

SURROGACY AND WOMEN'S REPRODUCTIVE AUTONOMY IN NIGERIA: HUMAN RIGHTS PERSPECTIVES

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Abstract

This article interrogates the legal, ethical, and human rights implications of surrogacy within the Nigerian context, while drawing comparative lessons from other jurisdictions such as India, and the United States. It situates surrogacy within the broader framework of reproductive rights, autonomy, and human dignity, and argues that despite the increasing practice of surrogacy in Nigeria, the absence of a coherent legal framework has generated legal uncertainty, exploitation risks, and human rights violations. Drawing from international human rights instruments, constitutional provisions, case law, and scholarly debates, the article contends that reproductive autonomy including the right to surrogacy forms part of the bundle of rights essential to human dignity and liberty. The Nigerian legal order, however, remains silent or indirectly hostile to assisted reproductive technologies, leaving women vulnerable to stigma, discrimination, and reproductive injustice. The article concludes by recommending the adoption of a clear legislative and institutional framework that recognizes surrogacy as a legitimate reproductive choice, balancing individual autonomy with safeguards against exploitation, while harmonizing Nigeria's obligations under international human rights law with domestic realities.

Keywords: Women, Surrogacy, Human Rights and Reproductive Autonomy.

Introduction

The desire to have children remains a central aspect of human identity and social life, particularly in African societies where fertility is highly valued and childlessness is socially stigmatized. In Nigeria, children are regarded as both a blessing and a marker of marital success. Consequently, infertility affecting between 20 to 46 per cent of couples in sub-Saharan Africa is not merely a medical condition but a sociocultural crisis that often leads to marital breakdown, social ostracism, and emotional trauma for affected women.¹ Within this context, surrogacy has emerged as an alternative means of procreation, offering hope to couples and individuals unable to conceive or carry a pregnancy to term.

Surrogacy is not a new phenomenon. Historical and customary practices from biblical accounts to African traditions where younger wives or female relatives bore children on behalf of infertile wives reveal that the concept of one woman bearing a child for another is deeply embedded in human history.² However, the modern form of surrogacy, structured through medical science and contractual arrangements, gained global visibility in the 1980s following the controversial Baby M case in the

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¹ WHO, *Infertility: A Tabulation of Available Data on Prevalence of Primary and Secondary Infertility* (Geneva: WHO, 1991).

² J. Nnadi, *The Future of Surrogacy in African Family Law* (Lagos: Malthouse Press, 2019) 34.

United States and the Baby Cotton case in the United Kingdom.³ These cases sparked intense ethical and legal debates on the commodification of the female body, the status of surrogate children, and the enforceability of surrogacy contracts.

In Nigeria, the practice of surrogacy is increasing, albeit informally and without legal regulation. This legal vacuum creates multiple challenges: uncertainty about parental rights, risks of exploitation of women due to poverty, potential trafficking concerns, and disputes over custody and legitimacy of surrogate children. Attempts to legislate have been inconsistent, with the most recent being a Bill before the National Assembly in 2024 seeking to establish a Surrogacy Regulatory Commission. Yet, in the absence of substantive law, Nigerian courts and policymakers face difficulty in balancing reproductive autonomy with ethical, religious, and sociocultural considerations.

This article therefore explores surrogacy in Nigeria as a human rights issue, anchored on reproductive autonomy, dignity, and equality. It provides conceptual clarifications of key terms such as rights, human rights, reproductive rights, autonomy, and surrogacy. It then examines the legal frameworks at international, regional, and national levels, highlighting the gaps in Nigerian law. It discusses the ethical, sociocultural, and legal controversies surrounding surrogacy, and draws lessons from jurisdictions such as India, and the United States of America where surrogacy has been legislatively and judicially regulated. The article concludes with recommendations for Nigeria, arguing that recognition and regulation of surrogacy is essential for fulfilling reproductive rights of women and aligning with global human rights standards.

Conceptual Clarifications

A clear understanding of surrogacy within the Nigerian human rights discourse requires an exploration of several interconnected concepts: rights, human rights, reproductive rights, reproductive autonomy, procreative liberty, and surrogacy itself. These concepts provide the theoretical lens through which the legal and ethical dimensions of surrogacy can be assessed.

