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REGULATING THE TRADE OF COMMERCIAL SURROGACY IN INDIA

Izabela Jargilo*

INTRODUCTION

“...it’s her egg and his sperm, and I’m just the oven, it’s totally their bun.” Phoebe Buffay, a character on the popular American sitcom Friends, said this as she explained the process of being a surrogate. Following the airing of this episode on January 8, 1998, surrogacy has quickly become increasingly popular as a common and trendy solution for developing a family. The World has come a long way from America’s first surrogate baby in 1980. Since then, surrogacy has become a popular alternative to childbirth, using a “host of boldfaced names from Elton John to Sarah Jessica Parker and Nicole Kidman [all of which have] publicly acknowledged using surrogates to birth babies for them.” As the number of surrogacies trends up and becomes mainstream, the demand for surrogates will continue to grow in the global market. This will result in the expansion of surrogacy programs, raising cross-border surrogacy agreements, and creating both national and international debate.

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3 See The History of Surrogacy, MODERN FAMILY SURROGACY CTR., http://www.modernfamilysurrogacy.com/page/surrogacy_history (last visited Apr. 19, 2015); see also Elizabeth Kane, Surrogate Mother Elizabeth Kane Delivers Her ‘Gift of Love’ – Then Kisses Her Baby Goodbye, PEOPLE (Dec. 8, 1980), http://www.people.com/people/archive/article/0,,20078051,00.html. In 1980 Elizabeth Kane was paid $10,000 for this traditional commercial surrogacy arrangement, where she was genetically related to the baby she gave birth. Id.


7 Id.

8 See generally Kristiana Brugger, International Law in the Gestational Surrogacy Debate, 35 FORDHAM INT’L L.J. 665 (2012). There are many negative aspects of surrogacy such as the physical risk involved to the surrogate mother, who risks damage to her health, including death. However, there are also many positive aspects to surrogacy such as the fact that the surrogate mother in poverty stricken nations are likely to receive a
The market for surrogacy is becoming concentrated in developing nations such as India, "which have access to contemporary technology and skilled individuals who can provide surrogacy program[s] at lower costs and service wealthier nations such as the United States." The economic disparity between men and women seeking a surrogate, and the women who offer their reproductive services for sale, is so extreme that the potential for abuse and exploitation is very high. Thus, international safeguards should exist to protect these women from being exploited into providing these services for profit. However, due to many controversies surrounding surrogacy, it is unlikely that such an international treaty can be formulated and put into effect in the near future.

This Note will focus on the exploitation of Indian women who enter into commercial surrogacy agreements due to a lack of regulations. The Indian government has recently implemented a ban on all commercial international surrogacy agreements, however this ban presents many new dangers. Part I explores the background of international surrogacy agreements including variations in international surrogacy laws, and more specifically the surrogacy laws of India. Part II examines the exploitation of Indian woman through commercial surrogacy; this exploitation can be seen in the case studies exploring how these women are lured into becoming surrogate mothers. Part III explains why an international treaty appears impractical; additionally it examines how the resent ban on international commercial surrogacy by the Indian government will create more danger for surrogate mothers. Banning international surrogacy agreements will lead to the creation of an underground market and will take away the potential economic benefits these women can receive through surrogacy agreements. Finally, this Note proposes that strict regulations are necessary to protect all parties involved in surrogacy agreements, especially the surrogate mothers.

level of medical care higher than they would normal receive, an increased feeling of control and self-worth from the fact that they are compensated for there services, and the satisfaction of assisting someone who could not obtain a child alone. Id.


11 Id. at 354.


13 See generally Nirmala George, Surrogates feel hurt by India's ban on foreign customers, CTV News (Nov. 8, 2015 2:09 AM), http://www.ctvnews.ca/health/surrogates-feel-hurt-by-india-s-ban-on-foreign-customers-1.2663609. Many feel that the ban on surrogacy in India does not help surrogate mothers but closes doors for them; activists for India's surrogacy market believe that the ban will only drive the surrogacy business underground. Id.

14 See generally Mujgerjee, supra note 1. Case Studies of women in India show that these women are often unaware and uneducated regarding the risks related with becoming a surrogate. Often the decision to become a surrogate is based on a need to help support their families. Id.

15 See generally George, supra note 13.

16 Id.
I. BACKGROUND

Surrogacy is quickly becoming a mainstream method of creating a family. However, the idea of surrogacy dates back to Biblical times. The Book of Genesis says Abram’s wife Sara could not conceive a child so she gave her husband her maid, Hagar, saying “the Lord has kept me from bearing children. Have intercourse, then, with my maid; perhaps I shall have sons through her.”

Today surrogacy is defined as “the process of carrying and delivering a child for another person.” A surrogate mother is defined as:

a women who carries out the gestational function and gives birth to a child for another; especially, a women who agrees to provide her uterus to carry an embryo throughout pregnancy, typically on behalf of an infertile couple, and who relinquishes any parental rights she may have upon the birth of a child.

A. Gestational v. Traditional Surrogacy

There are two types of surrogacy, traditional surrogacy and gestational surrogacy. Traditional surrogacy is when the surrogate mother has a biological link to the child she carries, she is the biological mother of the child. Traditional surrogacy is accomplished by artificial insemination. The surrogate mother uses her own egg and becomes inseminated with a man’s sperm.

Gestational surrogacy is when a woman is impregnated with an embryo formed from another woman’s fertilized egg. The process of gestational surrogacy is the result of In
vitro fertilization and embryo transplantation. Unlike traditional surrogacy, the result of gestational surrogacy is a child with no genetic link to the surrogate mother. Generally, a gestational surrogacy agreement is between the intended parents and the surrogate mother. These agreements state that the surrogate mother will carry the baby to term, and then relinquish her rights to the child after she delivers the baby.

If the surrogate mother has been paid for her service, the transaction is considered a commercial surrogacy. This is considered a business transaction and is purely for monetary compensation. On the other hand, if the surrogate mother is not compensated, beyond medical costs, it is known as an altruistic surrogacy. An altruistic surrogacy is when a surrogate mother decides not to take a fee for her services. This type of surrogacy most often occurs between immediate family members and close friends.

B. National Surrogacy Laws

Each nation’s approach to the legality of surrogacy varies, as each nation has a different view on the ethical and moral questions surrounding surrogacy. The various national laws on surrogacy can be broken down into four categories: Category 1 are those countries whose law is silent on surrogacy (e.g. Belgium); Category 2 are those countries where all surrogacy contracts, whether commercial or altruistic, are prohibited (e.g. France and Germany); Category 3 are those countries where only altruistic surrogacy is permitted (e.g. United Kingdom); and Category 4 are those countries where all forms of surrogacy are permitted (e.g. Ukraine and Israel).

