

## Surrogacy in Mexico: Viability of a model based on the United Kingdom law.

### Maternidad subrogada en México. Viabilidad de un modelo basado en la legislación del Reino Unido.

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#### Abstract:

This article examines surrogacy from a comparative law perspective between Mexico and the United Kingdom, with the aim of identifying elements of the British model that could be adapted to the Mexican legal context. The British model stands out for its comprehensive regulation, institutional oversight mechanisms, and a human rights-centered approach. The findings highlight its potential value as a reference for legal reforms in Mexico that strengthen reproductive rights, ensure legal certainty, and safeguard the dignity of all parties involved.

#### Keywords:

*Surrogacy, United Kingdom, Legal Framework, Comparative Law*

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#### Resumen:

Este artículo analiza la gestación subrogada desde una perspectiva de derecho comparado entre México y Reino Unido con el objetivo de identificar elementos del modelo británico que puedan adaptarse al contexto jurídico mexicano. El modelo británico sobresale por su regulación integral, mecanismos de control institucional y un enfoque centrado en los derechos humanos. Los resultados evidencian su potencial valor como referencia para reformas legales en México que fortalezcan los derechos reproductivos, garanticen seguridad jurídica y aseguren el respeto a la dignidad de todas las personas involucradas.

#### Palabras Clave:

*Subrogación, Reino Unido, marco legal, derecho comparado*

#### Introduction

Surrogacy is a legal arrangement that allows individuals unable to conceive naturally to have children through the consent of a woman who gestates on their behalf. In Mexico, only Tabasco and Sinaloa have regulated this arrangement in their Civil and Family Codes, respectively, while in the rest of the country a regulatory gap persists, generating legal uncertainty and potential abuses.

In contrast, the United Kingdom has a unified legal framework based on protecting the human rights of the involved parties, particularly the child's welfare, and prohibits its use for commercial purposes. Due to its ethical approach, this country was selected as a model for comparative analysis. This article aims to identify elements of the British model that may be applicable to the Mexican context, based on a documentary and normative analysis. The research question posed is: What characteristics of the United Kingdom's legal model could be adapted to the Mexican legal context regarding surrogacy?

#### Methodology.

This article was conducted using the comparative method of Adrián Mancera Cota (1), which involves a profound and systematic comparison of the norms and legal solutions of different legal systems, adopting an exploratory approach. When comparing the limited Mexican legislation with models such as those of Ukraine and Georgia, the possibility of adopting these regulations was ruled out, as they encourage reproductive tourism and permit commercial surrogacy, which is intended to be avoided in Mexico to prevent the exploitation of women (2). This is especially relevant in Mexico, where poverty and inequality could generate a market in which vulnerable women view their bodies as a means of obtaining profit for third parties. Therefore, the English legal system was chosen, based solely on altruistic surrogacy, as it is more suitable for avoiding the commodification of women's bodies.

#### Why Compare Mexico with European Countries?

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Comparing Mexico with European countries that do not share many similarities in their cultural, social, and, above all, economic contexts might seem of little use. However, the intention of this article is not to replicate any foreign model; rather, it is to learn from comparative experiences that could enrich our legal framework. Although Latin American countries like Brazil or Argentina have also regulated surrogacy and share more sociocultural similarities with Mexico, their legal frameworks still face challenges in guaranteeing an approach fully centered on human rights. In Brazil, for example, legal loopholes and bioethical dilemmas still exist (3), and in Argentina, cases of exploitation of vulnerable women in irregular surrogacy schemes have even been detected (4). International studies have noted that solid and homogeneous regulatory frameworks that fully prioritize human rights in the practice of surrogacy do not yet exist in Latin America (5).

