

*“Valorized,
but not
Compensated”**

Reproductive Labor and
Bodily Autonomy in the
Criminalization of Surrogacy



Just Futures
Collaborative

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Just Futures
Collaborative

A feminist initiative cultivating global cross-movement strategies for challenging criminalization, promoting human rights, and protecting democracy.

We bring together people and groups that are challenging criminalization and experimenting with approaches that address harm with humanity.

We ignite collaboration, collective imagination and power for just futures and counter highly coordinated anti-gender, anti-democracy actors.

Introduction

In July 2025, Australian bishops, during the Australian Catholic Bishops Conference, called on the Australian government to enforce its ban on commercial surrogacy, while calling on Australia's Law Reform Commission to recommend banning surrogacy in all its forms in Australia¹. This demand comes as the Australian Law Reform Commission is in fact reviewing all legal regulations related to surrogacy in the country, in an attempt to reduce barriers to "domestic altruistic surrogacy".²

The Australian bishops' statement happened against the backdrop of increasing regulations on surrogacy around the world: Italy passed a highly punitive law in 2024 criminalizing Italian couples from seeking surrogacy services overseas; penalties can include a two-year sentence as well as 1 million euros in fines.³

The United States' President's executive order on "Protecting the Meaning and Value of American Citizenship", which takes aim at the US' longstanding policy of birthright citizenship, has been marked by legal advocates and reproductive justice organizations as potentially having a significant impact on surrogacy.

India's 2021 law "Surrogacy Regulation Act" changed the surrogacy landscape drastically, banning everything seen as "commercial surrogacy" and ending an era of more open policies. The Act also made sweeping changes to restrict foreign nationals, even foreign nationals of Indian origin, from seeking surrogacy services in India. Recently, India's Supreme Court heard petitions to lift the age restrictions placed on surrogacy.⁴

Restrictions on reproductive and bodily autonomy are at the heart of contemporary conservative political projects today in a profound way. We are witnessing the culmination of decades-long campaigns to restrict, regulate and curtail freedoms related to our bodies and our health, particularly (though not limited to) rights connected to reproduction, gender identity and expression, and sexuality.

Surrogacy is a less visible issue of bodily and reproductive autonomy that governments considered both liberal and conservative seek to regulate, often without much pushback - or even with tacit support - from many in human rights and women's rights movements. But the increasingly severe limitations placed on surrogacy are part of a broader agenda - along with vigorous advocacy to block Comprehensive Sexuality Education (CSE), rampant homophobia and transphobia shaping and guiding law and policy, regression on protections for abortion and other healthcare, widespread divestment from gender-based violence prevention and response, and extremely hostile policies enacted at borders in the name of 'national security'.

In the following essay, we focus on four aspects of human rights as these relate to gestational surrogacy: first, we unpack the “altruistic” vs “commercial” surrogacy binary, questioning who this categorization actually serves. Second, we look at the importance of bodily autonomy as a fundamental human right. Third, we explore the need to address economic and social rights as part of the surrogacy conversation. Finally, we look at the harmful consequences of criminalization of gestational surrogacy.

While we recognize that regulation of surrogacy may be critical to ensuring the rights of all parties are respected, protected and fulfilled, this essay provides a cautionary note: sometimes regulation - especially when done in a way that undermines individual agency and autonomy - slides into penalization and punishment, resulting in discrimination and human rights violations.

Framing the Questions: Surrogacy and the Anti-Gender Agenda

The issue of assisted reproductive technology generally, and surrogacy in particular, have become flashpoints in the current anti-gender and anti-democracy pushback on bodily autonomy and reproductive justice. This is no surprise: surrogacy challenges traditional ideas about when, where and how reproduction is supposed to occur, i.e. in a heterosexual, nuclear family. At the same time, many movements (feminist, queer, disability rights, etc.) have challenged this “naturalized” model and note that there are as many forms of family formation as there are families.

Still, surrogacy is frequently framed as a moral and/or ethical issue, rather than an issue of bodily autonomy, economic opportunity and health. Governments, conservative religious and political actors, and, in some cases, courts have sought to impose ideological restrictions on the practice, rather than consider the real circumstances of all parties to a surrogacy arrangement, the need for clear agreements, and the importance of protecting rights.

Certainly, debates about surrogacy invoke numerous economic, political, social and ethical questions: how do we ensure the well-being of the surrogate and protect their rights against exploitation? What role does economic injustice and inequity play and how should law and policy address this? How do we balance the needs and rights of the different actors in a surrogacy situation and safeguard the rights of all parties? What are the rights of children born from these processes? When surrogacy is criminalized, who is most harmed?

