic connection formed between the surrogate and the baby, there tends to be serious legal and emotional issues, as the former has to file a formal termination of her parental rights. Gestational surrogacy, on the other hand, is a more widespread procedure in which the surrogates are not related to the child in any genetic manner.⁷ In certain countries, commercial surrogacy is legalized and permitted; in others, it is prohibited due to moral considerations of the potential exploitation and the commodification of the female body.

The ethical debate surrounding surrogacy primarily concerns the potential exploitation of surrogate mothers, the commodification of children and reproduction, and the protection of reproductive autonomy.⁸ Consequently, jurisdictions have adopted diverse regulatory approaches.⁹ Some prohibit all forms of surrogacy, others permit only altruistic arrangements,¹⁰ while a number regulate both altruistic and commercial surrogacy under statutory safeguards. Conversely, several countries, including Nigeria, lack comprehensive legislation, creating significant legal uncertainty regarding parentage, contractual enforceability, and the protection of participants. These divergent approaches demonstrate the absence of international consensus on the most appropriate regulatory model.¹¹ 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 ensure the well-being of all the parties involved in a surrogacy arrangement.

A central theme in surrogacy discourse is the tension between reproductive autonomy and the risk of exploitation. Proponents argue that surrogacy expands reproductive choice and provides a legitimate pathway to parenthood, particularly for individuals facing infertility or medical constraints.¹² However, critics contend that in socio-economically unequal settings, surrogacy may lead to the commodification of women's bodies and reproductive capacities.¹³ These competing perspectives are particularly relevant in Nigeria, where widespread poverty and weak regulatory oversight heighten concerns regarding informed consent and exploitation.

The use of surrogacy has increased in Nigeria, particularly in urban centres where fertility clinics and assisted reproductive technologies are more readily available.¹⁴ Growing public awareness, increased access to fertility treatment, media exposure, and international developments have contributed to this trend. A 2025 report by *The*

³ W Cheng, SH Liu and CY Chen, 'Legalization of Surrogacy? Opinions from More than 7700 Residents in Taiwan' (2025) 46 *Journal of Public Health Policy* 303 <https://doi.org/10.1057/s41271-025-00551-3>

⁴ Nweze SO, Ezenwaeze MN and Onyekpa JI, *ibid*

⁵ Genesis 16:1-16, Genesis 30:1-13

⁶ Elaine A Aurret, *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_aurret_.pdf?sequence=1&isAllowed=y Accessed 12 January 2025.

⁷ *ibid*

⁸ *ibid*

⁹ Olanike Sekinat Adelakun, 'A Comparative Human Rights Approach to Surrogacy Arrangements: A Study of India, South Africa and Nigeria' (University of South Africa PhD thesis, 2023)

¹⁰ *ibid*

¹¹ Alfred Oluropo Filani and Tolulope Omolola Fateropa, 'An Examination of the Legal Framework for Surrogacy in Nigeria' (2023) 9(5) *International Journal of Law* 143.

¹² Adelakun OS, 'The concept of surrogacy in Nigeria: Issues, prospects and challenges' (2018) 18 *African Human Rights Law Journal* 605-624

¹³ *ibid*

¹⁴ Bello FA, Akinajo OR, and Olayemi O, 'In-vitro fertilization, Gamete Donation and Surrogacy: Perceptions of Women Attending an Infertility Clinic in Ibadan, Nigeria' (2014) 18(2) *African Journal of Reproductive Health* 127

Guardian Nigeria further notes the increasing acceptance of surrogacy and in vitro fertilisation (IVF) as viable responses to infertility.¹⁵

3. Cultural Acceptance and Societal Attitudes to Surrogacy in Nigeria

The cultural acceptance of surrogacy in Nigeria remains complex and contested. Although awareness of assisted reproductive technologies has increased, public acceptance continues to be shaped by traditional beliefs, religious doctrines, cultural expectations surrounding procreation, and concerns regarding the ethical implications of surrogacy. Unlike some early traditions, such as the Igbo tradition of a woman marrying another woman to have children, which shows a historic trend of non-traditional reproductive methods, they differ fundamentally from modern medical surrogacy, which involves assisted reproductive technology, contractual arrangements, and, in some instances, commercial compensation.¹⁶ 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. Adaranijo, Ogungbemi and Nwachukwu found that attitudes towards surrogacy in North-Central Nigeria are significantly influenced by socio-demographic factors, particularly marital status, age, religion, and medical affiliation.¹⁷ The 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. The principal socio-cultural factors influencing public attitudes towards surrogacy in Nigeria include the following.