Rights

The concept of rights is central to law, politics, and ethics. Rights are generally understood as justified claims or entitlements that individuals hold against others or the state. Etymologically, the term derives from the Latin *rectus* meaning “straight” or “correct”, denoting what is proper or due.⁴ Black’s Law Dictionary defines a right as “something that is due to a person by just claim, legal guarantee or moral principle.”⁵ Similarly, the Osborne Concise Law Dictionary conceptualizes rights as interests that individuals can assert or demand.

³ *In re Baby M* (1988) 537 A.2d 1227 (N.J.); *In re C (a minor) (wardship: surrogacy)* [1985] FLR 846.

⁴ Derived from Latin *rectus*.

⁵ Black’s Law Dictionary, 11th ed. (St. Paul: West, 2019).

Philosophers such as Laski regard rights as essential conditions of social life without which no person can realize their best self.⁶ Nigerian jurist Oputa JSC has described rights as liberties or powers to compel others to act or abstain from acting in a manner enforceable by law.⁷ Nigerian case law affirms this view: in *Uwaifo v A.G. Bendel State*, the Supreme Court recognized rights as advantages conferred by law; while in *Afolayan v Ogunride & Ors*, rights were described as enforceable interests protected by law.⁸ These perspectives underline that rights are not granted by the state but are inherent to individuals and merely recognized and enforced by law

Human Rights

Human rights are a subset of rights universally recognized as belonging to all persons by virtue of their humanity. They are inherent, inalienable, and indivisible. Cranston defined them as those rights which no one should be deprived of without a grave affront to justice.⁹ Following World War II, the adoption of the Universal Declaration of Human Rights (UDHR) in 1948 entrenched the principle that human rights transcend sovereignty and belong to all individuals irrespective of race, sex, or nationality.

In Nigeria, the constitutional framework often equates human rights with fundamental rights, those enshrined in Chapter IV of the 1999 Constitution. As Oputa JSC noted in *Ransome Kuti v A.G. Federation*, fundamental rights are that inalienable rights antecedent to political society itself.¹⁰ Yet, the Nigerian constitutional scheme is selective: while civil and political rights are expressly provided, socioeconomic rights including reproductive rights are relegated to Chapter II and rendered nonjusticiable. This legal dichotomy undermines the holistic protection of human rights, particularly for women seeking reproductive autonomy.

Reproductive Rights

Reproductive rights emerged from global human rights discourse in the second half of the 20th century, particularly through the International Conference on Population and Development Cairo¹¹ and the Beijing Conference on Women.¹² These rights encompass the freedom of individuals and couples to decide the number, spacing, and timing of their children, and the right to access the information and means to do so. They also entail freedom from discrimination, coercion, and violence in reproductive decision-making.¹³

For Nigerian women, reproductive rights are essential in mitigating the stigma and discrimination associated with infertility. However, Nigeria lacks a comprehensive legislative framework recognizing reproductive rights as justiciable. While international instruments such as the Convention on the

⁶ H. Laski, *A Grammar of Politics* (London: Allen & Unwin, 1925).

⁷ C. Oputa, *Human Rights in the Political and Legal Culture of Nigeria* (Lagos: Nigerian Law Publications, 1996).

⁸ *Uwaifo v A.G. Bendel State* (1982) 7 SC 124; *Afolayan v Ogunride & Ors* (1990) 1 NWLR (Pt 127) 369.

⁹ M. Cranston, *What Are Human Rights?* (London: Bodley Head, 1973).

¹⁰ *Ransome Kuti v A.G. Federation* (1985) 2 NWLR (Pt 6) 211.

¹¹ ICPD 1994

¹² 1995

¹³ ICPD Programme of Action, Cairo, 1994.

Elimination of All Forms of Discrimination Against Women¹⁴ emphasize reproductive health and autonomy, domestic law remains largely silent, leaving women without enforceable legal remedies.

Reproductive Autonomy

At the heart of reproductive rights is the principle of autonomy the capacity of individuals to make decisions about their bodies and reproductive futures free from coercion. Autonomy entails both authenticity (decisions that are genuinely voluntary) and competency (the ability to understand consequences).¹⁵ In reproductive contexts, autonomy is often equated with bodily integrity: a woman's right to decide what happens to her body.

