

16th July 2021 Dr. Sheela Suryanarayanan

Interviewed by Dr. Hibino Yuri, Kanazawa University, Japan, on

インドの代理出産研究者

Exploitation in commercial surrogacy in India ; Dark side of lucrative business in Gujarat.

Q. 利他的代理出産に関するインドの Surrogacy [Regulation] Bill は、コロナで遅れてまだ成立していないのでしょうか、どのような見通しでしょうか。政治的綱引きはありますか？ どのよう

Has the introduction of the new Surrogacy Regulation Bill 2020, which relates to altruistic surrogacy and who can become a surrogate mother, been delayed due to COVID-19?

What is the current outlook? Is there a political tug of war regarding this bill?

When the previous bill was introduced in 2016. In 2019, the Rajya Sabha (Upper House) created a select committee of Ministers. The law had passed the Lok Sabha (Lower House), but there was no unanimous consensus in the Rajya Sabha. They called experts into seven meetings, inviting them to speak on the issue. Dr. Sheela Suryanarayanan gave her input in one of these meetings.

Dr. Sheela's contribution during the Select Committee meeting was that the new bill should not remove the upper age limit for surrogate mothers due to risk factors for their health. This follows the death of a 42-year-old surrogate mother in 2019. Dr. Sheela's recommendation is that surrogate mothers should be aged from around 20 to 35 years. She also believes that surrogacy should be a last option for couples who struggle to conceive, not a first option when seeking ART treatments. Thirdly she requested the Select Committee to pay due attention to the economic aspects that promote women to offer services as surrogate mothers and put an end to commercial surrogacy.

The medical sector was very disappointed because they were losing out on lucrative profits from foreign clients. Some were disappointed because only married heterosexual couples could use surrogacy services, thereby excluding same-sex couples. A third group were angered by the clause that stipulates that only family members can become surrogate mothers, while another set of people are not in support of altruistic surrogacy because they believe that a woman should be paid to act as a surrogate mother.

The new bill will be altruistic but is for married couples only. The requirement to wait for five years prior to surrogacy will be relaxed according to the Select Committee Report. Non-resident Indians (NRI) will also be able to come to India to engage surrogacy services. It will no longer be restricted only to relatives. Surrogate mothers must already be mothers themselves.

The Surrogacy Regulation Bill report that was published by the Select Committee states that they are waiting for the ART bill, which is much broader in scope. This bill will take a long time, so it is holding up the Surrogacy Regulation Bill from being introduced.

https://prsindia.org/files/bills_acts/bills_parliament/Select%20Comm%20Report-%20Surrogacy%20Bill.pdf

Q. Surrogacy [Regulation] Bill をどのように評価しますか？

What is your assessment of the new Surrogacy Regulation Bill?

Dr. Sheela is not very satisfied with the bill as there a lot of loopholes regarding altruism. Due to the economic inequalities in India, the motivation for surrogate mothers is still economic - they want to save their families from poverty.

It has been stipulated that a woman can only become a surrogate mother once; however, this is impossible to monitor at this time. The establishment of a Surrogacy Board in each state has been recommended but these do not yet exist.

Dr. Sheela also has concerns regarding the ethical factors involved. In particular, what happens to the surrogate mothers after they give birth? There are many areas that are unclear.

Q. 現在(法律はまだ施行されていないとして)、インド国内で商業的/利他的代理出産はどのように行われていますか？ それには、どのような問題がありますか？

With the most recent bill not yet in force, how is surrogacy being conducted? What kind of problems are being faced?

Dr. Sheela conducted a study of surrogacy clinics in 2009 and another impact assessment study in 2019. The main focus region was Anand in the state of Gujarat. The clinics expressed great disappointment with an end to commercial surrogacy.

One key impact was the reduction in foreign currency. This had been the main motivation for offering surrogacy services, and the flow on effect of this foreign demand had extended to hotels, auto rickshaws, nannies, passport service businesses, etc. It was a huge emerging business centre. Anand had become famous for surrogacy. But suddenly the demand plummeted. Now, the streets surrounding the clinics in Anand are very calm and the only clientele are Indian. The massive IVF complex is quieter, and everything associated with it has reduced.

Another issue being faced is that the surrogate mothers feel that the surrogacy process is risky. There are many side effects to the health of surrogate mothers because of their participation in surrogacy and its related procedures. There is also an emotional toll because they have no contact with the child. For the money they get, many think it is not worth it.