Stigma of infertility and Cultural Importance of Procreation

The strong cultural expectation of parenthood creates significant demand for reproductive alternatives, including surrogacy. However, acceptance of surrogacy remains limited because many couples continue to view natural conception as the socially preferred means of family formation. In Nigeria, a childless marriage is considered to be incomplete and it has a lot of pressure on couples especially women to bear children.¹⁸ 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 is contrary to God's design for procreation.¹⁹ 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.

Socio-Economic Factors and Concerns on Exploitation

High levels of poverty and economic inequality increase the vulnerability of women to exploitation through commercial surrogacy arrangements. Concerns regarding illegal baby factories and human trafficking have further shaped negative public perceptions of assisted reproduction. Consequently, fears of exploitation remain one of the greatest barriers to broader acceptance of surrogacy in Nigeria.²⁰

¹⁵ Ijeoma Nwanosike, '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/> accessed 19 August 2025

¹⁶ Mercy A Agugua, Emeka Ozoani SAN and Co, and Obianuju C Agu, 'Traditional Surrogacy in Igbo Culture: An Appraisal of Ethical Issues' (2025) 2(1) *Journal of Customary and Religious Law (JOCARL)* 15

¹⁷ Adaranijo, E. T., Ogungbemi, F. and Nwachukwu, C. (2026) 'Socio-demographic determinants of attitudes towards surrogacy practice in North-Central Nigeria', *Journal of Reproductive and Infant Psychology*, pp. 1–18

¹⁸ Obadina, IA. Regulating Surrogacy in Nigeria: Issues, Challenges and the Role of Culture, *Journal of African Law*, 2026;70(2):363-380

¹⁹ Ogunwande, O and Ozuru, G, 'Socio-Legal Issues of Surrogacy in Nigeria: A Quagmire' (2020) 4(1) *African Journal of Law and Human Rights* 43

²⁰ Olanike, Adelakun, 'The Concept of Surrogacy in Nigeria: Issues, Prospects and Challenges' (2018) 18 *African Human Rights Law Journal*

The ethical debate surrounding surrogacy centres on the tension between exploitation and empowerment, financial compensation and altruism, and reproductive autonomy and coercion. Critics argue that commercial surrogacy commodifies women's reproductive capacities, exploits economically disadvantaged women, and reinforces inequalities by enabling wealthier intended parents to benefit from the reproductive labour of vulnerable women.²¹ They contend that poverty often undermines genuine informed consent, raising concerns that surrogate mothers may be driven by financial necessity rather than free choice.

4. Legal Framework for Surrogacy in Nigeria

Nigeria currently lacks a comprehensive legal framework specifically regulating surrogacy. Although surrogacy is not expressly prohibited under Nigerian law, there is no federal legislation that comprehensively governs surrogacy arrangements, determines the legal status of intended parents and surrogate mothers, or establishes clear procedures for the protection of children born through ART. Consequently, the legal regulation of surrogacy is derived from a combination of constitutional provisions, general healthcare legislation, child protection laws, common law principles, and administrative guidelines, none of which adequately address the unique legal and ethical issues arising from surrogacy. Obadina examines the legal, ethical, cultural, and geopolitical challenges surrounding the regulation of surrogacy in Nigeria. The author argues that the country's fragmented approach to regulating ART is shaped by diverse socio-political, cultural, and religious norms, resulting in the absence of a coherent legal framework for surrogacy.²²