Nedelsky argues that autonomy is relational, shaped by law and social structures.¹⁶ In Nigeria, women's reproductive autonomy is compromised by cultural expectations of fertility, economic pressures, and patriarchal norms that restrict women's freedom to decide whether, when, and how to have children. Denying access to alternatives such as surrogacy undermines women's dignity, equality, and health.

Surrogacy

Surrogacy is a form of assisted reproductive technology whereby a woman carries a pregnancy for another individual or couple with the intention of handing over the child after birth. It may be Genetic or Traditional surrogacy, where the surrogate provides the egg or Gestational where the surrogate carries an embryo created from the commissioning parents' gametes or donors. Surrogacy may be Commercial, involving payment beyond expenses or Altruistic, limited to reimbursement of expenses.¹⁷

Globally, legal approaches to surrogacy vary. Some jurisdictions ban it outrightly like France, while others permit only altruistic surrogacy such as United Kingdom and South Africa, yet others permit commercial surrogacy like certain States in the United States and in India before recent restrictions.¹⁸ Nigeria belongs to the category of countries where surrogacy is unregulated. Despite its practice, there is no legal framework defining the rights and responsibilities of surrogates, commissioning parents, or children born through surrogacy. This lacuna leaves all parties vulnerable to exploitation, legal disputes, and uncertainty over the child's legal status.

Legal Frameworks

The regulation of surrogacy and reproductive rights is shaped by a multilayered framework of international, regional, and domestic instruments. While international and regional treaties increasingly recognize reproductive health as a human right, the Nigerian legal system has yet to incorporate these provisions into a coherent national framework. This absence of domestic legislation has left surrogacy

¹⁴ CEDAW 1979

¹⁵ R. Sifris, *Reproductive Freedom, Torture and International Human Rights: Challenging the Masculinisation of Torture* (London: Routledge, 2013).

¹⁶ Nedel J.sky, *Law's Relations* (Oxford: OUP, 2011).

¹⁷ South African Law Commission, *Report on Surrogate Motherhood* (Pretoria, 1993).

¹⁸ Warnock Committee, *Report of the Committee of Inquiry into Human Fertilisation and Embryology* (London: HMSO, 1984).

unregulated, with profound implications for women's rights, children's welfare, and the integrity of family law.

Outline of Some International Legal Framework

The recognition of reproductive health and surrogacy as human rights issues stems from international human rights law.

- i. **Universal Declaration of Human Rights** affirms the right of men and women of marriageable age to marry and to found a family.¹⁹
- ii. **International Covenant on Economic, Social and Cultural Rights** recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, which has been interpreted by the United Nations Committee on Economic, Social and Cultural Rights to include reproductive health.²⁰
- iii. The **Convention on the Elimination of All Forms of Discrimination Against Women** obliges states to eliminate discrimination in access to health care services, including those relating to family planning.²¹ The CEDAW Committee has clarified that reproductive rights form an integral part of women's human rights.
- iv. The **Convention on the Rights of the Child 1989** recognizes the child's right to know and be cared for by his or her parents, a provision that raises questions about legal parentage in surrogacy arrangements.²²
- v. **International Conference on Population and Development**²³ explicitly linked reproductive health with human rights, affirming women's right to decide freely and responsibly the number and spacing of their children.
- vi. **Beijing Platform for Action**²⁴ reinforces the claim that access to assisted reproductive technologies, including surrogacy, is a legitimate exercise of human rights.

However, Nigeria's ratification of these instruments has not translated into effective domestic enforcement.

Regional Legal Framework

At the African level, the following instruments make provisions that are related to reproductive rights.

- i. **African Charter on Human and Peoples' Rights**²⁵: The ACHPR recognizes rights relevant to reproductive health, including the right to dignity, the right to family life, and the right to health.²⁶ Unlike CEDAW, the Charter has been domesticated in Nigeria through the African

¹⁹ UDHR, Art. 16.

²⁰ ICESCR, Art. 12; CESCR, General Comment No. 14 (2000).

²¹ CEDAW, Art. 12.

²² CRC, Art. 7.