In contrast, the United Kingdom has a protective and balanced legal approach. Unlike other countries where this practice is either completely restrictive or, conversely, too liberal regarding its accessibility, the UK has a regulatory framework that protects the human rights of the parties, seeks to avoid exploitation, and prevents the practice from becoming clandestine. Likewise, the European country has an inclusive regulation that allows access for same-sex and single individuals, aligning with Mexican jurisprudence that recognizes reproductive rights without distinction of sexual orientation or marital status. Incorporating elements of the British model into the Mexican legal framework could facilitate the transition towards a more just and ethical system of justice. This approach allows for protective regulation without criminalization, avoiding the exploitation of gestating women.

### **Background: Surrogacy**

Over time, science has made significant discoveries that now enable previously unthinkable achievements, such as surrogacy. This practice involves gestating an embryo for a person, substituting their body with that of another woman suitable for carrying out this process. This surrogate mother is a healthy individual who agrees to carry the pregnancy to term through an altruistic or, in some countries, commercial agreement. (6)

Upon conclusion of the pregnancy, the product is delivered to those who arranged the procedure, provided the terms of the contract are met. Although it is an alternative for becoming parents, this practice involves physical, psychological (7), and legal repercussions.

In recent years, it has become popular among people unable to form a family, but its high demand has turned it into a business, especially in Mexico, where regulation is limited and allows foreign or national couples to access low-cost procedures with fewer legal consequences. (8)

It has been subject to criticism for its commercial focus, but its regulation is necessary. Although there are no exact figures on who resorts to these techniques, infertility is on the rise due to environmental and biological factors, thus increasing demand in the absence of a clear legal framework. (8)

### **Surrogacy in Mexico.**

In Mexico, only Tabasco and Sinaloa have active regulations regarding surrogacy, limited to the civil sphere. However, surrogacy also encompasses health-related matters; therefore, limitations on these assisted reproduction techniques can affect the formalization of contracts.

Tabasco has recognized this arrangement since 1997, when a section was added to the Civil Code to register infants born via this method through a notarized contract, without considering the involved parties or the contractual conditions. By not establishing clear requirements or restrictions, gestational mothers were exposed to violations of their rights. In 2016, it was reformed to limit access to Mexican couples and prohibit surrogacy for profit, but it also restricted access to heterosexual couples and mandated an infertility diagnosis of at least five years' standing (9).

On June 3, 2021, the Supreme Court of Justice of the Nation (SCJN) ruled on an action of unconstitutionality (16/2016) and endorsed both altruistic (*gratuita*) and remunerated (*remunerada*) surrogacy. It invalidated Tabasco's provisions that prohibited access for same-sex couples and foreigners. The Chief Justice at that time, Arturo Zaldívar Lelo de Larrea, argued that prohibiting such contracts could drive the practice underground. Furthermore, those precepts requiring the spouse of the gestational mother to sign the contract were invalidated, as this act pertains only to the woman. Similarly, for the first time, the best interests of the child were considered, stipulating that all decisions must prioritize the child.

In Sinaloa, specific measures were established in 2013, including requirements for the gestational mother, informed consent, and specific health and environmental conditions. Furthermore, it prohibited access for foreigners, thereby preventing its use as a commercial destination.

The Family Code for the State of Sinaloa (CFS) defines surrogacy as:

the medical practice by which a woman gestates the product fertilized by a man and a woman, when the [intended] woman suffers from physical impossibility or medical contraindication to carry out the gestation in her uterus, and is substituted by a gestational woman who carries the intended parents' embryo in her uterus, a relationship that concludes upon birth. (10).

Its regulations contain an entire chapter establishing the modalities, restrictions, and requirements for executing these contracts. The CFS establishes 4 modalities of surrogacy in Article 284:

I. Total surrogacy (*Subrogación total*): Implies the gestational woman is inseminated, contributing her own ova, and after gestation and delivery, she delivers the child to the contracting couple or individual; II. Partial surrogacy (*Subrogación parcial*): Occurs when the gestator is contracted exclusively to carry an embryo in her womb that was fertilized *in vitro* and transplanted to her, originating from the union of the sperm and ovum of the contracting couple or individual; III. Onerous surrogacy (*Subrogación onerosa*): Occurs when a woman agrees to become pregnant on behalf of another, as if it were a service, for which a specific and determined amount is paid, in

addition to the expenses of the gestation; and, IV. Altruistic surrogacy (Subrogación altruista): Occurs when a woman agrees to gestate on behalf of another free of charge.