Until recently India fell into Category 4, where all forms of surrogacy were permitted. However, a recent order from the Supreme Court of India (“the Order”) has

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27 See ROBERT E. OLIPHANT & NANCY VER STEEGH, EXAMPLES AND EXPLANATIONS: FAMILY LAW 353 (2nd ed. 2007) ("In vitro fertilization (IVF) is the fertilization of a human egg outside the human body in a laboratory. Children conceived in this way are sometimes referred to as ‘test tube babies’, because their actual conception may have occurred in a petri dish."); Embryo Transfer, AM. PREGNANCY ASS’N, http://americanpregnancy.org/infertility/embryo-transfer/ (last visited Jan. 28, 2016) ("Embryo transfer is a procedure that follows in vitro fertilization (IVF) and is often considered the simplest and final step of the in vitro fertilization process. The objective of embryo transfer is to facilitate conception following fertilization from the in vitro fertilization procedure.").
29 See generally id.
32 See id.
33 Id.
35 Id.
36 See CTR. FOR SOCIAL RESEARCH, supra note 2, at 20.
37 Lin, supra note 31, at 552.
38 Lin, supra note 31, at 552.
REGULATING THE TRADE OF COMMERCIAL SURROGACY IN INDIA

made commercial surrogacy for foreign couples illegal. This new order has placed India in a new category. International commercial surrogacy agreements are now illegal, but Indian couples may continue to commission Indian women for their services as surrogate mothers. Unlike some aspects of commercial surrogacy, altruistic surrogacy continues to be legal in India.

There is no uniform federal law governing surrogacy in the United States. Although, there have been several bills introduced in the House of Representatives that would prohibit commercial surrogacy; Congress has yet to act on any of these bills. The National Conference of Commissioners on Uniform State Laws approved a statute called the Uniform Status of Children of Assisted Conception Act, which set forth two possible approaches to surrogacy in the United States. A state could either make surrogacy contracts void and unenforceable, or enforce surrogacy contracts so long as they comply with statutory requirements. This choice was left to each individual state, which gave states much discretion, but left vast variations in surrogacy laws between states.

For example, California has a very favorable attitude towards all types of surrogacy as established through common law. On the other hand, New York forbids surrogacy; anyone who enters into a surrogacy agreement can be fined up to $10,000 and under certain circumstances may be guilty of a felony. Similarly, in Michigan surrogacy is forbidden and individuals who enter into surrogacy agreements can be fined up to $50,000 and imprisoned for up to five years. In Washington uncompensated agreements (altruistic surrogacy agreements) are permitted, however, compensated agreements (commercial surrogacy agreements) are considered void and unenforceable. Yet, in Florida traditional surrogacy is considered a “pre-planned adoption agreement” and is regulated under the Florida’s adoption statute; gestational surrogacy is permitted only between legally married couples.

43 Rao, supra note 42.
44 Id.
45 Id.
46 Id.
48 Id. ("Those who facilitate surrogacy arrangements, e.g. lawyers and agencies, are fined in the first instance and, for a second offense, are guilty of a felony.").
49 Id.
50 Id.
51 Id.
52 Id.
53 Id.
Rhode Island, Vermont and a number of other states have no laws governing surrogacy but are generally considered favorable jurisdictions.\textsuperscript{55}

The vast variances in surrogacy laws in both the United States and in other nations have contributed and encouraged commissioning parents to enter into surrogacy arrangements in nations with more welcoming policies.\textsuperscript{56} Finding surrogate mothers in nations such as Ukraine and Israel, where all forms of surrogacy are permitted allows the commissioning couple to rest assured that they will be able to legally go through the surrogacy process.\textsuperscript{57} India was on this list, as it was a nation with little to no regulation regarding surrogacy laws,\textsuperscript{58} until the Order banned commercial surrogacy in India for all foreign couples.\textsuperscript{59}

C. India’s Surrogacy Laws

Until recently, India was quickly becoming a hub for commercial international surrogacy due to its relatively low costs, lax regulations, and a population of willing surrogates.\textsuperscript{60} The Indian Ministry of Health and Family Welfare and the Indian Council of Medical Research (“ICMR”), along with the Indian National Academy of Medical Science have all realized there is a need for regulations as surrogacy becomes ever more prevalent in India.\textsuperscript{61} The aforementioned organizations published the National Guideline for Accreditation, Supervision and Regulation of ART Clinics in India (“Guidelines”) in 2005.\textsuperscript{62} These Guidelines are nonbinding because the Indian government has not adopted them into law.\textsuperscript{63} While these Guidelines have not been adopted into law, they have been debated over by sets of experts, practitioners of Assisted Reproductive Technology (“ART”), and the Indian public in an effort to provide safe and ethical ART services for infertile couples.\textsuperscript{64}

The Guidelines define ART as “all techniques that attempt to obtain a pregnancy by manipulating the sperm or/and oocyte outside the body, and transferring the gamete or embryo into the uterus.”\textsuperscript{65} Professor N.K. Ganguly, Director General of ICMR stated that “[t]he increasing demand for ART has resulted in a mushrooming of infertility clinics in

\textsuperscript{54} Id.

\textsuperscript{55} \textit{See generally id}. The following states do not have any set regulations regarding commercial surrogacy: Alaska, Colorado, Georgia, Hawaii, Idaho, Kansas, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, New Mexico, North Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Vermont, West Virginia and Wyoming. \textit{Id.}


\textsuperscript{57} \textit{See id.}

\textsuperscript{58} \textit{See id.}


\textsuperscript{60} \textit{See Lin, supra} note 31, at 553.


\textsuperscript{62} \textit{See id.}

\textsuperscript{63} \textit{See id.}

\textsuperscript{64} \textit{See id. at xii.}

\textsuperscript{65} \textit{Id. at 6.}
REGULATING THE TRADE OF COMMERCIAL SURROGACY IN INDIA

India.” The Guidelines aim to “fill [the] lacuna” that has been created by a lack of guidelines and aim at providing a means of maintaining a national registry of ART clinics in India.  