²³ ICPD, Cairo 1994

²⁴ 1995.

²⁵ ACHPR 1981

²⁶ *ibid* Arts. 4, 5, 16, 18.

Charter on Human and Peoples' Rights (Ratification and Enforcement) Act²⁷, thereby enjoying the status of Nigerian law.

- ii **The Protocol to the African Charter on the Rights of Women in Africa**²⁸: This instrument goes further, expressly recognizing women's reproductive rights, including the right to control fertility and to decide whether to have children.²⁷ It obliges states to protect women's rights to reproductive self-determination and access to reproductive health services. Although Nigeria ratified the Maputo Protocol, its provisions are yet to be effectively implemented in domestic law and policy. Regionally, therefore, there is a strong normative basis for recognizing surrogacy as part of reproductive autonomy. However, enforcement mechanisms remain weak, and cultural resistance in many African societies, including Nigeria, continues to frustrate the practical realization of these rights.

National Legal Framework

The Constitution of the Federal Republic of Nigeria²⁹

The Constitution is the grundnorm of Nigeria and provides the foundational framework for fundamental rights. However, reproductive rights are not expressly recognized in Chapter IV. Rather, provisions touching on health and welfare are located in Chapter II Fundamental Objectives and Directive Principles of State Policy, which is nonjusticiable by virtue of section 6(6)(c).

Nevertheless, several constitutional rights may be interpreted to encompass aspects of reproductive autonomy and surrogacy:

- **Right to Life.** Interpreted broadly, this includes access to reproductive health care, as reproductive failure can endanger life³⁰
- **Right to Dignity of the Human Person. Section 34:** Protects against inhuman or degrading treatment thus denying women alternative means of reproduction may be degrading in the context of infertility stigma.³¹
- **Right to Personal Liberty:** Section 35 which deals with personal liberty empowers individuals to make choices which encompasses freedom to make reproductive choices, including whether to engage in surrogacy or not.
- **Right to Privacy and Family Life:** By the provisions of Section 37, individuals' autonomy over family decisions, including procreation through assisted technologies is protected.
- **Freedom from Discrimination:** Section 42 Prohibits discrimination based on sex, which may extend to discriminatory restrictions on women's access to reproductive technologies.

While these provisions provide a constitutional foundation for reproductive rights, judicial enforcement has been inconsistent. Nigerian courts have been reluctant to interpret these rights expansively, often deferring to the no justiciability of socioeconomic rights under Chapter II.

²⁷ 1983

²⁸ Maputo Protocol 2003 came into force in 2005

²⁹ CFRN 1999, as amended

³⁰ S. 33 CFRN 199 as amended, *Medical and Dental Council v Okonkwo* (2001) 7 NWLR (Pt 711) 206.

³¹ *Osamwonyi v Osamwonyi* (1972) 10 SC 1

Absence of a Basic Statutory Law on the Subject of Surrogacy

Nigeria lacks a dedicated statute regulating surrogacy. However, some statutory provisions indirectly affect reproductive rights:

- **The Criminal Code³² and Penal Code³³** criminalize certain sexual and reproductive conduct but are silent on surrogacy. Sections dealing with offences against morality could potentially be construed against commercial surrogacy, though no case law exists to confirm this.
- **Child Rights Act 2003** protects the rights of children, including the right to parental care. However, it does not address the status of children born via surrogacy.
- **Medical and Dental Practitioners Act** regulates medical practice but provides no guidance on assisted reproductive technologies.

National Health Act 2004³⁴. By its provision appears to prohibit Surrogacy as well as other forms of Alternative Reproductive Technology such as Invitro Fertilization

In 2016, a Bill for an Act to provide a framework for the regulation of assisted reproductive technology, including surrogacy, was introduced in the National Assembly but was not passed. More recently, in October 2024, a Bill to establish the Nigeria Surrogacy Regulatory Commission passed its second reading in the House of Representatives, signaling growing legislative awareness.³⁵

Judicial Decisions

Unlike jurisdictions such as India and USA, Nigerian courts have not developed jurisprudence on surrogacy. In the absence of case law, disputes arising from surrogacy arrangements are adjudicated under general principles of contract, family, and child welfare law. This leaves significant uncertainty about enforceability of surrogacy agreements, recognition of parentage, and the rights of children born through surrogacy.

