**UN Special Rapporteur on Surrogacy Arrangements and the Sale and Sexual Exploitation of Children**

Dr. Sheela Saravanan[[1]](#endnote-1), Independent Researcher, Bonn Germany.

**Introduction**

India had become one of the most popular destinations for third-party childbearing in the last one decade, until the Government of India proposed a prohibition of commercial surrogacy in Sept 2016, with the Surrogacy (Regulation) Bill (MoHFW 2016). This ban was proposed because of the deaths of surrogate mothers and egg donors, custody battles for children, commodification of children, exploitation of poor women and trafficking of women and teenaged girls for surrogacy. According to some estimates that it had grown into a 2 Billion dollar business (Perappadan 2014). In essence, as I have mentioned in my book titled ‘A Transnational Feminist View of Surrogacy Biomarkets in India’, surrogacy in India had turned into a *“bazaar where everything about women’s reproductive capacity and the children born has been marketed and priced; the woman’s body parts, her breast-milk, her labour as a nanny, the number of child(ren) born, the weight of the babies, the gender/ (dis)abilities of the child and even the surrogate mother’s caste, body weight or religion was priced”* (Saravanan 2018: pg. 6).

I conducted one research study on transnational commercial surrogacy in India in 2009-10. Recently, in February 2019, I conducted a follow up study funded by The European Observatory for Non- Discrimination and Fundamental Rights (EONDFR), France (Saravanan 2019). Earlier, in 2009, I interviewed five commissioning parents, 13 surrogate mothers, and five medical practitioners in Anand and Ahmedabad, Gujarat. Among these, I closely followed five surrogate mothers throughout their pregnancy (from embryo transfer to post relinquishment) and five commissioning parents using participant observation method. Recently, in February 2019. I conducted in-depth interviews in Anand, Nadiad and Ahmedabad, Gujarat with 45 surrogate mothers who had completed 63 surrogacies and had given birth to 89 babies. I focus this report on the sale and sexual exploitation of children largely based on the findings of my two studies on surrogacy in India. The studies have revealed evidence from India that children have been commodified and sold in surrogacy arrangements. The children born through surrogacy are priced based on their characteristics (the number of children, the weight of the child, the gender of the children), (sex)selective abortions of children have been performed in the womb, trafficking for surrogacy and sale of children, abandonment of children based on their characteristics. Hence the following sections are referred to, in this report;

* the price tag on children based on their characteristics (the number of children, the weight of the child, the gender of the children, the ability of the children
* (sex) selective abortions,
* trafficking and child sale, and
* abandoned children

**A Price Tag on Children**

Children were commodiﬁed in the surrogacy arrangements in India. Surrogate mothers mentioned that; the payment they received for twins was higher as compared to single babies, birth of boys meant a higher payment as compared to single girl babies (Saravanan 2019). Even the skin colour of the babies has determined the payment of surrogate mothers.

This popular clinic in Western India charged the commissioning parents Rs 14 lakhs (€18000) for one child and about 20 lakhs (€26000) for twins. The payment for the surrogate mothers was also higher for twins as compared to single babies. Similarly the birth of boys meant a higher payment for the surrogate mothers and the clinic as compared to the birth of a girl child.

Madhuri was paid lesser for the twins she gave through surrogacy because the skin colour of the children was not to the liking of the commissioning parents.In her words *“the commissioning parents selected me because I have a fair complexion. I gave birth to two boys; the babies were of a darker complexion”.* The commissioning parents taunted her after the birth of the children, *”this girl is so fair and beautiful, how is it that the children are dark”* and they paid her lesser than what they had promised (Saravanan 2019).

**(Sex) Selective Abortions**

The selection of the desired characteristics of children begin even before birth. Sex selective abortions are commonly performed on surrogate mothers based on the whims and desires of the clinics and the commissioning parents. My follow-up study in 2019 confirmed that sex selective abortions was actually being performed in surrogacy clinics although it is illegal in India. Of the 45 surrogate mothers I interviewed, several surrogate mothers were forced into (sex) selective abortions. Gracy, a surrogate mother said she had two girls and one boy growing in her womb after the embryo transfer. One of the female foetuses was identified and selectively aborted by the doctor in the clinic according to the commissioning parent`s desire. Bhavya was carrying twins and one fetus was aborted inside the uterus on the request of the commissioning parents. Similar foetal reduction procedure was also performed on Nargisa. During the pregnancy, it became known that Ujwala was carrying triplets and the doctor conducted an in-utero abortion of one foetus (Photo 1; Ujwala and her husband with Dr Sheela S). Nargisa, Ujwala and Bhavya were not even informed about the sex of the foetuses or why one was being aborted.