Professor Ganguly acknowledges there are many issues with the regulations of surrogacy agreements, or more accurately the lack thereof. He states there is no reliable information available on the number of ART clinics, no information on the follow-up of babies born after the use of ART, in addition there have been multiple reports in the press of malpractice carried out by some of the clinics. The Guidelines strive to address these issues by creating regulations for surrogacy in India by (1) setting requirements for ART clinics; (2) listing ethical and legal considerations; (3) providing sample consent forms; and (4) listing training requirements for staff involved in the process. However, the Guidelines have been highly criticized for their vagueness on a number of key issues such as surrogates’ rights; surrogates’ minimum age; contract specifications; the voluntary nature of surrogacy agreements; and overall lack of guidance.

These Guidelines can continue to make India a favorable place for couples or individuals seeking surrogacy because the surrogate mother is not considered to be the legal parent. The genetic parents of the child are the named parents on the birth certificate, therefore when a surrogate mother delivers the baby the surrogacy contract determines who the legal parents of the child are.

This is of great importance for many commissioning couples; across the world issues have arisen where genetic parents were not recognized as the legal parents of the child resulting from the gestational surrogacy. Their situations occur in nations where surrogacy contracts are not recognized, thus the surrogate mother is considered the legal parent. In the

66 Id. at xii.
67 Id.
68 Id. at xi.
69 Id. at xii.
70 See id.
73 Id. at 14.
74 Wannes Van Hoof & Guido Pennings, Cross-Border Reproductive Care Around the World: Recent Controversies, in MED. TOURISM AND TRANSNAT’L HEALTH CARE 98, 108 (David Botterill et al. eds., 2013).
75 See Mary Keyes, Cross-border Surrogacy Agreements, 26 AUSTRALIAN J. OF FAM. L. 28, 46 (2012), http://www98.griffith.edu.au/dspace/bitstream/handle/10072/48503/80585_1.pdf; see also Sarah Mortazavi, It takes a village to make a Child: Creating Guidelines for International Surrogacy, 100 THE GEORGETOWN L. J. 2249, 2253 (2012). The commissioning couples are the people who wish to have a child conceived for them and seek out a surrogate to accomplish this goal, also known as intended parents. Id.
76 Hoof & Pennings, supra note 74; Surrogacy Around the World, THE NEXT FAMILY (last visited Jan. 28, 2016), http://thenextfamily.com/2015/08/surrogacy-laws-around-the-world/. There are many concerns with using a surrogate in a country that does no have law governing surrogacy agreements. In many cases the country will not enforce the surrogacy contract if a dispute arises and in many other situations the country will list the surrogate mother on the birth certificate. Ireland is an example of a country where it is likely that a surrogate will be documented as the birth mother on the birth certificate. Another example is Nepal, since no
end these situations come before the courts, where a judge typically allows an exception to
the law in "the best interest of the child." 77 However, this is often a long drawn-out battle that
can last many years. 78

Until recently these non-binding Guidelines, with no actual legal authority,
governed surrogacy agreements in India; 79 commercial surrogacy was legal and essentially
unregulated. 80 In 2008, in Baby Manji Yamada vs. Union of India and Another, the Supreme
Court of India held that commercial surrogacy was legal. 81 In this case a commissioning
couple contracted with a surrogate mother, but prior to the birth of the child the
commissioning couple divorced and the commissioning mother no longer wanted to move
forward with the surrogacy. 82 When the commissioning father went to pick up the child, the
government of India did not offer the child an exit permit since she did not have a legal
mother listed on the birth certificate. 83 The case reached the Supreme Court of India where the
court decided to honor the surrogacy contract. 84 Following this case, commercial surrogacy
was considered legal, even though there were no uniform laws in India requiring any pre-
requisites for a commercial surrogacy. 85

The ICMR has been working on a draft bill to regulate surrogacy since 2005,
ettitled The Assisted Reproductive Technology (Regulation) Bill 2010. 86 This bill has made

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77 See PAULA GERBER & KATIE O' BYRNE, SOULS IN THE HOUSE OF TOMORROW: THE RIGHTS OF CHILDREN
BORN VIA SURROGACY, SURROGACY LAW AND HUMAN RIGHTS 81 (Paula Gerber & Katie O'Byrne eds., 2015)
(examining the meaning of "best interest of the child," pointing out how this is difficult to define and often it is
not required that the "best interest of the child be a single overriding consideration but rather the States Parties
must promote a child centered approach by 'asking whether the forces of any other consideration outweigh[s] it'.").
78 Keyes, supra note 75, at 28.
79 See COMMISSION OF INDIA, supra note 72, at 14.
80 See Margaret Ryznar, International Commercial Surrogacy and Its Parties, 43 J. MARSHALL L. REV. 1009,
1017 (2010); see also Vinita Lavania, Commercial Surrogacy In India: Exploitation or Mutual Assistance,
FERTILITY MATTERS, http://www.iaac.ca/en/commercial-surrfgacy-in-india-exploitation-or-mutual-assistance-
4 (last visited Apr. 19, 2016) (discussing how surrogacy was legal in India after 2002, however there were no
laws governing it).
81 Union of India & Anr. v. Jan Balaz & Ors. (2015) SC (India); Mortazavi, supra note 75, at 2274; Points,
supra note 71. A Japanese couple, Ikufumi and Yuki Yamada, traveled to India in 2007 to find a surrogate
mother to carry a child for them. Using the father's sperm and an egg harvested from an anonymous Indian
woman, the embryo was implanted into the womb of an India surrogate. The couple divorced and a month later
Baby Manji was born to the surrogate mother. The father wanted to raise the child, his ex-wife who had
contracted for the surrogacy, did not. When Mr. Yamada went to collect his child and arrange for it to return to
Japan with him, the baby could not get a passport or exit permit because she had no legal mother listed on her
birth certificate. This case was the first surrogacy case to reach India's Supreme Court. Id.
82 Points, supra note 71.
83 Id.
84 Id. at 7.
85 Surgato Mukherjee, Legal and Ethical Issues of Commercial Surrogacy in India: An Overview, ACADEMIA,
https://www.academia.edu/1955503/LEGAL_AND_ETHICAL_ISSUES_OF_COMMERCIAL_SURROGAC
Y_IN_INDIA_AN_OVERVIEW (last visited Apr. 20, 2016).
86 Vandana Shukla, Unregulated surrogacy: Law yet to deliver, THE TRIBUNE (Jun 24, 2015, 12:50 AM),
REGULATING THE TRADE OF COMMERICAL SURROGACY IN INDIA

an appearance in three subsequent drafts - 2008, 2010, and 2013. However, the bill has yet to be passed by the Indian Parliament. The bill addresses the rights and duties, as relates to surrogacy, in under a mere three pages; in its two-dozen enumerated points the bill addresses expectations and requirements of both the surrogate mother and the couple/individual seeking surrogacy.