Matters Arising

Surrogacy, while offering hope to infertile couples and individuals, raises a host of ethical, legal, cultural, and socioeconomic challenges. These challenges are particularly pronounced in Nigeria, where surrogacy is practiced in the absence of regulation, against a backdrop of strong cultural expectations of fertility, patriarchal structures, and weak enforcement of human rights. This section examines the major controversies arising from surrogacy within the Nigerian context.

Ethical Concerns

A primary ethical objection to surrogacy is the potential commodification of women's bodies and children. Critics argue that commercial surrogacy reduces the womb to a market commodity and children to products of contract.³⁶ Feminist scholars warn that in contexts of poverty and gender

³² S.299, S.358

³³ S.282

³⁴ S.50

³⁵ Nigeria House of Representatives Debates, October 2024 (Bill for the Establishment of Surrogacy Regulatory Commission).

³⁶ M. Warnock, *Making Babies: Is There a Right to Have Children?* (Oxford: OUP, 2002).

inequality, women may be coerced into surrogacy by economic necessity rather than genuine choice, raising concerns about exploitation.³⁷

Furthermore, questions of informed consent are central. For consent to be valid, it must be free, informed, and competent. In Nigeria, limited literacy, lack of awareness of reproductive technologies, and unequal bargaining power between commissioning parents and surrogates cast doubt on whether surrogate mothers fully understand the medical and legal implications of their decisions.³⁸

Religious objections also complicate the ethical discourse. In predominantly Christian and Muslim communities, surrogacy is often regarded as contrary to divine will or natural law, undermining its social acceptance. The absence of a clear ethical code leaves surrogacy vulnerable to moral condemnation without structured debate.

Cultural and Social Dimensions

Infertility in Nigeria carries significant stigma, particularly for women. Childlessness is often attributed to the woman, regardless of medical evidence, and may result in divorce, ostracism, or accusations of witchcraft.³⁹ Against this backdrop, surrogacy represents both a potential remedy and a cultural disruption.

On the one hand, surrogacy enables infertile couples to have biologically related children, mitigating stigma. On the other, cultural norms that valorise biological motherhood complicate the acceptance of children born through surrogacy. In some communities, the surrogate may be viewed as the “real mother,” leading to disputes over legitimacy and inheritance.

Traditional practices reveal some parallels to surrogacy: among the Ijaw and Kalabari peoples, infertile wives historically encouraged their husbands to marry younger wives to bear children on their behalf.⁴⁰ These practices demonstrate cultural precedents for surrogate like arrangements, suggesting that regulated surrogacy could find cultural legitimacy if framed appropriately.

Legal Uncertainty: The absence of legislation regulating surrogacy in Nigeria creates profound legal uncertainties. Key questions that remain unresolved include:

- **Enforceability of Surrogacy Contracts:** Are agreements between commissioning parents and surrogates legally binding, or void for public policy?
- **Parentage and Legitimacy:** Who is the legal mother – the surrogate who gives birth or the commissioning mother whose gametes were used?
- **Rights of the Child:** What legal status do children born via surrogacy have regarding inheritance, citizenship, and recognition?

³⁷ R. Tong, *Feminist Thought* (Boulder: Westview, 2009) 214.

³⁸ R. Sifris, *Reproductive Freedom, Torture and International Human Rights* (London: Routledge, 2013).

³⁹ A. Okonofua, “Infertility and Women’s Reproductive Health in Africa” (1999) 10 *African Journal of Reproductive Health* 1.

⁴⁰ J. Nnadi, *The Future of Surrogacy in African Family Law* (Lagos: Malthouse, 2019) 56.

Socio-Economic Implications

Nigeria's socioeconomic realities intensify the risks of surrogacy. Poverty and gender inequality make women susceptible to coercion into surrogacy arrangements. The lack of state oversight increases the risk of trafficking, baby selling, and exploitation under the guise of surrogacy.⁴¹

Medical risks

Surrogates may face complications such as preeclampsia, gestational diabetes, or maternal mortality, especially given Nigeria's weak healthcare infrastructure. Without regulation, surrogates may lack adequate medical insurance or postnatal care.

