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Faculty Advisor: **Locke Bowman**

Research Group Members: **Ashley Fretthold, Abby Russell, Le Trieu**

Paper Title: **The Outsourcing of Motherhood to India: A Picture of the Legal Landscape**

Abstract:

Surrogacy is an inherently intriguing concept. The idea of a woman carrying and giving birth to another woman's genetic offspring has grabbed the public's attention worldwide. In the United States, the differences among the responses individual states have had to surrogacy reflect American's wide ranging opinions and feelings about the practice.

The practice of surrogacy has recently developed a new and intriguing variation – the hiring of Indian surrogate mothers by foreigners. Often, these hopeful parents go to India to seek a more affordable surrogacy arrangement or to avoid the restrictive laws of their country. This merging of reproductive technology with the global phenomena of outsourcing has attracted the attention of media around the world. Upon first hearing of this “reproductive outsourcing,” many are amazed at its existence. Our research group was similarly intrigued by this practice and the laws surrounding it.

This paper will focus on foreign gestational surrogacy - where the surrogate mother is an Indian woman living in India, and the intended parents hail from another country, such as the United States. Our in-country interviews led us to the conclusion that the practice is not as prevalent, nor sensationalistic, as U.S. newspaper and magazine articles indicate. There is no doubt, however, that surrogacy is gaining ground in India, as every year more and more Indian women sign up to be surrogates, and IVF doctors receive an increasingly large number of inquiries from foreign parents desperate for a child.

Part I will give a basic overview of what the practice of surrogacy looks like in India today, from the perspective of our interviewees. It is difficult to get a complete picture of surrogacy in India because it appears that no official studies have examined the practice. Much of the information we collected is anecdotal and based on personal experiences. Part II will present a review of the laws pertaining to surrogacy in both the United States and India. U.S. law varies among the states, with no federal legislation addressing the practice. India currently has no law pertaining to surrogacy, only nonbinding regulations issued by the governmental Indian Council of Medical Research (ICMR). However, national legislation is in the process of development. With that future legislation in mind, Part III will identify the issues and conflicts that we feel are most pressing in the practice of foreign surrogacy in India.

This legislation has been pending for years, and even if passed, it will be based on guidelines that inadequately address issues unique to surrogacy in India. Indian lawmakers must realize the delicacy of the issues involved in these arrangements, and the importance of thoroughly safeguarding the interests of all parties involved. For although it is certainly impossible to craft a comprehensive and timeless surrogacy law, it is clear that the Guidelines are not an adequate blueprint for future legislation. We feel that more comprehensive legislation is needed in order to protect the rights of all involved parties.