Passed alongside the Assisted Reproductive Technologies (Regulation) Bill – 2010, is a set of Rules, which contains forms for surrogacy arrangements. Sample contracts for surrogacy agreements were outlined; “Form-U” lays out a proposed contract between the patient and the surrogate. This form is a three page contract stating the commissioning couple, and the surrogate, are contracting to facilitate the surrogacy process under the ART (Regulations) Act; it addresses the proposed payment plan and contains basic information for all contracting parties. The contract is signed by the commissioning couple, the surrogate and her husband, if applicable. On July 9, 2012 the Ministry of Home Affairs issued further guidelines restricting surrogacy to infertile Indian couples and to foreign couples who have been married for at least two years and have a medical visa for surrogacy in India. A previous order had already barred gay and unmarried couples and single people from hiring surrogates.

The Department of Health Research of the Indian Ministry of Health and Family Welfare, Government of India, filed an affidavit with the Supreme Court on October 27, 2015 in an effort to ban foreigners from using surrogates in India. It announced that India “does not support commercial surrogacy and the scope of surrogacy is limited to Indian married infertile couples only, and not to foreigners.” This ban is being put into effect in an effort to protect women from being exploited from a lack of legal safeguards via an order from the Supreme Court of India.

The Indian Supreme Court states that notifications have been made regarding the prohibition of the import of human embryo via an order dated October 26, 2015. The Ministry of Health and Family Welfare and the Department of Health Research have “la[id] down guidelines and instructions to be followed by Surrogacy Clinics/ART Clinics/IVF

87 Id.
88 Id.
90 Id. at 83.
91 Id.
92 Id at 84.
93 Id. at 85; Smerdon, supra note 9, at 42.
94 George, supra note 13.
95 Id.
97 See George, supra note 13.
Clinics etc. which offer surrogacy services. The Ministry of Home Affairs has banned the issuing of visas to foreign nationals intending to visit India for the purposes of commissioning a surrogacy. The Ministry of Home Affairs has issued instructions dated March 11, 2015 addressing the fact that “no exit permission should be granted … to the child/children to be born through surrogacy to foreign nationals.” Surrogacies commissioned prior to this order shall be decided by the Foreigners Regional Registration Officers (FRROs)/Foreigners Registration Officers (FROs) on a case-by-case basis.

The Supreme Court of India concluded by stating that all instructions mentioned in its Order are to take immediate effect. It states, “[i]nsofar as the banning of commercial surrogacy is concerned the stand of the Government of India is that it is opposed to commercial surrogacy.” The previously published Guidelines remain in force until enactment of further legislation. However, the instructions issued in the Order prevail over the provisions in the guidelines.

**D. Payment for Babies**

Commercial surrogacy can be very expensive, especially in the United States; the cost of surrogacy in the United States is estimated at $100,000. Commissioning couples who look to other nations for a surrogate tend to do so because the costs are significantly less than that in the United States. The estimated cost of a surrogacy in India is approximately $47,350.00 this cost is paid directly to the clinic. The compensation the surrogate mother

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100 Id. (Via an affidavit filed on November 4, 2015, “(ii) that the Surrogacy Clinics/ART Clinics/IVF Clinics/any centre/Genetic Counseling Centres/other clinical establishments, by whatever name they may be called, offering surrogacy services/Assisted Reproduction Services will not import human embryo for offering surrogacy services or in connection thereto.”).

101 Id.

102 Id.

103 Id. This exception also allows for a case-to-case review in situations where steps “have been initiated /taken by surrogacy clinics/ART Clinics/IVF Clinics […] or such other establishments to commission surrogacy, including import of ‘Human Embryo’ and implantation thereof into surrogate mother or child/children born from it.” These cases will be allowed to complete the process that has already been started in an effort to avoid medical complications, however, the State Health Authorities must give permission. Id.

104 Id.

105 Union of India & Anr. v. Jan Balaz &Ors. (2015) SC (India). The matters discussed in the Order of the Supreme Court were adjourned to enable all contesting parties to obtain necessary instructions and is to be listed in March 2016. Id.

106 Id.

107 Id.


109 Id.

110 Id.; Darlena Cunha, The Hidden Costs of International Surrogacy, THE ATLANTIC (Dec. 22, 2014), http://www.theatlantic.com/business/archive/2014/12/the-hidden-costs-of-international-surrogacy/382757/, (discussing how surrogacy in the United States can cost upwards of $120,000 while a surrogacy in India is regularly cited as under $30, 000. Out of the amount surrogates are paid anywhere from $800-$8,000 and the clinics and staff pocket the rest).
receives is often arbitrarily decided by the clinic. On average a surrogate is paid $5,000.00 to $6,000.00 if she successfully carries the baby to term, and even more if she bears twins. Even though the amount paid to the surrogate is small in comparison to the total amount one pays for surrogacy, surrogates in India depend on this money, as it is more than they would make in a year of ordinary labor. In fact, many women in India go into surrogacy looking forward to collecting their checks and moving on with their lives.

A prime example of the surrogacy payment in India is the Akanksha Infertility Clinic, India’s most successful fertility clinic. The payments to surrogates are usually made in installments, with the surrogate receiving $50.00 every month during the pregnancy, $500.00 at the end of each trimester, and the remainder upon a successful delivery. If the surrogate has a miscarriage, she keeps what she has been paid up to that point of the pregnancy. However, if at any point the surrogate chooses to abort the pregnancy – an option that is usually contractually allowed – she must reimburse the clinic and the client for all expenses.

Overall, commercial surrogacy is a business that brings millions of dollars into India’s economy every year. One study by an advocacy group in New Delhi, called Sama, estimated that the trade of surrogacy in India is worth over $44 billion dollars. It is estimated that annually surrogacy brings in half a billion dollars, and in 2012 it was estimated to be a $2.3 billion dollar industry in India alone. Consequently, due to the low medical costs, lax laws, and poverty, many women are willing and ready to rent wombs at low compensation amounts, making India into the surrogacy capital of the world.

II. EXPLOITATION OF WOMEN THROUGH COMMERCIAL SURROGACY

Indian women are being led to surrogacy as a means of making extra income to help support their families. These women are often in desperate situations and have no other means of making ends meet; they are illiterate with a grade school education, at best, and

13 Id.
14 Id.
15 Id.
16 Id.
17 Id.
18 Id.
20 Id.
21 Id.
22 Id.
23 Id.
are not educated on the process and steps of surrogacy. Ranjana Kumari, the director of the New Delhi-based Centre for Research has said, “[m]ost often, the woman doesn’t even know what she is signing, except that her womb will be used to carry a baby.” Many of the rules and regulations are often not adhered to. The regulations in India state that the surrogates have to be at least 21 years old; despite these regulations, families are often persuaded into letting girls as young as 16 years old become surrogates. These girls are provided with fake documentation showing them as older than their actual age.