Additionally, surrogacy is expensive, making it accessible mainly to wealthy Nigerians or foreigners, thereby reinforcing inequalities in access to reproductive technologies. This raises questions of distributive justice: should surrogacy be a privilege of the affluent, or a right supported by the State as part of Reproductive Health Care?

Religious and Moral Opposition

Religious objections to surrogacy are strong in Nigeria. The Catholic Church condemns surrogacy as inconsistent with natural law, while Islamic jurisprudence generally prohibits third party involvement in procreation.⁴² These objections influence societal attitudes and political reluctance to legislate. Yet, as the practice in United States demonstrates, legal regulation can coexist with moral pluralism, providing safeguards for those who choose surrogacy while respecting dissenting moral views.

Child Welfare

Another key issue is the welfare of children born through surrogacy. In the absence of legal recognition, such children may face discrimination, denial of inheritance rights, or lack of recognition of their legal parentage. The best interests of the child principle, recognized in the Child Rights Act 2003 and Article the CRC, should guide surrogacy regulation.⁴³ Unregulated surrogacy, however, risks undermining these interests by leaving children in legal limbo.

Surrogacy in Nigeria raises pressing issues of ethics, culture, law, and socioeconomics. While it offers hope to infertile couples, it also poses risks of exploitation, commodification, and legal uncertainty. The absence of regulation exacerbates these challenges, leaving women and children vulnerable. Addressing these issues requires a legal framework that balances reproductive autonomy with protection against abuse, cultural sensitivity with human rights obligations, and individual choice with child welfare.

Lessons from Other Jurisdictions

A comparative analysis of surrogacy regulation across jurisdictions provides important insights for Nigeria. Different legal systems have adopted varied approaches, ranging from prohibition to

⁴¹ A. Adepoju, "The Impact of Human Trafficking on Women and Children in Africa" (2005) 24 *Gender and Development* 4.

⁴² P. Ramsey, *Fabricated Man: The Ethics of Genetic Control* (New Haven: Yale UP, 1970).

⁴³ Child Rights Act 2003; CRC, Art. 3.

permissive regulation, reflecting diverse cultural, ethical, and policy considerations. Examining India, and the United States offers valuable lessons on how Nigeria might structure its legal response to surrogacy.

India

India initially emerged as a hub for commercial surrogacy, attracting commissioning parents from around the world due to low costs and availability of surrogates. However, reports of exploitation, abandonment of children, and lack of regulation led to significant reforms. In *Baby Manji Yamada v Union of India*, the Supreme Court highlighted the legal ambiguities of international surrogacy, including parentage and citizenship of surrogate born children.⁴⁴

In response, the Indian Parliament enacted the Surrogacy (Regulation) Act 2021, which bans commercial surrogacy and permits only altruistic arrangements for Indian couples married at least five years, with at least one partner infertile⁴⁵. The Act requires prior authorization by regulatory authorities and imposes criminal penalties for violations.

India's experience illustrates the dangers of unregulated commercial surrogacy, including exploitation and cross border disputes. Nigeria should avoid laissez faire practices and instead adopt clear rules distinguishing altruistic and commercial surrogacy, with oversight mechanisms.

United States

The United States offers perhaps the most diverse picture, as surrogacy is regulated at the state level. Some states, such as New York (until 2020) and Michigan, historically banned surrogacy contracts, while others, such as California, permit and enforce them, including commercial surrogacy. In *Johnson v Calvert*, the California Supreme Court upheld the enforceability of a surrogacy contract, recognizing the intended mother as the legal parent based on intent.⁴⁶

The U.S. approach reflects a pragmatic emphasis on contractual freedom and reproductive choice, while allowing state variation. States permitting surrogacy generally impose requirements such as independent legal advice, psychological screening, and court issued parentage orders.⁴⁷

The U.S. demonstrates the benefits and risks of a decentralized system. While contractual enforceability enhances certainty for commissioning parents, the risks of commodification remain. Nigeria, as a unitary state, may be better served by a uniform federal law that combines regulation with safeguards, avoiding fragmentation.

From these jurisdictions, three broad lessons emerge for Nigeria:

⁴⁴ *Baby Manji Yamada v Union of India* (2008) 13 SCC 518.