Madeeha was taken from Ahmedabad to a clinic in Kerala for surrogacy, catering to the demands of Muslim commissioning parents from the Middle-East. After a few months into the pregnancy her agent told her that there are two children, and that she should abort one foetus. She refused to abort one child. The agent warned her that she would not get any money from the clinic if she refused an abortion. She shouted and screamed and demanded they allow her to speak to the commissioning parents directly. They didn’t allow her to talk to them, but she didn’t allow the abortion and gave birth to twins. Her friend Rabeena was not so lucky; she was carrying twins and selective abortion was performed on her.

**Trafficking and Child Sale**

In 2010, young Adivasi girls were trafficked, traded, enslaved, raped and made to conceive through surrogacy six times to sell the children into adoption. The surrogacy trafficking trade used the same network that was used for domestic work and sex trade from the poor regions of India into urban areas. These unmarried girls are impregnated with embryos without their consent. Others were confined in homes and when some girls tried to run away, they are caught, brought back and beaten. They are trafficked at as young as 15 years of age for surrogacy and the children are sold after they are one year old. Anshu says, *“they sold my son for Rs 40,000”*. “They treated me like a money minting machine. My will never mattered to them, all they wanted was me to deliver babies for them” (Roy 2015). She had no idea where her children were sold and to whom and she is now seeking justice from Child Welfare Committee in Gumla. In the same district in East India, another girl was trafﬁcked into surrogacy when she was just eight years old and forced to deliver at least 10 babies (Roy 2015). There are other cases of trafﬁcking too from the same district. Some of the girls gave birth to children while staying in their houses and the agents came later to collect the babies. According to this report, some were paid a pittance and others were cheated after handing over the baby. The police in the area have named this as, “forced surrogacy”.

**Abandoned children**

In my study one girl child was born without a hand and the following week a newspaper reported about a new born child found under a bridge in Ahmedabad. The surrogate mother recognized this as the same child born to her but she did not come forward to inform the police officials as she feared they would hold her responsible for abandoning the child. There are news reports of children with disabilities born through surrogacy who were left in orphanages or sold in illegal adoption markets. As there is no record of the number of children born in India through surrogacy, the actual number of children born with disabilities or abandoned is unknown.

One of the hushed-up cases was of the twins, a girl and a boy, born through surrogacy in India to an Australian intended couple in November 2012. The intended couple was adamant to abandon the boy child and return only with the girl because they could not afford him. They already had a son at home and wanted to “complete their family” with a girl, according to the communication between the Australia consulate and the couple (Times of India 2014). They were repeatedly told that abandoning the boy could leave the child stateless because India did not recognize surrogate children as citizens. They insisted of having followed the Indian law in handing over the child for adoption in India. This misled the Australian consulate who understood that the couple had made arrangements for handing over the baby boy to a friend of theirs. There are reports that money had been exchanged in the handing over of the baby to another couple in India. The Australian couple had sold the baby boy in India which is analogous to child trafﬁcking.

**Conclusion**

The surrogacy practice hence violates the Convention on the Rights of the Child as per Article 7 § 1, on the child’s right to know and be cared for by his or her parents; Article 9 §1, on ensuring that a child is not separated from his or her parents against their will; and Article 35, on preventing the abduction of, the sale of or trafﬁc in children for any purpose or in any form; the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography (as per Article2a),which deﬁnes the sale of children as “any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration”. The Surrogacy (Regulation) Bill 2016 in India does not refer to “trafficking or sale, abduction of surrogate child” either in altruistic or commercial surrogacy arrangement in any form under the same.

From a global perspective, India is a typical case of how rampant violations of human and child rights, women’s bodily integrity and medical ethics thrived on global structural inequalities The surrogacy practice promotes deeply embedded pronatalist, patriarch, racial, ageist, casteist, sexist and ableist hegemony. This raises globally relevant questions of geneticisation, alienation of the gestational role, human and child rights violations, trafficking and reproductive injustice. Surrogacy should be disallowed in any circumstances because even if a woman is not donating part of her body or her biological substance, she is creating another human being and then giving it away. In all the debate on individual rights of the commissioning parents and the surrogate mothers, the human rights of children has not been taken into account.

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1. Since 1998, Dr. Sheela Saravanan`s academic focus has been on women and health and she has specialized on reproductive health since her PhD on birthing practices in India from the School of Public Health, Queensland University of Technology, Brisbane, Australia. Her post-doctoral work in German Universities was on maternal and child health, selective abortions, reproductive technologies; surrogacy and prenatal screening. Conceptually, she has applied `authoritative knowledge, intersectionality, reproductive justice and transnational feminism` in her research on reproductive health. Author of a book on commercial surrogacy in India, she has been invited as a keynote speaker on this topic on several prestigious forums, including the United Nations. [↑](#endnote-ref-1)