The Constitution of the Federal Republic of Nigeria 1999 (as amended) provides the foundational legal principles that indirectly apply to surrogacy. Section 34 guarantees the right to the dignity of the human person, thereby protecting surrogate mothers from degrading or exploitative treatment. Section 37 safeguards the privacy of individuals and family life, supporting reproductive autonomy and personal decision-making regarding assisted reproduction. Furthermore, Section 42 prohibits discrimination, which is capable of extending to children born through surrogacy by ensuring that they are not subjected to unequal treatment because of the circumstances of their birth. Although these constitutional provisions establish fundamental rights, they do not specifically regulate surrogacy agreements, parental rights, or the legal status of children born through surrogacy.

The National Health Act 2014, which serves as Nigeria's principal healthcare legislation, similarly provides no express regulation of assisted reproductive technologies or surrogacy. While the Act establishes standards for healthcare delivery and the protection of patients' rights, it predates the rapid expansion of fertility treatment and does not address issues such as the licensing of fertility clinics offering surrogacy services, eligibility requirements for intended parents and surrogate mothers, informed consent procedures, embryo transfer, compensation, or dispute resolution. Consequently, healthcare providers continue to operate without a uniform statutory framework governing surrogacy practices.

The Child's Rights Act 2003 also indirectly influences surrogacy regulation by establishing the principle that the best interests of the child shall be the paramount consideration in all matters affecting children. The Act guarantees children's rights to identity, dignity, protection, and parental care. However, it does not define legal parentage in surrogacy arrangements, determine the status of surrogate mothers, or provide procedures for the registration and custody of children born through assisted reproductive technologies. In the absence of specific legislation, courts are likely to rely on the general principles contained in the Act when resolving disputes arising from surrogacy.

At the sub-national level, Lagos State has taken a significant step by issuing the Guidelines on Assisted Reproductive Technology (2019). These Guidelines establish minimum standards for the operation of fertility clinics, including provisions relating to licensing, professional ethics, informed consent, record keeping, embryo handling, and confidentiality.²³ Although these Guidelines significantly improve professional practice, they remain administrative instruments without the force of primary legislation. Hence, they do not comprehensively regulate surrogacy agreements or resolve legal questions concerning parentage, compensation, enforceability of agreements, or the rights and obligations of the parties involved.

In the absence of specific statutory regulation, surrogacy agreements in Nigeria are generally governed by the principles of contract law. Parties entering into surrogacy arrangements typically execute contractual agreements

²¹ Cyril, Osilama Adamu, 'Ethical Issues in Commercial Gestational Surrogacy' (2020) 18(4) *AMAMIHE: Journal of Applied Philosophy* 1597–1691.

²² Obadina, IA, Regulating Surrogacy in Nigeria: Issues, Challenges and the Role of Culture. *Journal of African Law*. 2026;70(2), 363-380

²³ 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 (Second Reading, Federal House of Representatives).

outlining their respective rights and obligations. However, the enforceability of such agreements remains uncertain because Nigerian courts have not developed consistent jurisprudence on surrogacy, and contracts that conflict with public policy may be declared unenforceable.

Recognising these regulatory deficiencies, the National Assembly has recently considered several legislative proposals intended to establish a comprehensive legal framework for assisted reproductive technologies and surrogacy in Nigeria. Among these is the Nigeria Surrogacy Regulatory Commission Bill, 2024, which seeks to establish a specialised regulatory commission responsible for monitoring and supervising surrogacy arrangements.²⁴ The Bill seeks to establish the Nigeria Surrogacy Regulatory Commission to oversee surrogacy practices and maintain a national registry, while prohibiting commercial surrogacy and permitting only informed, voluntary altruistic surrogacy.²⁵ It proposes the registration of surrogate mothers, intended parents, agencies, and fertility clinics, while also establishing a national registry for surrogacy arrangements. It further aims to regulate compensation, ensure compliance with ethical standards, protect surrogate mothers from exploitation, and safeguard the welfare of children born through surrogacy.