⁴⁵ Surrogacy (Regulation) Act 2021 (India), s. 4.

⁴⁶ *Johnson v Calvert* 851 P.2d 776 (Cal. 1993).

⁴⁷ R. Scott, "Surrogacy and the Politics of Commodification" (2009) 72 *Law and Contemporary Problems* 109.

1. **Legal Clarity is Essential:** Both the UK and South Africa demonstrate that explicit statutory recognition of surrogacy reduces disputes and protects children.
2. **Safeguards Against Exploitation:** India's reforms underscore the need to protect poor women from commercial exploitation. Regulation must prevent coercion while enabling reproductive choice.
3. **Balancing Autonomy and Oversight:** The U.S. experience highlights the value of respecting contractual autonomy, while requiring oversight mechanisms such as court approval or regulatory licensing.

For Nigeria, the path forward lies in crafting legislation that recognizes surrogacy as a legitimate reproductive choice, requires preconception approval to protect surrogates and children, prohibits exploitative commercialization, and harmonizes domestic law with international human rights obligations.

Conclusion

The regulation of surrogacy in Nigeria sits at the crossroads of law, culture, ethics, and human rights. On one hand, surrogacy provides a vital lifeline for couples and individuals grappling with infertility, affirming their reproductive autonomy and right to family life. On the other hand, the absence of a legal framework exposes women and children to exploitation, denies intended parents legal certainty, and risks the commodification of human life.

This article has shown that while international and regional instruments such as CEDAW, the CRC, and the Maputo Protocol strongly support reproductive rights, Nigeria has yet to translate these obligations into coherent domestic law. Chapter IV of the Constitution provides avenues for judicial interpretation particularly the rights to dignity, privacy, and family life yet the judiciary has been reluctant to adopt expansive readings that embrace reproductive autonomy. Statutory and institutional frameworks remain silent, leaving surrogacy in a grey zone governed only by informal practices and private contracts.

The comparative review of India and the United States demonstrates that a range of regulatory models is available, from altruistic only frameworks with court oversight to contractual freedom with safeguards. Each model balances autonomy, exploitation concerns, and child welfare differently. Nigeria need not reinvent the wheel; instead, it can adapt lessons from these jurisdictions to its sociocultural context.

Surrogacy represents not merely a biomedical innovation but a profound question of human rights, dignity, and justice. For Nigeria, the challenge is to craft a legal and institutional framework that upholds women's autonomy, protects vulnerable parties from exploitation, and secures the best interests of children. By learning from comparative experiences and grounding reforms in human rights principles, Nigeria can move beyond silence and uncertainty to a regulatory regime that affirms reproductive justice for all.

Recommendations

1. Enact Comprehensive Legislation

Nigeria should enact a Surrogacy Regulation Act that explicitly recognizes surrogacy as a legitimate form of assisted reproduction. The law should distinguish between altruistic and commercial surrogacy, prohibiting exploitative practices while allowing reasonable compensation for expenses.

2. Protection of Surrogates

The law must provide safeguards for surrogate mothers, including medical insurance, psychological counselling, and protection from coercion. Surrogates should be free to make autonomous decisions without undue economic pressure or family coercion.

3. Clarification of Parentage

Legislation should clearly establish the intended parents as the legal parents once a surrogacy arrangement is approved, thereby avoiding disputes over custody and inheritance. This aligns with the principle of the best interests of the child under the Child Rights Act and CRC.

4. Institutional Oversight

A Surrogacy Regulatory Commission should be established to license fertility clinics, maintain a registry of surrogacy arrangements, and monitor compliance with ethical and medical standards. This would prevent trafficking, baby selling, and medical malpractice.

5. Integration of International Obligations

Nigeria should domesticate and implement its obligations under CEDAW and the Maputo Protocol, explicitly recognizing reproductive rights as justiciable. This would strengthen the legal foundation for surrogacy and align Nigeria with international human rights norms.

6. Public Education and Cultural Dialogue

Awareness campaigns are necessary to reduce stigma and misinformation surrounding surrogacy. Framing surrogacy within African traditions of communal childbearing could foster cultural acceptance, while engagement with religious leaders could promote nuanced ethical discourse.