In other states, such as Querétaro and Coahuila, the practice is prohibited. Although initiatives have been introduced to regulate it at the national level, none have prospered.

### **Surrogacy in the United Kingdom**

In 1985, the Surrogacy Arrangements Act was approved, permitting only altruistic surrogacy and penalizing commercial surrogacy. In 1990, it was reformed so that the legal parentage (filiación) of the child born from this contract would be determined by a judge, provided it was requested by the intended parents and the gestational mother consented, following a six-week period after the child's birth. In 2008, another amendment to the law allowed same-sex couples to enter into this contract. Finally, on January 3, 2019, a last reform to the law included single individuals.

In the United Kingdom, two laws coexist to regulate this practice. On one hand is the Surrogacy Arrangements Act 1985, which focuses on the ethical and contractual aspects of the agreement. On the other is the Human Fertilisation and Embryology Act 2008, which regulates how the child's legal parentage is transferred to the intended parents through a judicial resolution establishing parentage (parental order). That is, one regulates the agreement, and the other, the legal process after birth. Both remain in force and are applied jointly.

In the United Kingdom, only altruistic surrogacy is legal, meaning the intended parents only cover reasonable expenses incurred due to the pregnancy. When requesting the parental order, the court must verify that no payment has been made in exchange for the child, thus prioritizing the rights and dignity of the gestational mother and the involved minor (11).

Key regulations and restrictions exist in this country. The law does not prohibit the gestational mother from contributing her genetic material, but it is not advisable as this could complicate the court's issuance of the parental order. The HFEA (Human Fertilisation and Embryology Authority) Code of Practice states that, in surrogacy cases, treatments should be performed using ova from an external donor or the intended mother, thus avoiding legal conflicts over parentage (12).

After the birth, intended parents have a six-month period to apply for legal parentage of the minor (11). If this application is not made in the required time and manner, the baby will be legally considered the child of the gestational mother (and, where applicable, her partner), in accordance with sections 35 and 36 of the same act. Furthermore, for the application to be admitted, certain requirements must be met, such as the minor living with the applicants, legal residence in the United Kingdom, and the free and informed consent of the gestator (11).

The initial birth certificate contains the gestator's name, but it can be changed via a parental order. This process ensures the intended parents have legal authority over the child (11).

An organization called the HFEA (Human Fertilisation and Embryology Authority) is responsible for maintaining a register of assisted fertilization treatments, thereby protecting the biological rights of children born through surrogacy. Upon reaching 16 years of age, the child can request limited information about the donor from the authority, such as whether other individuals are children of the same person, how many there are, their year of birth, and their sex, which guarantees access to relevant data without compromising the donor's privacy. The authority will only provide this data after the applicant has received legal and psychological counseling (11). In this country, residence of at least one member of the couple is required to access surrogacy. This condition makes the United Kingdom a legally restricted destination for most foreigners.

### **Discussion: Comparison of Legal Frameworks**

The United Kingdom has a unified legal framework at the national level, establishing rules and procedures for the use of this arrangement. In Mexico, regulation varies between states, creating legal uncertainty, as involved parties may face ambiguous or unjust situations. These include difficulty in establishing the baby's legal parentage, the refusal of certain civil registries to recognize the intended parents' parenthood, lack of protection against contractual breaches, or the use of surrogacy for commercial purposes in unregulated contexts, affecting the dignity and rights of both the gestators and the minors. This lack of legal clarity can make it difficult for foreign parents to transfer the minor to their home country, generating legal loopholes that compromise their right to an identity and a recognized family. Federal legislation would provide legal certainty to parents, gestators, and minors by defining requirements, procedures, and judicial intervention to validate contracts.