The only women who are becoming surrogate mothers now are extremely poor. In 2009, the business was thriving so much that women were being trafficked through the regions that follow the Ganges River. In addition to prostitution and forced labour, it became another industry associated with human trafficking. This is no longer the case because the surrogacy business is not lucrative anymore.

Despite this, women are still dying. The 42-year-old woman previously mentioned (2019) had many co-morbidities and ultimately died in a major hospital in Delhi. She either did not disclose her true health status, or something else went on. This is concerning.

Q. 外国人向けの商業的代理出産で儲けた人たち(医師、法律家、エージェント等)は、現在、どうしていますか？ 困窮していますか？ 商業的代理出産を認めるよう、ロビー活動をしていますか？

There are a variety of stakeholders, such as doctors, lawyers and agents, who would have profited from the previous commercial surrogacy model that was targeted towards international clients. What are these stakeholders doing now? Have they lost their livelihoods? Are they lobbying to have commercial surrogacy allowed?

They have probably diverted and are now focused on a different element of the ART industry.

The surrogate mothers still do egg donation, but this is less lucrative for them. Most were involved in surrogacy to make money to buy a house, but there is a government program that they can take part in instead. The Pradhan Mantri Awaas Yojana, aims for housing for all by 2022 and gives loan to people below poverty line on low interest. People do not want to take this loan and the easy way to obtain money is women's body.

The doctors are still operating their business. They have quite a good clientele across the ART board, so surrogacy is simply no longer a major part of their portfolio.

Surrogacy agents tended to be nurses working in the clinics. The surrogates themselves often have no interest in becoming agents because they don't want to feel responsible for putting another woman's life in danger.

In the case of hotel owners and auto rickshaws drivers, etc., it is hard to tell what they are engaged in now due to the COVID slump.

It is also interesting to note that, during the previous commercial model, Muslims coming from the Middle East preferred to use Muslim surrogates (often in Kerala). Similarly, Christians coming from foreign countries preferred Christian surrogate mothers. Muslim women were sometimes taken from other parts of India to Kerala and then kept in surrogate homes to then become surrogate mothers for Muslim clients. These were highly questionable business practices.

Q. アナンドに 2012 年に訪問したとき、パテル医師(Dr. Nayna Patel)は 5 階建てのクリニックを建設する予定と言っていました。現在、アナンド(Anand)は閑散としているのでしょうか？もしご存知でしたら教えてください。

[Are you aware of Dr. Nayna Patel?] In 2012, I visited the Anand District in Gujarat and spoke with Dr Nayna Patel. At that time, she had plans to build a 5-storey clinic. Do you know whether she is still practicing?

Yes, she is still practicing. Her clinic in Anand is an enormous glass building – it is as big as a shopping mall. It has a mall, a nursery, and hotel rooms. Surrogate mothers are housed in the basement. It has everything. It is still operating.

Q. 現在の利他的代理出産の法案が成立した場合、どのような女性が代理母になりますか？ In the case that the new bill regarding altruistic surrogacy is enacted, what kind of women do you think will become surrogate mothers?

The pattern will be the same, i.e., poor women from poor families.

In the past, agents sought out poor women who were desperate for money and therefore wouldn't ask questions. The same thing will continue to happen now but on a much lower scale. The new bill will make it more difficult to find surrogate mothers.

Q. 利他的代理出産における妊娠出産の必要経費はいくらまで認められるのでしょうか？ 金額によっては、実質的には商業的代理出産(de facto commercial surrogacy)にならないのでしょうか？ How much compensation do you think will be allowed for necessary expenses related to pregnancy and childbirth under the altruistic surrogacy model? Do you think that payment will result in a de facto commercial surrogacy situation?

Only medical expenses are covered - there is nothing for lost wages, etc. The compensation covers health and life insurance, food, and anything related to the surrogacy.

The bill is designed to prevent women from becoming surrogate mothers for economic purposes; however, Dr Sheela believes that it will operate like a de facto commercial surrogacy model.

Historically, it was a common practice among Gujarati families for a sibling to provide another sibling with a child if they were infertile. Commercial surrogacy just became a new iteration of this same practice.

A famous case was that of an older woman becoming the surrogate mother of her own granddaughter.

Dr. Sheela has asked surrogates whether they would become surrogate mothers for free, and they responded 'no' because the risks are so high. These women are generally not very healthy in terms of their nutrition and their overall health status, so it is very risky for them.