For example, Diksha a woman who came to the Akanksha clinic to become a surrogate describes the perspective of the women living in the dormitories through an interpreter. “We miss our families, but we also realize that by being here we give a family to a woman who wants one.” Diksha used to be a nurse at the clinic; she left her home in a neighboring village to find work. She plans on using the money from the surrogacy to fund the education of her two school-aged children. Even though Diksha was able to uplift herself through becoming a surrogate, many critics have said that commercialization has led to the exploitation of these women. Although many of these women realize that they are helping the commissioning couple develop a family, the main reason they agree to become surrogates is for financial purposes. Ranjana Kumari, a critic on commercial surrogacy agreements, has said, “If someone really has to opt for the child, somebody’s friend should offer a womb, somebody’s relative should offer the womb. Why it has to be the poor woman? It’s like organ sale.”

A. Case Studies

Case studies of women that interview to become surrogates in Kolkata, India, show that there are many similarities between the women that seek to become surrogates. All the women interviewed were between the ages of 22 and 35 years old. Most of these women were unemployed or without a fixed job or income, and had an education level ranging from illiterate to that of a 6th grade standard. All these potential women were

125 See id.
126 George, supra note 13.
127 See generally id.
128 Id.
129 Id.
130 Carney, supra note 112. In the Akanksha clinic the surrogates spend their entire pregnancies living in a building together with other surrogate mothers. These dormitories claim to facilitate medical monitoring and provide the women with better living conditions than they might have back home. Id.
131 Carney, supra note 112.
132 Id.
133 Id.
134 Kevin Voigt, Mallika Kapur & Lonzo Cook, Wombs for rent: India's surrogate mother boomtown, CNN (Nov. 3, 2013, 8:00 PM), http://www.cnn.com/2013/11/03/world/asia/india-surrogate-mother-industry/.
135 Id.
136 Id.
137 See Mujgerjee supra note 1.
138 See id.
139 See id.
REGULATING THE TRADE OF COMMERCIAL SURROGACY IN INDIA

married; some were even separated from their husbands. Similar to the wives, the husbands of these women were mostly unemployed and illiterate as well.

The main similarity between all these women was their reason for being a surrogate. Out of the nine women interviewed, all of them said, money was their primary motivation for becoming a surrogate. While the specific financial reasons varied, from needing the money to buy a piece of land, to build a house, open shop or even being able to send their children to school, all the women showed “strength and courage” in moving forward with the process. However, they were not without concern. They feared having to stay away from their families, about their health and bodies post surrogacy and the stigma that is attached to the process. These concerns did not outweigh the need for the financial gain they sought to get through becoming a surrogate.

It became clear through the interviews with these women was that they were not fully aware of all the procedures of surrogacy. The Guidelines provide that all clinics should have a counselor to ensure that all patients are adequately informed on what to expect from the treatment offered to them. A perfect example of this lack of knowledge is Rita, a 27-year-old participant in this case study; when asked about her experiences she said “I am illiterate I do not understand about all the medical aspects the doctors talk about and neither do I understand English. I do not know exactly what was written in the agreement. I just know whatever they told me.” Analogously, Rina, a 28-year-old woman in this study said, I am in a lot of pain. I cannot even move. These many injections and medicines are making me weak. I was not told about all this before. I too had my own children but then things were simpler. I do not understand why it is so complicated and painful this time.

Clearly, these women are not fully aware of the process of surrogacy when they agree to become surrogate mothers.

140 See id.
141 See id.
142 See id.
143 See Mujgerjee, supra note 1.
144 See id.
145 See id.
146 See id.
147 See generally id.
148 COMMISSION OF INDIA, supra note 72.
149 See Mujgerjee, supra note 1.
150 See THE GUIDELINES, supra note 61, at 22.
151 See Mujgerjee, supra note 1.
152 Id.
153 See generally id.
B. Methods Used to Attract Surrogate Mothers

Often clinics will hire agents to find women who are willing to be surrogate mothers and then refer them to their respective clinic employers.154 Radha initially became involved with the clinic in Kolkata when she went to donate eggs, now she works for them referring women who want to be surrogate mothers.155 She comments on how finding women who are willing to be surrogates is not an easy task, “[a]ll of them are poor and in desperate need of money.”156 Radha studied till the fourth grade and is the most educated person in her family.157 Additionally, she states that she would never be a surrogate herself, saying that she is afraid of the whole arrangement.158

A research study on how couples around the world approach finding surrogacy services in India showed that there were many different methods to obtaining a surrogate.159 Surrogates could be found in family owned nursing homes that worked as IVF centers, to highly sophisticated third-party agencies of Mumbai that provided hostels for the surrogate mothers to live in.160 “The study shows, the ART industry has created another parallel industry for the poor – the sale or hire of one’s own body – which is touted as a form of social development.”161

The clinics have no financial incentive to ensure the health of the surrogate mother, they are getting paid to deliver a fetus, therefore there is nothing preventing them from cutting costs on the amount they pay the surrogate mother and follow-up care.162 An illustrative example can be seen with a surrogate mother named Pinky, a ghost name given to her, who died with her eight-month-old fetus, in a hospital in Mahali, India.163 Pinky’s death left behind “a web of unanswered questions.”164 She was reported to be sick for some time and her sudden death remains inconclusive.165 Similarly, at the Ishwarya Fertility Clinic a young surrogate died after giving birth.166 Unlike Pinky, this pregnancy and birth went as planned, however, afterword she began bleeding heavily; the ill equipped hospital was unable to handle her hemorrhaging.167 In a perfunctory police investigation the fertility clinic denied any wrongdoing.168 Despite the surrogate’s death, the child was delivered to the customer in

154 See Voigt, supra note 134.
155 See Mujgerjee, supra note 1.
156 See id.
157 See id.
158 See id.
161 Shukla, supra note 160; citing Deepa, supra note 159.
162 See generally Carney, supra note 112.
163 Shukla, supra note 160.
164 Id.
165 Id.
166 Carney, supra note 112.
167 Id.
168 Id.
accordance with the surrogacy contract. Unfortunate situations like this are often kept quiet and the surrogacy business in India continues to grow exponentially.