In addition, the Nigeria Human Fertilization and Embryology Regulatory Commission Bill, 2024 proposes a broader regulatory framework for assisted reproductive technologies. The proposed legislation would also introduce licensing requirements, establish ethical standards, and provide regulatory oversight for fertility services nationwide.²⁶ As of the most recent reporting, both the 2024 and 2025 Bills remain pending before the National Assembly — past second reading in the House but not yet passed into law. Critics have flagged gaps, including the outright commercial-surrogacy ban's disregard for the socio-economic realities facing many Nigerian women, and the absence of provisions for surrogates' post-pregnancy financial and psychological support.

The Women's Health and Surrogacy Protection Bill, 2025 (HB.2340) represents a further legislative effort to regulate surrogacy in Nigeria by prioritising the protection of women's health, reproductive rights, and the welfare of children born through surrogacy.²⁷ The Bill permits only altruistic surrogacy while prohibiting commercial surrogacy, and introduces safeguards including a minimum age of 21 years for surrogate mothers, mandatory medical and psychological counselling, and measures to prevent coercion and exploitation. It also prescribes penalties for non-compliance, reflecting a stronger rights-based approach to the regulation of surrogacy. However, like earlier legislative proposals, the Bill remains at the preliminary stage of the legislative process and has not yet been enacted into law.²⁸

Despite these legislative initiatives, Nigeria continues to operate within a significant legal vacuum regarding surrogacy. There is presently no legislation defining the legal parentage of children born through surrogacy, distinguishing between gestational and traditional surrogacy, regulating commercial or altruistic surrogacy, prescribing eligibility criteria for intended parents and surrogate mothers, or establishing mandatory counselling and independent legal representation for participants. Similarly, there are no statutory provisions governing compensation, medical insurance, confidentiality, informed consent, data protection (as ART records contain sensitive genetic information), dispute resolution, cross-border surrogacy, citizenship of children born through international arrangements, or penalties for unethical practices by fertility clinics and surrogacy agencies.

The absence of a comprehensive legal framework exposes surrogate mothers to potential exploitation, leaves intended parents without legal certainty, and creates uncertainty regarding the rights, identity, and welfare of children born through surrogacy. It also permits inconsistent practices among fertility clinics, unregulated commercialisation, and complicates the enforcement of surrogacy agreements. These gaps have prompted scholars to advocate for comprehensive federal legislation capable of balancing reproductive autonomy with ethical safeguards and child protection.

²⁴Nigeria Surrogacy Regulatory Commission Bill, 2024 (HB 1137) https://nass.gov.ng/documents/download/11147?utm_ Accessed 27 May 2026

²⁵ Chukwuebuka Ikwuazom, 'Surrogacy Bill 2024: Nigeria's Bold Step toward Regulating a Complex Frontier' (20 December 2024) Mondaq <https://www.mondaq.com/nigeria/family-law/1557464/surrogacy-bill-2024-nigerias-bold-step-toward-regulating-a-complex-frontier> accessed 25 May 2026.

²⁶ National Institute for Legislative and Democratic Studies (NILDS) Institutional Repository website, https://ir.nilds.gov.ng/handle/123456789/2888?utm_ accessed 27 July 2026

²⁷ The National Institute for Legislative and Democratic Studies (NILDS) hosts the full Bill titled "A Bill for an Act to Protect the Health and Well-being of Women, Particularly in Relation to Surrogacy, and for Related Matters see https://ir.nilds.gov.ng/handle/123456789/3304?utm_ Accessed 27 July 2026

²⁸ Umetietie AE (2026), Surrogate motherhood in Nigeria: Critical evaluation of proposed Bills, *African Research Reports*, 2(5):472–483

Accordingly, while recent legislative initiatives represent an important step towards regulating surrogacy in Nigeria, they remain insufficient to address the full spectrum of legal, ethical, cultural, and socio-economic issues associated with assisted reproduction. A comprehensive federal framework is therefore required to clarify legal parentage, regulate surrogacy agreements, protect surrogate mothers and children, establish effective institutional oversight, and harmonise statutory regulation with Nigeria's diverse cultural and religious realities.