Q. “Altruistic surrogacy”は、インドの文脈ではどのような意味を持ちますか？ どのような advantage、どのような disadvantage がありますか？ 依頼者にとって。代理母にとって。より搾取的と言えますか？

In the Indian context, what meaning does the term ‘altruistic surrogacy’ hold? What advantages and disadvantages exist in this context for the surrogate mother and for those seeking a surrogate? Do you think it is more exploitative?

Under the commercial model, the surrogate mothers were completely exploited. They were placed in restrictive surrogate homes. Dr Sheela has observed this closely for several months in one as part of her research.

Their health was often severely impacted, and many became poorer and had to repeat the cycle. Each surrogacy instance meant several attempts, which equates to hormone injections and miscarriages. Dr. Patel implants five embryos (the limit is actually three), but if more than two survive, they selectively abort the excess (always the girl(s)). These are risky procedures for the surrogate mothers and often results in miscarriage. The compensation after a miscarriage is very low (e.g. 50,000 rupees).

For one woman to successfully come out of poverty via surrogacy, she has to engage in at least two surrogacies. Meaning repeated trials sometimes with no success and miscarriages. While one positive case after multiple surrogacy attempts might be reported in the news, ten other women have the opposite experience. Looking at the broader picture, commercial surrogacy is not a way to eliminate poverty. The women have no real agency if they are choosing between poverty and potential death, and surrogacy. These women lack educational opportunities and go on to have early marriages and early childbirth.

Q. 金銭的対価を認める商業的代理出産の枠組みの方がインドには適していると言えるでしょうか？

Do you think that a commercial surrogacy framework that allows for monetary compensation is better suited to the Indian context?

No, as per the previous answers.

Q. イギリスで予定されている代理出産法改正で、利他的代理出産の大幅な規制緩和が行われる見通しだと聞いています。これについてどう思いますか？

I've heard that the planned amendment to the Surrogacy Act in the UK is expected to significantly deregulate altruistic surrogacy. What are your thoughts on this?

Dr. Sheela notes that India is following UK model and UK is now trying to open up commercial surrogacy and she believes this is a slippery slope.

Prior to the end of the commercial surrogacy model, a lot of British people came to India for surrogacy services.

Approximately 15 British babies were born via surrogacy per month in one hospital alone (Hiranandani Hospital). There were many NRI coming to India for this purpose; however, the demand has shifted now.

Q. 今回の法案、あるいは商業的代理出産 or 利他的代理出産に対するインドのフェミニストの意見は？

What are the thoughts of feminists in India regarding the new Surrogacy [Regulation] Bill? What is their opinion of commercial vs. altruistic surrogacy?

There is not much dialogue regarding the new bill currently. Under the commercial model, there was a lot of talk regarding women's agency. On the other hand, there were some saying that surrogacy is not an example of exercising one's agency due to their poverty. Dr Saravanan shares this belief.

Q. 代理出産法(surrogacy [regulation] bill)が成立したら、代理出産で生まれた子どもは、その事実と、代理母が誰かを知ることはできますか？

When the new Surrogacy [Regulation] Bill is enacted, will children born through surrogacy have the right to know how they were conceived/born? Will they be able to know who their surrogate mother was?

There is no right to know recognised. There is no choice available regarding allowing the child to know.

Q. インドでは、養子の出自を知る権利は認められていますか？

In India, is the right to know one's ancestry recognised for adopted children?

In the case of adopted children, they have no right to know.

Q. インドでは、代理出産で生まれたことを知ったとき、子どもにとってトラウマ/スティグマとなる可能性がありますか？ 精子提供、卵子提供ではどうでしょうか。

In India, do you think there is a possibility that a child may experience trauma or stigmatisation because of being born through surrogacy? What about in the case of a child conceived via sperm or egg donation?

India is largely a traditional society that is progressing quickly. There might be some stigmatisation, but progress is being made.

Particularly in Gujarat, the stigma will be less due to the historic practice of giving a child to an infertile relative. The taboo regarding surrogacy has also reduced for surrogate mothers.

The taboo around adoption is also less due to increased awareness.

Q. インドで調査をした際、代理出産だけでなく、卵子提供もかなりたくさん行われていることを知りました。これらは不妊治療だけではなく、研究に使われているものでしょうか？ このことについて、インドの規制は十分ではないのでしょうか？

When conducting a survey in India in the past, I learnt that, in addition to surrogacy, a lot of egg donation was also taking place. Was this predominantly for use in infertility treatments, or were they used in research as well? Do you think that regulation in this area is insufficient?