III. CREATING NEW STRICT REGULATIONS TO ALLOW GOVERNMENTAL CONTROL OF COMMERCIAL SURROGACY AGREEMENTS

A. Impracticality of Passing an International Agreement

Many argue that an international agreement, similar to the 1993 Hague Convention on Protection of Children and Co-Operation of Intercountry Adoption ("Hague Adoption Convention"), is needed to create consistency throughout national surrogacy law. The Hague Adoption Convention is an "international agreement to establish safeguards to ensure that inter-country adoptions take place in the best interest of the child." However, this is difficult in the case of surrogacy since there are vast discrepancies in surrogacy laws across different countries. Moreover, it is unlikely that countries will agree to any one set of standard.

The Hague Adoption Convention governs international adoption. However, not all countries are parties to the Convention. The impracticality of such a treaty lies in the fact that countries may choose to not be parties, which does not solve the problems that exist between the interactions of these countries because differences in international laws remain. Additionally, such international treaties, like the Hague Adoption Convention, take years to come into force.

The Hague Adoption Convention concluded in May 1992, the

169 Id.
170 Shukla, supra note 160.
171 See Kirshner, supra note 22, at 88 (proposing that implementation of the existing Hague Convention procedures be applied to surrogacy agreements).
173 See Lin, supra note 31, at 552.
174 Cheung, supra note 108; Lin, supra note 31, at 552.

The Permanent Bureau carries out the basic research required for any subject that the Conference takes up. It also maintains and develops contacts with the National Organs, experts and delegates of Member States and the Central Authorities designated by the States Parties to the Hague Conventions on judicial and administrative co-operation, as well as with international organization's and, increasingly, responds to requests for information from users of the Conventions. Id.

177 Hague Convention, supra note 172; see also FAQ, supra note 176.
United States did not sign the treaty until 1994, and it did not enter into force in the United States until April 1, 2008.\textsuperscript{160} The Bureau acknowledges that it needs to address international surrogacy and the Hague Special Convention ("Convention") for Surrogacy was held in 2010.\textsuperscript{181} This Convention aims at discussing the possibility of an international treaty to control surrogacy.\textsuperscript{182} In 2015, the Permanent Bureau published an updated note.\textsuperscript{183} The Convention met and decided that expert groups should convene and explore the feasibility of advancing work in this area.\textsuperscript{184}

In January 2016, the Permanent Bureau published notes from the experts' group meeting.\textsuperscript{185} The notes list three potential problems in the use of international surrogacy agreements: "(1) [d]enial of parentage and thus nationality by home state of intending parents; (2) [r]efusal to recognize foreign judgment establishing parentage; (3) [r]efusal to recognize foreign birth certificate."\textsuperscript{186} In their meetings, this experts' group, seemed to have done extensive research on the safety and well being of children in international surrogacy agreements.\textsuperscript{187} However, there is no recognition of the dangers that are posed to the women - the surrogate mothers.\textsuperscript{188}
REGULATING THE TRADE OF COMMERCIAL SURROGACY IN INDIA

Research is being done and an international surrogacy agreement is in the works. However, similar to the Adoption Convention, it is possible that will take many years before an agreement is available on international surrogacy that a majority of countries agree on. This is especially true since surrogacy has shown to be a controversial issue with each nation having an individual take on the subject matter. Now that surrogacy has become a trendy and popular way for developing a family in the modern world, it is impractical to put the issue aside and wait for an international agreement. This is a real and current issue in India that needs to be dealt without undue delay, and it is unforeseeable that an international agreement will be able to provide assistance for the women of India in the near future.

B. India’s ban on cross-border commercial surrogacy

There is much criticism of the recent ban regarding international commercial surrogacy agreements that the Supreme Court of India ordered. Devi Parmar, an Indian surrogate mother has said, “[w]hat the government is doing is wrong. Are they going to come to our homes to ask us about our problems and feed us if we’re starving?” Surrogate women have said that being a surrogate mother brings them an income far above what they could earn otherwise. Although many aspects of being a surrogate mother in India are unregulated and lead to the exploitation of women, being a surrogate mother has become a trade that women depend on. Becoming a surrogate mother gives these women a way to earn more money than they would by doing ten years of domestic help employment.

It is recognized that the recent ban aims to protect women from exploitation. However, some women who have worked as surrogates say that the ban on surrogacy agreements with foreigners will actually hurt them. On average approximately 70 percent of surrogacy cases are from foreign clients. An additional, 25 percent are non-resident Indians and persons of Indian origin; it is only, a mere 5 percent who are local Indian couples. Some surrogacy clinics approximate that as much as 90 percent of surrogacy

189 Id.
190 See generally id.
191 See CTR. FOR SOCIAL RESEARCH, supra note 2.
192 See Rustin, supra note 5.
193 See generally Cheung, supra note 108.
194 See generally Malhotra & Sugden, supra note 111; See generally Despair Over Ban In India’s Surrogacy Hub, supra note 98.
195 Id. See generally Despair over ban in India’s surrogacy hub, supra note 98.
196 Malhotra & Sugden, supra note 111.
197 Id.
198 George, supra note 13.
199 Id.
200 Id.
202 Id.
agreements come from overseas clients, most customers come from the United Kingdom, the United States, and Canada. With the majority of the surrogacy business coming from overseas clients, it is understandable why women, who have depended on being a surrogate mother as a source of income, are unhappy with this ban on international commercial surrogacy.

The Supreme Court of India made clear that the purpose of the ban was to safeguard the rights of the surrogate mother. However, a ban on international surrogacy agreements in India may do the opposite by driving the surrogacy market underground. Here, those doctors and clinics that are successful are dependent on overseas clients for their success and are unlikely to give up because of the ban. In fact, they are likely to carry on making agreements with international couples seeking to develop a family.

Moreover, there are already many underground surrogacy clinics in India. As a result of this ban, foreigners traveling to India in search of starting a family are locating these clinics and paying as much as it takes to find a surrogate. Since surrogacy is so much more expensive in other countries, individuals are willing to take the risk of entering into a surrogacy agreement with an underground clinic in India, regardless of the recent ban. Commissioning couples do not know how they will take their future child back to the United States or even how the process will work out now that surrogacy is banned in India, but their desperation to start a family overrides these risks.

Underground medicine, also known as black market medicine, thrives because there is a demand for some treatment or product. This demand for surrogate mothers obviously exists as thousands of commissioning couples travel to India every year with the hopes of contracting with a surrogate. The demand is present, as are the women willing to

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204 *India Introduces Legislation to Ban Surrogacy Tourism*, supra note 202.