5. Comparative Analysis of Surrogacy Regulation in Nigeria, India, and South Africa

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

Unlike South Africa and India, Nigeria presently has no comprehensive federal legislation specifically regulating surrogacy. Consequently, surrogacy operates within a legal vacuum, with practice largely governed by private contractual arrangements, professional medical ethics, and non-binding clinical guidelines, such as the Lagos State Assisted Reproductive Technology (ART) Guidelines. Although surrogacy is neither expressly prohibited nor expressly recognised under Nigerian law, the absence of a statutory framework creates significant uncertainty regarding the validity and enforceability of surrogacy agreements, legal parentage, citizenship, inheritance, and the rights and obligations of the surrogate mother, intended parents, and the child.²⁹ In practice, fertility clinics and intended parents frequently rely on contractual arrangements that may be challenged on grounds of public policy, particularly because Nigerian law has yet to determine whether surrogacy contracts are legally enforceable.

The existing legal framework provides only indirect regulation of surrogacy through general constitutional, family, and child protection laws. The Constitution of the Federal Republic of Nigeria 1999 guarantees fundamental rights, including the rights to dignity, privacy, and freedom from discrimination, which may have implications for reproductive autonomy and the protection of surrogate mothers. Similarly, the Child's Rights Act 2003 places the best interests of the child as the paramount consideration in all matters affecting children, while the National Health Act 2014 establishes general standards for healthcare delivery without specifically addressing assisted reproductive technologies or surrogacy. Consequently, these statutes do not resolve critical issues such as the determination of legal parentage, the enforceability of surrogacy agreements, compensation of surrogate mothers, or mechanisms for resolving disputes arising from surrogacy arrangements. The absence of comprehensive legislation therefore leaves considerable gaps in the regulation of assisted reproductive technologies and exposes all parties to legal uncertainty and potential exploitation.

Although Nigerian courts have not yet decided a case directly concerning surrogacy, existing judicial decisions relating to family law provide useful guidance on the principles likely to influence future adjudication. In *Okwueze v Okwueze*,³⁰ the Supreme Court reaffirmed that the welfare and best interests of the child should prevail over technical legal considerations in resolving family disputes. This decision suggests that Nigerian courts would likely adopt a child-centred approach when confronted with disputes arising from surrogacy arrangements. Recognising the increasing use of assisted reproductive technologies and the inadequacy of the existing legal framework, recent legislative initiatives including the Nigeria Surrogacy Regulatory Commission Bill, 2024 (HB 1137) and the Women's Health and Surrogacy Protection Bill, 2025 (HB 2340) represent important steps towards regulating surrogacy at the federal level. However, both Bills remain at preliminary stages of the legislative process and have yet to address comprehensively the broader constitutional, cultural, religious, ethical, and socio-legal issues that continue to shape surrogacy practice in Nigeria.

India

India provides an important comparative model because it has evolved from one of the world's largest commercial surrogacy markets to one of the most restrictive statutory regimes.³¹ Prior to legislative intervention, the country lacked a comprehensive legal framework governing surrogacy, allowing fertility clinics to operate largely under professional guidelines issued by the Indian Council of Medical Research (ICMR) rather than enforceable legislation. This regulatory vacuum contributed to the rapid expansion of commercial surrogacy, attracting commissioning parents from across the world and establishing India as a major destination for reproductive tourism. Although the industry generated significant economic opportunities, it also raised serious ethical and legal concerns regarding the exploitation of economically disadvantaged women, the commercialisation of

²⁹ 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/> accessed 12 July 2025.