Dr Sheela has not researched this directly; however, anecdotally many of the surrogate mothers that she has spoken to were also involved in egg donation.

At Dr. Patel's clinic, women are sometimes asked if they want to donate after having been told they cannot be given treatment for their own infertility. Dr Patel has been keeping these eggs in her own egg bank.

Even young, unmarried women have been sent to donate eggs. During COVID-19, egg donation increased as a means of making money.

Q. 将来、インドが再び外国人に門戸を開くことはありえますか？

In the future do you believe that India will open its doors once more to international clients for the purpose of surrogacy?

Dr Sheela thinks the practice has ended permanently, both for India, Nepal and Malaysia. It was stopped due to the number of deaths reported, the number of abandoned children, the number of court cases, the associated health issues, the number of surrogates wishing to keep the child, etc. It reached the Supreme Court, so there is no way it could be started up again.

Dr Sheela believes it would be a great shame if commercial surrogacy were to recommence. Many medical practitioners, too, support the end of this practice.

Q. インド人の代理母が外国で代理母になる可能性は、ありますか？

Are Indian surrogate mothers able to become surrogate mothers overseas?

One of the surrogates that Dr Sheela has interviewed was called to Malaysia to participate in surrogacy. Generally, the women in this situation do not go. There is a fear of what may happen to them. Also, many women do not yet have that much freedom of movement, etc.

Unlike when pregnant women fly overseas to find out the gender of their baby, it is not a common practice.

Q. 質問していない点で追加コメントがあればお願いします。

Do you have any further comments that you would like to share with us?

Another ethical concern is in utero selective abortion. This practice results in the deaths not only of babies, but also of surrogate mothers. If the intended parents say they don't want twins, the surrogate mother carrying two (or more) babies is obliged to have an in-utero selective abortion. Even if the surrogate mother successfully refused this procedure, what happens to the additional baby(ies) once they are born?

Furthermore, Dr Sheela has never seen a baby carried to term – they are always born pre-term. Many are healthy, but many are not. Some are left behind and deserted if they are disabled. It is unclear what is happening to the children. Certainly, under the commercial surrogacy model it was

more obvious due to the sheer volume of births; however, under the altruistic model it is less clear as there are fewer births.

These are serious and sensitive ethical issues that require addressing.

Q. Why is Gujarat so popular on the surrogacy scene?

The popularity stems from the historical practice of giving a child to another family member if that person is infertile. Also, the Gujarati community is well known for being very business oriented. They are progressive in their business practices, so the level of stigma for surrogate mothers/surrogacy homes is much less.

In addition to Gujarat, surrogacy homes can be found in Mumbai, Calcutta, and Bangalore. Chennai has them too, but you will not find them due to the stigma in their community. Comparatively, Hyderabad is conservative. If you go further south to Tamil Nadu, you won't be able to find surrogate homes as easily there. The stigma is huge, so they are well hidden.

Surrogate mothers are quite well networked, so if you meet one, they will introduce you to many more. However, this network is not sufficiently strong for the women to know when someone has had a negative experience. Dr. Patel does not allow surrogate mothers to form an association or organise in any way to protect themselves. The surrogate mothers fear her.

Dr. Patel is ruthless in business. She only supports surrogate mothers in the most extreme of cases. For example, a previous surrogate went on to fall pregnant with her own child and asked for discounted obstetric treatment at Dr. Patel's clinic. Despite the prior connection, discounted service was refused. The woman later gave birth during Diwali at a public hospital. Due to the time of year, there was no doctor readily available, and she had a fistula. Dr. Patel only offered discounted care after this all had occurred to maintain the reputation of her business.

Another example is that of one surrogate mother who fell into greater poverty. Dr. Patel refused to allow her to contact the intended parents overseas to seek support.

The image that Dr Patel puts out is that she is supporting women via an NGO, but this is completely false. Surrogates are frightened and are unable to contact the intended parents. In the name of 'education', Dr. Patel gives the surrogate mothers a backpack and four workbooks that they are obliged to pick up themselves. But that is all. She doesn't pay school fees or anything. Any skill training would arm these women with the capabilities that would prevent them from coming back to do surrogacy again. She has used women's vulnerabilities to coerce them into repeating surrogacy. Dr. Patel is exploiting women on a grand scale. Her practices are inhumane.