These are legitimate questions and ones that are also tied to the ethics of technology, based on concern for rights, health and wellbeing. However, surrogacy is often the subject of bad faith interventions by conservative, anti-gender and anti-democracy actors who increasingly call to criminalize surrogacy entirely or partially, as a form of “violence against women”, and conflate it with trafficking of women and children.

The motivation behind the focus on surrogacy for anti-gender and anti-democracy actors is easy to understand: the issue gives them an opening through which to restrict the bodily autonomy of women, and attack the rights of sexual and gender diverse persons while casting doubt on women’s choices and the status of a fetus. It also gives them an opportunity to promote narratives which degrade some groups (e.g. same-sex couples, women who cannot or do not want to undertake gestational reproduction, women who accept compensation for undertaking gestational surrogacy) while uplifting others as models (e.g. heterosexual couples who can or want to produce children), in a bid to impose their narrow, patriarchal worldview on society.

In contrast, assisted reproduction is increasingly recognized as a cornerstone of health and human rights in national and international jurisprudence. In the Global Report on Assistive Technology,⁵ the World Health Organization (WHO) and UNICEF comment that assisted reproductive technology (the larger category under which surrogacy can be considered) serves as both a means to securing human rights (to facilitate access to the right to health) and a human rights issue in and of itself (as a practice of fully informed decision making about one’s sexual and reproductive health). Being able to access healthcare and social services that promote equal

opportunities for health, and that enable family formation in a non-discriminatory fashion, are human rights.⁶

Despite this, incendiary rhetoric is increasingly used to create moral panic, usually by invoking narratives of “violence”, “coercion”, and “exploitation”, and conflating surrogacy and trafficking. The weaponization of “violence” narratives continues to gain traction, as anti-gender actors have captured human rights instruments, state bodies and other institutions, and work in concert with regional and local homegrown right-wing movements. For example, a recent report on surrogacy from the United Nations Special Rapporteur on violence against women, its causes and consequences, (UN SRVAW) frames the issue of surrogacy as inherently violent, and conflates surrogacy with trafficking and the sale of children.⁷ The UN SRVAW calls on states to ensure “eradication of surrogacy in all its forms”.⁸

This kind of formulation helps anti-gender and anti-democracy movements in several ways: not only does it restrict the rights of women and children, but it also offers states tacit approval for their numerous harmful border policies, which are increasingly hostile to migrant persons (including asylum seekers and refugees), and use threats of citizenship revocation as a way to stifle dissent.

Disrupting the “Commercial”/ “Altruism” Binary in Surrogacy

The binary framework that has produced the distinct categories of “commercial” and “altruistic” surrogacy creates the false notion that “altruistic” surrogacy is not compensated in some fashion, even if it is not financial. It also presupposes that compensated surrogacy is non-altruistic and somehow either suspect or exploitative. In countries that ban “commercial” surrogacy but allow “altruistic” surrogacy, the process relies on “an altruistic agreement based upon voluntary consent rather than an explicit surrogacy contract.”⁹ Most legal reform projects that seek to protect “altruistic” surrogacy, while criminalizing “commercial” surrogacy stipulate that those close to the intended parents may carry out surrogacy as an act of “altruism”.

In India for example, the Surrogacy (Regulation) Act, 2021 permits only altruistic surrogacy, meaning no financial compensation for the surrogate - beyond medical expenses and insurance - is allowed. The law earlier permitted only married women or divorcees to undertake surrogacy. It now uses the phrase “willing woman”.¹⁰ However, there appears to be a contradiction in who is a willing woman under the law and the rules.¹¹

As Sarojini N notes
“Within the altruistic
surrogacy arrangements in
India, post and prior the legal
regime of the Act, it is this
particular transgression that the
regulations are in conflict with and
a certain tension is arising at the
site where the recognition of
and compensation
is sought.”¹²

There is a troubling assumption that altruistic surrogacy, because it does not involve compensation, is assumed to be free from coercion or exploitation. We cannot ignore the social and cultural constraints on the agency of a married woman within Indian society being pressured by relationships of power, patriarchal norms and the lack of autonomy to make certain choices regarding reproduction and childbearing.¹³

The preference of non-commercial/altruistic surrogacy over commercial surrogacy raises concerns since it obscures the gravity or precariousness of the conditions in which women may enter into such arrangements.¹⁴ The state must strengthen institutional and structural support for surrogates: including access to quality healthcare, childcare, safe working and living conditions, nutrition, education, and social security. This is essential to uphold their rights and dignity.¹⁵ And why should the “willing women” not be financially compensated for their labor?