205 Id.

206 See George, supra note 13.


208 Id.


210 See Singh, supra note 208.

211 Id.

212 Id.

213 Id. ("We will stay here till our child is born. I don’t know how we’ll take the child back home. We are just desperate right now," Kate added.)


215 See generally Malhotra & Sugden, supra note 111; see generally Despair Over Ban In India’s Surrogacy Hub, supra note 98.

be surrogate mothers. In India hundreds of women are willing to become surrogate mothers in hopes that the paycheck that comes along with it will help make their lives a little easier. This is a lethal combination. Thus, with the recent ban passed by the Indian government, it is susceptible the development of a black market for surrogacy.

Becoming a surrogate mother entails many medical procedures that range from IVF to embryo transplantation - all with the hope of resulting in pregnancy. Overall, in a surrogacy agreement pregnancy is the goal. This often causes much joy to the commissioning couple. However, pregnancy is a time where a woman is vulnerable and susceptible to many dangers. If the surrogacy agreements in India get pushed into an underground surrogacy market, it is foreseeable that women will face more harm from shifty doctors and unsafe medical treatments than it was ever possible with a legal, but unregulated market. In fact, banning international commercial surrogacy agreements may, in fact, do the opposite of what the government intended. The Indian government is not protecting these women from exploitation; it is leading them down the rabbit hole.

Dr. Nayna Patel runs the Akanksha fertility clinic, one of the largest clinics in India. She addresses the recent ban and argues that the government should consider tough regulations instead of a ban. There is a large outcry against this ban from the individuals involved in the surrogacy process. Most acknowledging that some sort of regulatory regime is needed and that this ban is not going to protect the surrogate mothers from exploitation. In fact, it will harm them both by eliminating a possible source of income and potentially endangering the lives of other women who are desperate enough to participate in an underground surrogacy market.

C. Need for Strict Regulations to Govern Commercial Surrogacy

Commercial surrogacy in India is the cause of much controversy. In order to calm this controversy, there is a need for the government to step in. However, a ban is not the answer. This Note advocates for the implementation of strict procedures to be applied to all

217 See generally Voigt, supra note 134.
218 See generally id.
219 Id.
220 AM. PREGNANCY ASS'N., supra note 27.
221 Id.
222 Id.
224 See Singh, supra note 208.
225 See id.
226 See generally id.
227 See id.
228 Despair over ban in India’s surrogacy hub, supra note 98.
229 See id.
230 See id; George, supra note 13; India Introduces Legislation to Ban Surrogacy Tourism, supra note 201; Singh, supra note 207 (approximately 8,000 surrogacy clinics are currently operating illegally or underground in Delhi, India).
231 See generally Singh, supra note 208; George, supra note 13; Despair over ban in India’s surrogacy hub, supra note 98.
232 Singh, supra note 208.
233 CTR. FOR SOCIAL RESEARCH, supra note 2 at 27.
commercial surrogacy agreements in India. The Supreme Court of India, in its most recent order, noted that the Bill of Assisted Reproductive Technology ("The Bill") is presently at a consultative stage.\(^{232}\) This ban should be lifted and commercial surrogacy should continue to be legal for both foreigners and locals in India couples. The Bill should offer protections for all parties involved: the commissioning couple, the resulting child, and the surrogate mother. It should also provide a system for the government to track the number of surrogacies being performed; the agencies that offer such services; and the doctors, agents and other employees that facilitate ART practices.

The Bill proposes that all assisted reproductive clinics be registered with the Registration Authority.\(^{233}\) The Registration Authority would give all clinics, which satisfy the specified rules, a registration for a term of three years.\(^{234}\) This registration should be reported to the State Board.\(^{235}\) Renewal of this registration is permitted as long as all requirements continue to be met.\(^{236}\) No registration is granted to a clinic unless the Registration Authority has inspected the facility of the applicant.\(^{237}\) By structuring a governmental authority to oversee and regulate how surrogacy clinics and facilities operate would allow the government to: track the number of clinics; the number of surrogates the clinics are working with; the number of surrogate children that are result from surrogacy agreements; and the revenue that is coming out of such agreements.\(^{238}\) Currently, a major issue for commercial surrogacy in India is the government's inability to track or control the surrogacy market.\(^{239}\) Requiring clinics to register and report to a governing body would provide the government with the power to oversee and regulate the industry.\(^{240}\)

The Bill lists duties of the clinics; noting that all patients shall be tested for any diseases that may endanger the life of the commissioning couple, the resulting child, or the surrogate mother.\(^{241}\) A duty of the clinic would be to provide professional counseling to patients or individuals involved in the process.\(^{242}\) More specifically, that all patients or individuals shall be informed of the advantages, disadvantages, costs, medical side effects, risks, and the possibilities of adoption as an alternative to surrogacy to the commissioning couple.\(^{243}\) However, it seems not to offer similar professional counseling to the surrogate


\(^{233}\) The Assisted Reproduction Technologies Act 2010 (Ministry of Health & Family Welfare Govt. of India, New Delhi) [hereinafter The Bill]. A Registration Authority or Authorities is a group of at least six experts in assisted reproduction technology or related field that has been put together by the State Government with the advise of the National Board. The State Board has the power of setting all policies and plans for assisted reproduction in the state and consists of twelve members. The Central Government shall establish a Board known as the National Advisory Board for Assisted Reproductive Technology who shall have jurisdiction and power to discharge the functions and duties conferred or imposed on the Board by the proposed Act. Id.

\(^{234}\) Id.

\(^{235}\) Id.

\(^{236}\) Id.

\(^{237}\) Id.

\(^{238}\) See generally id.

\(^{239}\) See THE GUIDELINES, supra note 61, at xii.

\(^{240}\) See generally The Bill, supra note 233.

\(^{241}\) Id. at 15.

\(^{242}\) See id.

\(^{243}\) Id.
In addition to counseling the commissioning couple on the options they may have, it is crucial to ensure that the surrogate mother is aware of all her options, the risk, medical side effects, and everything else that may come along with carrying a child for a commissioning couple. In addition to professional counseling, the surrogate mother should meet with a psychologist to ensure she is entering into a surrogacy agreement of her own free will. Specifically, to ensure that she is not being exploited, or coerced into a contract. The Bill lists the rights and duties in relation to the surrogacy. These include that the agreement entered into by the commissioning couple and the surrogate mother shall be legally enforceable. All expenses related to the surrogacy up until the child is born shall be covered by the commissioning couple. The Bill states:

The commissioning parent(s) shall ensure that the surrogate mother and the child she deliver are appropriately insured until the time the child is handed over to the commissioning parent(s) or any other person as per the agreement and till the surrogate mother is free of all health complications arising out of the surrogacy.