³⁰ (1989) 3 NWLR (Pt 109) 321 (SC)

³¹ Kashish Vaishnavi, 'Critical Analysis of Surrogacy Regulation Act 2021' (2025) 12(1) *The International Journal of Enhanced Research (TIJER)* <www.tijer.org> accessed 20 August 2025.

reproduction, citizenship and parentage disputes, and inadequate protection of surrogate mothers. Scholars such as Yadav, Pande³² and Sharmila Rudrappa³³ argue that the absence of statutory safeguards transformed surrogacy into a lucrative industry in which poor women frequently assumed disproportionate health and social risks while intended parents and fertility clinics derived the greatest financial benefits.³⁴

The inadequacies of the regulatory framework became apparent in *Baby Manji Yamada v Union of India*³⁵, where the Supreme Court of India was confronted with a dispute involving a child born through a surrogacy arrangement for Japanese commissioning parents. Although the principal issue concerned the child's custody and travel documentation following the commissioning couple's divorce, the case exposed the absence of any comprehensive legislation governing surrogacy. The Supreme Court recognised surrogacy as a legitimate form of assisted reproduction and facilitated arrangements that served the child's welfare, but it refrained from establishing broader legal principles governing the rights and obligations of surrogate mothers, intended parents, or children born through surrogacy. The decision nevertheless highlighted the urgent need for legislative intervention. Similar concerns later emerged in *Jan Balaz v Anand Municipality*,³⁶ where the Gujarat High Court addressed the nationality and citizenship of twins born through a commercial surrogacy arrangement involving German commissioning parents. The case demonstrated the complex cross-border legal issues associated with surrogacy and reinforced calls for comprehensive statutory regulation.

Responding to these concerns, the Indian Parliament enacted the Surrogacy (Regulation) Act, 2021, which fundamentally transformed the legal landscape by prohibiting commercial surrogacy and permitting only altruistic surrogacy. The Act permits surrogacy only under strictly regulated conditions, primarily for Indian heterosexual married couples who satisfy prescribed medical eligibility requirements, while also extending limited eligibility to certain categories of widowed and divorced women. It establishes National and State Surrogacy Boards to supervise the practice, mandates registration of surrogacy clinics, prescribes informed consent and medical screening requirements, and criminalises commercial surrogacy, exploitation of surrogate mothers, and unauthorised surrogacy arrangements with penalties that may include imprisonment and substantial fines. Although the legislation has been commended for strengthening the protection of surrogate mothers and reducing commercial exploitation, commentators have criticised its restrictive eligibility criteria and exclusion of single persons, unmarried couples, same-sex couples, and foreign nationals from accessing surrogacy services. Consequently, India's experience demonstrates both the value of comprehensive statutory regulation and the continuing challenge of balancing reproductive autonomy, equality, and the protection of vulnerable women.

South Africa

South Africa has one of the most comprehensive statutory frameworks governing surrogacy in Africa. Unlike Nigeria, where surrogacy remains largely unregulated, South Africa provides a clear legal regime through Chapter 19 of the Children's Act 38 of 2005,³⁷ which comprehensively regulates surrogate motherhood agreements. The legislation adopts a rights-based approach that balances the reproductive interests of intended parents with the protection of surrogate mothers and the welfare of children born through surrogacy.³⁸ Chapter 19 establishes detailed procedural and substantive requirements for the validity of surrogacy arrangements. Under section 292, every surrogate motherhood agreement must be reduced into writing and confirmed by the High Court before any artificial fertilisation takes place. Failure to obtain judicial confirmation renders the agreement invalid, and any child subsequently born is regarded in law as the child of the woman who gave birth. The Act further prescribes eligibility requirements for both commissioning parents and surrogate mothers, including domicile requirements, while requiring the court to be satisfied that the commissioning parent or parents are permanently and irreversibly unable to give birth to a child. In addition, the legislation regulates legal parentage by providing that, once a valid agreement has been confirmed, parental rights and responsibilities vest automatically in the commissioning parent or parents upon the birth of the child.

The Act also adopts an altruistic model of surrogacy by prohibiting commercial surrogacy. Section 301 prohibits the receipt of financial reward for acting as a surrogate mother or facilitating a surrogacy arrangement, except for reimbursement of reasonable expenses directly related to the pregnancy, including medical costs, insurance, legal

³² Amrita Pande, *Commercial Surrogacy in India: Manufacturing a Perfect Mother-Worker Signs*, *Journal of Women in Culture and Society* Vol. 35, No. 4 (Summer 2010), pp. 969-992 Published by: The University of Chicago Press

³³ Rudrappa S (2015) *Discounted Life: The Price of Global Surrogacy in India*. NYU Press.