Feminist scholarship, like that of Banerjee and Kotiswaran, argues for a framework beyond the “altruism/commercial” binary and calls for “compensated surrogacy” to become a protected category of reproduction in the law.¹⁶ The altruistic/commercial binary doesn’t serve women or women’s rights - instead, it best serves those seeking to undermine women’s agency, autonomy and privacy and cast doubt on women’s ability to make decisions for themselves. Feminists have long argued that the stigma around so-called commercial surrogacy and the laws that seek to regulate, and in many cases criminalize, commercial surrogacy renders women’s reproductive labor invisible without solving their economic issues. These policies often endanger the very women they claim to protect. Indeed, in the context of altruistic surrogacy, “[w]omen’s reproductive labour in performing surrogacy is valorized but not compensated”, as Banerjee and Kotiswaran write¹⁷, and the label of “altruism” proffers precisely this sense of valor to the surrogate.

Bodily Autonomy and Protectionism

Bodily autonomy in international and regional jurisprudence

The right to bodily autonomy is rooted in various philosophical, legal, and human rights frameworks that emphasize freedom, dignity, and the right to make personal choices regarding one's own body. For instance, the International Covenant on Civil and Political Rights (ICCPR) maintains that individuals should have autonomy over their bodies and protection from violations; and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) emphasizes the rights of women to make decisions regarding marriage and family, including reproductive choices, and the right to be free from violence. This is further amplified in the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) that states that core to ensuring equality and non-discrimination, is the need for all individuals, regardless of race, to have equal rights to bodily autonomy.

Bodily autonomy is also supported in regional human rights instruments like the European Convention on Human Rights (ECHR) and the American Convention on Human Rights, both of which support the principles of bodily autonomy through their provisions on the right to privacy, personal integrity, and protection from inhumane treatment. The Maputo Protocol¹⁸ affirms that women have the right to control their reproductive health, which includes the right to make decisions about their bodies and reproductive choices. This provision underscores the importance of bodily autonomy in the context of reproductive rights. National governments are also grappling with laws, policies and regulations, with significant differences from one country to the next. Some, such as the South African constitution, contain provisions that would appear to encompass surrogacy through a clear protection of reproductive choices.¹⁹

In the context of gestational surrogacy, bodily autonomy means that individuals, whether they are surrogates or intended parents, should have the freedom to make informed choices about reproduction. When surrogacy is criminalized under the pretext of “protection,” it often leads to what we could call “protectionism.” This approach frames individuals (usually women or girls) as inevitable victims, thereby stripping them of their agency and rights. Instead of protecting the rights of people engaged in the surrogacy process, it creates a narrative that undermines their autonomy and in doing so, restricts rather than protects their rights. Surrogates aren’t victims in need of protection just because they are surrogates. Rather, they are actors with agency, who need their rights protected and their decisions respected.

The denial of bodily autonomy can have far-reaching implications. It perpetuates a societal view that individuals, particularly women, are not capable of making informed decisions about their own bodies. This not only affects surrogacy but also a broader range of reproductive rights, reinforcing harmful stereotypes and limiting personal freedoms. A rights-based framework respects and upholds the rights of all individuals involved in the assisted fertility process.

Some regulations may be needed to ensure against abuse of all those who engage in the surrogacy process - as in other areas of labor, reproduction and healthcare - but the regulations also need to be rights-based and rights-affirming.

Building on the theme of autonomy, it is also important to consider how lack of economic autonomy and independence, combined with economic inequity creates conditions of injustice. Within the context of gestational surrogacy, it is important to secure economic and social rights for all parties – the surrogate, the intended families and any children born through surrogacy. As with ideological “anti-trafficking” laws and policies, the vast majority of laws and policies which criminalize surrogacy fail to address root causes like gender inequality, poverty, racism, xenophobia and experiences of family, social and/or state violence. Instead of criminalizing surrogacy, we should focus on systemic factors that limit economic security and independence, in particular, gender inequality and the denial of autonomy and agency for women.

Indeed, surrogacy can provide economic opportunities for gestational surrogates, particularly in marginalized communities. Criminalizing surrogacy not only denies these women the chance to improve their lives but punishes them for their desire to do so. On the other hand, those responsible for the broader exclusion, marginalization and discrimination of women enjoy impunity. At the same time, as GIRE (Grupo de Información en Reproducción Elegida, Mexico) reminds us, it is important to consider how the “unequal conditions in which contracts are commonly established affect the surrogate’s ability to consent to them.”²⁰

GIRE emphasizes the need to consider the socioeconomic context while also highlighting that “measures to ban surrogacy are frequently rooted in gender stereotypes and biases regarding maternity, pregnancy, and women’s

autonomy.”²¹ Furthermore, prohibition does not contribute to the protection of the parties against the most widely documented forms of abuse identified with the practice,²² such as inadequate care or compensation for surrogates.