Although this regulation appears standard for both commercial and altruistic surrogacies, this is of the utmost importance. Ensuring that all medical costs resulting from issues, complications, post pregnancy examinations, and any psychological assistance the surrogate may need as a result of the surrogacy lay with the commissioning couple will guarantee that the mother is properly taken care of post surrogacy. There have been stories in news articles of surrogates dying post surrogacy as a result of complications resulting from the pregnancy. Additionally, the clinics and facilities that help arrange these surrogacy agreements have incentives and duties placed on them by the Regulations Authorities that ensure they have a vested interest in ensuring the health of the surrogate mother post-pregnancy. After the surrogacy is complete, these facilities have been paid and have no interest in protecting the wellbeing of the surrogate mother. The Regulations Authorities would track the status of the surrogate mothers post-delivery, to ensure compliance with the proposed regulations. Any clinics or facilities where an excessive number of these women have post-delivery complications that are not properly dealt with should have their registration re-evaluated, and a forum should be made available to the public warning patients. The health of the surrogate women is of great importance; these women are already

See generally id.

See generally Stickler, supra note 223.

The Bill, supra note 233.

Id.

Id.

Id.

Id.

The Bill, supra note 233.

See generally id.

See Carney, supra note 112.

See generally Mujgerjee, supra note 1.

See generally id.

357
putting their lives into some risk by agreeing to be surrogate mother. It should be a priority that their health is protected both pre-pregnancy, during pregnancy and post-pregnancy.

The Bill lists that the surrogate mother may receive compensation for her services, which is the commercial aspect of the surrogacy. The Regulation Authorities should set some standards regarding minimums that a surrogate mother is entitled to in a commercial surrogacy. As mentioned previously, on average, the commissioning couple pays the clinic $47,350.00, with the surrogate mother receiving between $5,000.00 and $6,000.00. This seems like a small slice of the pie for the woman who is actually carrying the child for nine months, and in many instances giving up nine months of her life to live in a communal home for the duration of the pregnancy. In some instances, it has been recorded that a surrogate gets as little as $800.00 for her time. Surrogate mothers need protections, similar to a minimum wage set by the federal government to protect workers; surrogate mothers need set minimums to ensure they are not being taken advantage of.

No woman shall enter into a surrogacy arrangement unless she is between the ages of 21 and 35 years of age. The birth certificate shall have the names of the commissioning couple as the parents. The commissioning couple shall be legally bound to accept custody of the child. Information about the surrogate shall be kept confidential and shall not be disclosed to anyone other than a database for the Department of Health Research. Furthermore, no clinic shall provide information regarding the surrogate mother or potential surrogate mothers to any person. This is of particular importance to the woman of India, as there is a negative stigma associated with surrogacy and many surrogates may not want this information disclosed.

The Indian government should re-evaluate the recent ban for commercial surrogacy agreements for foreigners. It should pass stricter regulations to govern commercial surrogacy. The Assisted Reproductive Technologies (Regulation) Bill presents a great start to regulations that would ensure the wellbeing of surrogate mothers, children resulting from surrogacy agreements, and the commissioning parents. The Bill should be past propyl with a few tweaks to ensure that the surrogate mother has proper protections. These protections need to be offered in the form of mandatory psychological evaluations prior to signing a surrogacy agreement, during the entire pregnancy, and post medical and psychological care. The industry needs to be regulated by a controlling governmental body, in addition to tracking the

256 Stickler, supra note 222.
257 See The Bill, supra note 233.
258 Cheung, supra note 108; Carney, supra note 112.
259 Carney, supra note 112.
260 Cunha, supra note 110.
262 The Bill, supra note 233, at 26.
263 Id.
264 Id.
265 Id.
266 Id.
267 See Mujgerjee, supra note 1; The Bill, supra note 233.
268 The Bill, supra note 233.
269 See generally Brugger, supra note 8.
Regulating the Trade of Commercial Surrogacy in India

number of clinics and facilities and their operations, including the number of surrogacies and profits made from such arrangements. The government should track the health of women post-pregnancy to ensure the clinics are offering proper treatment to them following the birth of the resulting child.

In addition, the Regulations Authorities need to set some sort of minimum for the amount a surrogate can receive for her services; the minimum should be a percentage of the total contracted amount. In India, surrogacy is sometimes referred to as renting-a-womb, and women are offering their bodies multiple times and most often they do this for the income. If this is becoming a sort of trade, the profits these women gather from such agreement need to be regulated in a manner that is less arbitrary, especially since they are doing bulk of the work in the process.

IV. Conclusion

In recent years India has become a hub for international commercial surrogacy. Fifteen percent of couples around the world are infertile, and surrogacy is a growing trend with couples looking to develop their families. India's lax surrogacy laws, low costs and the number of woman willing to become surrogate mothers have made India the hot destination for surrogacy. However, with thousands of couples traveling to India yearly in search of surrogate mothers, clinics began to mushroom. Lack of regulations on the issue of surrogacy, along with a lack of protections for surrogate mothers, brought forth many ethical issues involved with this practice.

The Supreme Court of India issued an order in November 2015 banning commercial surrogacy for foreign couples. The court said the ban was put into place to stop the exploitation of women in India. However, it has been highly criticized. A ban is not the answer, as it will potentially lead to the expansion of an underground/black market for

270 THE GUIDELINES, supra note 61, at xii.
271 Carney, supra note 112; Malhotra & Sugden, supra note 111.
272 Carney, supra note 112.
273 Id.
274 Id. (Usha Smerdon, a lawyer who runs a U.S. based adoption reform group called Ethica has been quoted saying Surrogacy is a form of labor,” he further explains that “it’s an exploitative one, similar to child labor and sweatshops driven by Western consumerism ... I challenge the notion that within these vastly differential power dynamics that surrogates are truly volunteering their services, that hospitals are operating aboveboard when driven by a profit motive.” Amit Karkhanis, a prominent surrogacy attorney has offered his opinion: “Surrogacy is a type of employment, plain and simple. Foreigners are not coming here for their love of India. They are coming here to say money.”).
275 See Lin, supra note 31, at 553; THE GUIDELINES, supra note 61, at xii.
278 See THE GUIDELINES, supra note 61, at xii.
279 See id.
281 See George, supra note 13.
282 See Points, supra note 71.
surrogacy that will be even more dangerous to the woman of India. This Note suggests that the government lift the ban and pass strict regulations protecting surrogate mothers.

283 See generally George, supra note 13.