³⁴ Pooja Yadav, 'Law and Policy on Surrogacy: A Comparative Study of India and Other Countries' (2018) 4(2) *International Journal of Scientific Research in Science and Technology (IJSRST)*

³⁵ (2008) 13 SCC 518

³⁶ (2010) AIR GUJ 21 (All India Reporter)

³⁷ Children's Act 38 of 2005 (South Africa) sections 292–303

³⁸ Labuschaigne, M, Aurett, E and Mabeka N (2024). Surrogate motherhood regulation in South Africa: Medical and ethico-legal issues in need of reform. *South African Journal of Bioethics and Law*, 17(3):104–108.

expenses, counselling, and loss of income occasioned by the pregnancy. These provisions seek to prevent the commercialisation of reproduction while ensuring that surrogate mothers are not financially disadvantaged by the arrangement. South African jurisprudence has further strengthened this statutory framework. In *AB and Another v Minister of Social Development*,³⁹ the Constitutional Court considered the constitutionality of the genetic-link requirement contained in section 294 of the Children's Act. The applicants challenged the provision on the grounds that it unjustifiably limited their reproductive rights by requiring at least one commissioning parent to contribute a gamete before a surrogate motherhood agreement could be approved. The Court upheld the constitutionality of the provision, holding that the requirement served legitimate governmental objectives, including the protection of the best interests of the child and the preservation of the integrity of the statutory surrogacy framework. Although the judgment attracted criticism for limiting access to surrogacy for individuals unable to contribute genetic material, it reaffirmed the principle that surrogacy must operate within carefully regulated statutory safeguards rather than through unrestricted contractual autonomy.⁴⁰ In *Ex Parte WH and Others*,⁴¹ the High Court affirmed that surrogate motherhood agreements must receive prior court approval under the Children's Act. The decision underscored the supervisory role of the courts in safeguarding the best interests of the child and ensuring that all statutory requirements for surrogacy are satisfied.

The South African model demonstrates the importance of combining comprehensive legislation with judicial oversight. By requiring prior judicial approval, clearly defining legal parentage, regulating payments, and imposing strict eligibility requirements, the Children's Act significantly reduces the legal uncertainty commonly associated with surrogacy arrangements. Unlike Nigeria's current regulatory vacuum, South Africa provides a coherent legal framework that protects the interests of surrogate mothers, intended parents, and children while ensuring that surrogacy is conducted in accordance with constitutional values and the paramount principle of the best interests of the child. Although aspects of the South African model, particularly the genetic-link requirement, may not be directly transferable to Nigeria, its emphasis on statutory regulation, judicial supervision, and child-centred protection offers valuable guidance for the development of a comprehensive Nigerian surrogacy framework.

Issue	Nigeria	India	South Africa
Legislation	None	Surrogacy (Regulation) Act 2021	Children's Act 38 of 2005
Commercial Surrogacy	Unregulated	Prohibited	Prohibited
Altruistic Surrogacy	No statute	Permitted	Permitted
Court Approval	No	Administrative	High Court
Parentage	Uncertain	Statutory	Statutory
Regulatory Authority	Proposed only	National Boards	Court supervision

6. Conclusion and Recommendations

This study has demonstrated that the increasing use of assisted reproductive technologies in Nigeria has outpaced the country's legal and institutional framework. Although surrogacy continues to provide an important reproductive option for individuals and couples experiencing infertility, its practice remains largely unregulated, creating uncertainty regarding legal parentage, contractual enforceability, the protection of surrogate mothers, and the rights and welfare of children born through surrogacy. The absence of comprehensive legislation has also heightened the risks of exploitation, inconsistent clinical practices, and human rights violations.