Truly protecting individuals from exploitation requires that we address structural violence such as exclusion, gender inequality and other intersecting forms of discrimination. To do this effectively requires the engagement of those involved in the surrogacy process, especially surrogates themselves.

The Harmful Consequences of Criminalization

In December 2024, 13 pregnant women from the Philippines who had agreed to act as surrogates were sentenced to be jailed in Cambodia, after being convicted of human trafficking for intending to “sell” the babies they were carrying through surrogacy²³. A Cambodian woman was also jailed for two months in this same case as an “accomplice”, merely for cooking meals for the surrogates. While this is an extreme manifestation of the harms of a punitive response to the issue of surrogacy, there are other wide-ranging harms to women and children which arise from criminalization and punishment.

If we understand that assisted fertility is a means to access rights as well as a right in and of itself, as discussed above, then criminalization of surrogacy criminalizes the exercise of a human right (infertility treatment as part of realizing the right to health). Laws that criminalize may also discriminate, for example, when unmarried women are prohibited from engaging surrogates. These regulations create unjust hierarchies where some groups are seen as deserving

to form families and others not.

The existence of exploitation, often in the context of regulatory voids, should not automatically lead us to argue for criminalization. Indeed, exploitation does often occur alongside significant economic inequity. Take, for instance, the situation in Argentina in which, until recently, the legal status of surrogacy was unclear. In January 2024, a 58-year-old German mother brought her weak three-month-old infant to Bonn for emergency care. A birth certificate from the Buenos Aires City Civil Registry and an Argentine passport showed the infant was surrogate-born. After investigating, German authorities ruled the parent unable to care for the child, placing the child in foster care.²⁴

The Argentinian government has responded by tightening their surrogacy laws and policies: in November 2024, a gay male couple wanted both of their names on their surrogate-born child's birth certificate (the surrogate was the sister of one of the couple), but the Argentinian Supreme Court denied their request. The ruling further stated that surrogacy contracts cannot change parental relationships and asked authorities to regulate surrogacy in Argentina. In essence, this Supreme Court ruling is taken to mean that surrogacy in Argentina is now prohibited at least until other regulations are put into place.²⁵

Criminalization risks other unintended harmful consequences as laws intended to protect can be manipulated and misused, pushing surrogacy underground and making it more dangerous, pushing women to act as "altruistic" surrogates without any compensation, paving the way for exploitation. When surrogacy operates in the shadows, it becomes challenging to ensure the rights of surrogates, intended parents and the children born through surrogacy are protected and promoted.

Conclusion

Several general principles might be considered in developing feminist and rights-based responses to surrogacy. First, it is important to address exploitation, but not by criminalizing the practice. As we have noted, criminalization itself creates conditions conducive to exploitation. Second, it is always important to address impunity, but punitive approaches rarely provide a rights- and justice-based solution. Imprisoning women who agree to act as surrogates is neither feminist nor rights-based. Finally, it is important to address women's lack of economic independence and financial security, overall. However, closing off the avenue of compensated surrogacy does little to advance women's economic and social rights or their bodily autonomy, nor does it address the growing challenge of infertility, and diverse persons' rights to form a family.

The blatant attempt by anti-gender and anti-democracy actors to co-opt the gender-based violence and sexual and reproductive rights and justice agendas is transparent - it distracts us from the real work of addressing and preventing gender, sexual and reproductive injustice. We need to understand how injustice occurs when persons face inequality and forms of discrimination, based on intersecting structures such as gender, gender identity, race, caste, nationality, ethnicity, ability,

class, form of work, health or migrant status, among others. Without bodily autonomy, there can be no gender justice.

Similarly, without addressing root causes underlying the contexts in which surrogacy occurs - economic inequality, patriarchy, climate change driving migration patterns, escalating war and militarization - we cannot hope to achieve a rights-based, evidence-based, gender-just approach to surrogacy. Women's rights and sexual and reproductive justice movements too must be more attentive to the issue of surrogacy, ensuring that states and anti-gender actors cannot use surrogacy as a way to limit autonomy and rights. Not only is commercial surrogacy justifiable when properly regulated, it promotes reproductive autonomy of intended parents and empowers surrogates to choose what to do with their bodies.²⁶

Limiting bodily autonomy in the name of "saving poor women", especially as a way to invoke moral panic, calls for a quick and strong counter-narrative - one that emphasizes the promotion and protection of bodily autonomy, the right to health and to sexual and reproductive justice. Gender justice, queer, trans, intersex, sex workers', migrant justice, reproductive justice, disability justice, HIV/AIDS, public health, drug-use, and other communities and movements must urgently work together to advance an inclusive bodily autonomy agenda which recognizes bodily autonomy as a central pillar of our shared vision for our future.

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Collaborative

 justfuturescollaborative.org

 info@justfuturescollaborative.org