The fact that surrogacy is not regulated nationally in Mexico does not mean it is not occurring covertly or illegally, giving rise to potential abuses such as contracts without judicial supervision, pressure on women in vulnerable situations to agree to gestate without medical or legal advice, or even the complete lack of guarantee of their free and informed consent. Regulating it nationally would ensure an ethical practice respectful of human rights, also protecting the child from conception.

### **Rights of the Involved Parties**

In the United Kingdom, legislation ensures the surrogacy process is ethical, fair, and legal, protecting intended parents, the minor, and, especially, the gestational woman. The latter can change her mind about handing over the minor before the parental order is issued, which, although creating uncertainty for the parents, protects her from potential abuses.

In Mexico, the rights of the gestational mother are not clearly defined and are left entirely to the discretion of the federative entity where the process takes place. In most states, no regulation exists, leaving gestational mothers completely unprotected and exposed to exploitation.

The United Kingdom prioritizes the best interests of the child, ensuring they have clear legal parentage and access to

information about their genetic and gestational origins in the future; that is, it seeks to protect their right to identity. In Mexico, due to the lack of regulation, instead of protecting their rights, they are violated, as there are cases where children face problems being registered, which can affect their access to rights such as nationality or inheritance.

In the United Kingdom, intended parents receive full parental rights via a court order, which is applied for 6 weeks after birth and guarantees the legal transfer of these rights. This system provides legal security and, above all, seeks to avoid future disputes. In Mexico, the absence of legal recognition for these contracts generates uncertainty and leaves parents vulnerable to conflicts with the gestator or gaps in the civil registry.

### Adaptability and Challenges of the British Model

In the United Kingdom, every surrogacy contract must be approved by a court, ensuring legal, medical, and ethical review. Mexico could implement a centralized registration system, based on this model, to formalize agreements and guarantee informed consent, gestators' rights, and legality.

The British model avoids the commodification of the female body and limits compensation to pregnancy-related expenses, which would be key in Mexico to prevent abuses in vulnerable contexts. Parentage is granted via a judicial resolution after birth, supervised by a court, whereas in Mexico, it is often acquired upon signing the contract without verification of ethical or legal requirements.

In the United Kingdom, gestators and intended parents must undergo medical and psychological evaluations to assess their physical fitness and understand the emotional and legal impact of the process—a measure Mexico should adopt to prevent conflicts and risks. However, adapting the model faces social, economic, and cultural challenges. Although regulated in Tabasco and Sinaloa, surrogacy maintains prejudices and religious influences that question the gestator's autonomy or the altruistic modality. Furthermore, in Mexico, many women access surrogacy for economic reasons; therefore, prohibiting the onerous modality could reduce its availability and encourage reproductive tourism, as couples who do not find an option within the country will seek countries where commercial gestation is legal, thus reproducing exploitative practices and greater vulnerability for gestational women.

The lack of federal legislation hinders a homogeneous system, stemming from Article 124 of the Constitution, which states that each State reserves all faculties not expressly granted to the Federation. Even so, a gradual approach with a unified federal framework, specialized courts, and awareness campaigns would allow progress toward safer surrogacy, adapting the British model to the national reality.

### Conclusion

Surrogacy is a highly complex arrangement that cannot continue without unified regulation in Mexico. A clear and just normative framework is required, one that respects the rights of all involved parties. Among the most important findings, the advantages of altruistic surrogacy, judicial oversight, and

institutional mechanisms—which offer greater legal security in the United Kingdom—stand out.

The adoption of practices such as a centralized registry, mandatory judicial review of agreements, independent legal counsel, and medical and psychological evaluations would be fundamental steps toward a more just, effective, respectful, and rights-centered legislation.

As future lines of research, it is suggested to compare the legal frameworks of other countries that regulate surrogacy and to discover additional elements that could be adapted to the Mexican context.

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