Comparative analysis demonstrates that jurisdictions have adopted different regulatory models reflecting their respective legal, cultural, and policy priorities. While India has moved towards a restrictive altruistic model under the Surrogacy (Regulation) Act 2021, South Africa provides a more balanced framework combining statutory regulation with judicial oversight under the Children's Act 38 of 2005. These comparative experiences illustrate that effective surrogacy regulation requires clear statutory standards, institutional oversight, and safeguards for all parties. However, neither model can be transplanted wholesale into Nigeria without regard to its constitutional framework, plural legal system, and socio-cultural realities.

This article therefore argues that the solution to Nigeria's regulatory challenges lies not merely in enacting legislation but in developing a comprehensive and culturally responsive legal framework that reconciles

³⁹ 2017 (3) SA 570 (CC)

⁴⁰ Chicago 18th ed. Meyerson, Denise. 2019. 'Surrogacy, Geneticism and Equality: The Case of AB v Minister of Social Development' *Constitutional Court Review* 9: 317-342. HeinOnline.

⁴¹ 2011 (6) SA 514 (GNP)

reproductive autonomy with child welfare, human dignity, public policy, and the country's diverse cultural and religious values. By integrating comparative best practices with Nigeria's constitutional principles and socio-cultural realities, the study provides a practical model for regulating surrogacy in a manner that promotes legal certainty while respecting the country's unique legal identity.

The findings of this study demonstrate that Nigeria's existing legal framework is inadequate to regulate surrogacy effectively. Although recent legislative proposals mark significant progress, they remain limited in scope, offering insufficient guidance on legal parentage, enforceability, informed consent, dispute resolution, cross-border surrogacy, and the interaction between statutory law and Nigeria's customary and religious systems. Accordingly, the following reforms are recommended:

1. Enact a comprehensive federal Assisted Reproductive Technology and Surrogacy Act which is culturally responsive, rights-based federal framework. The Act should define the legal status, rights, and obligations of intended parents, surrogate mothers, gamete donors, and children born through assisted reproduction; set out requirements for valid surrogacy agreements; determine legal parentage at birth; and prescribe standards for informed consent and eligibility, always subject to the best interests of the child.
2. Establish an independent National Assisted Reproductive Technology and Surrogacy Regulatory Commission with statutory power to license and supervise fertility clinics, maintain a national register of surrogacy arrangements, investigate complaints, and enforce compliance - working with state governments to ensure uniform implementation across the federation.
3. Build in statutory safeguards for surrogate mothers, including mandatory independent legal representation, psychological assessment and counselling, comprehensive medical care before and after pregnancy, informed and voluntary consent free from coercion, and adequate health insurance throughout the pregnancy.
4. Establish an ADR-first dispute resolution mechanism. Given the sensitivity of family relationships, disputes should first go to mediation before litigation, with judicial intervention reserved for cases that cannot be resolved consensually or where the child's welfare requires immediate court action.
5. Pair legislative reform with sustained public education. Since cultural and religious expectations deeply shape Nigerian perspectives on family and procreation, any realistic reform of assisted reproduction law must be harmonised with these customary values rather than imposed in spite of them. Government agencies, professional bodies, religious and traditional institutions, and civil society should collaborate to reduce infertility stigma, correct misconceptions about surrogacy, and encourage informed public discourse that respects Nigeria's diverse religious and cultural landscape.

Accordingly, Nigeria should enact a comprehensive federal Assisted Reproductive Technology and Surrogacy Act establishing a coherent legal framework governing legal parentage, eligibility requirements, enforceability of surrogacy agreements, informed consent, counselling, dispute resolution, regulatory oversight, and the protection of surrogate mothers, intended parents, donors, and children. Such legislation should incorporate mechanisms for public education and engagement with cultural and religious stakeholders to enhance social acceptance and regulatory compliance. A culturally responsive and rights-based framework of this nature would not only address existing legal uncertainties but also position Nigeria to regulate surrogacy ethically, transparently, and consistently with international best practices while preserving its constitutional values and socio-cultural identity.