

**Full Length Research**

# Surrogacy Legislation and Social Entrepreneurship

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The research shows a lack of understanding of the complexities of surrogacy, is prejudiced in its approach, is ambiguous, unrealistic, and, most importantly, fails to give adequate surrogate safeguards. Surrogacy is appreciated, but not compensated, for the reproductive work that women do. A group of challenges that affect a portion of the population is difficult for the government, private organisations, and the third sector to tackle. Because social entrepreneurship is a scientific issue that evolved from the empirical world and the cosmos, it was established for this reason. With the objective of evaluating the social enterprise from the viewpoints of social entrepreneurship and local development, this article presents a case study based on information obtained through in-depth interviews. The institution fosters social transformation by paying attention to instances of social fragility. The studies also indicated that the management team is concerned with maintaining a strong, lean, and objective organisational structure, with each sector knowing that the activity they are performing is essential to the organization's quality and performance.

**Keywords:** surrogacy, social company

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## INTRODUCTION

Surrogacy is a unique and probably desirable option for many people and couples seeking to start a family, but it also raises a slew of ethical concerns that span several legal disciplines. These difficulties have been increased in recent years as a result of globalization-enabled reproductive tourism.

Governments throughout the world have participated in a type of "regulatory arbitrage," in which the ban of commercial or altruistic surrogacy in some nations leads to more lenient legal frameworks in others. Surrogacy poses a tough issue for feminists in particular. On one side, it challenges heteronormativity and the heteropatriarchal family structure. On the one hand, reproductive markets provide favourable economic terms and negotiating leverage for intended parents from the

global North, resulting in exploitative arrangements for surrogates in the global South. As a result, the legislation has become a hotbed of political, social, and economic debate about the status of women's reproductive labour.

Let's take a look at the feminist surrogacy normative environment and then follow India's efforts to regulate surrogacy to examine a case study of Brazil's social empowerment. The Bill is then dissected in depth along four axes: situating surrogacy within the wider context of assisted reproductive technologies (ARTs), evaluating eligibility requirements for commissioning surrogacy, and the question of surrogate "compensation." We understand this perspective by analysing another front, That example, while social entrepreneurship is a hot issue in scientific and academic circles throughout the world, it only became well-known in this sector in the mid-1990s. The word "social entrepreneurship" still lacks a

clear and objective meaning, which may explain what Parente, Santos, Chaves, and Costa (2011) refer to as "conceptual inflation," or the term "social entrepreneurship" being used interchangeably.

As a result, a distinct idea that objectively describes it is required. Nonetheless, other writers, such as Dees (1998), Martin and Osberg (2007), and Parente et al. (2011), believe that the ultimate aim, namely, the adaptation of a social reality to a specific group with apparent requirements, should be prioritised. Social entrepreneurship may be thought of as an extension of traditional entrepreneurship. Both have comparable features; what distinguishes them is their goal, which is profit for the former and social revolution for the latter. The Dees (1998). This supports the claim that social entrepreneurship evolved from traditional entrepreneurship with the goal of closing social disparities that degrade human life quality.

The creed can be used to rationalise this goal.

It's crucial to note, however, that any profit-making social company will use these surpluses to support itself and continue operating in a sustainable manner. It's worth noting that if an investor wants to put money into a business, he or she will not benefit during the transition since the money to be taken will be precisely equal to the amount invested as distinct organisations through which groups of individuals collaborate and coordinate operations in order to meet society's demands. Other writers (Comini, Barki, and De Aguiar, 2012; Karnani, 2007; Marquez, Reficco, and Berger (2010), as well as Young and Lecy (2014), introduce the notion of social businesses, stating that these organisations strive to solve social issues with efficiency and long-term development through the use of market techniques and standards.

The desire for change in the social situation gives rise to social business. According to Oliveira (2008), social entrepreneurship consolidates of social vulnerability, which searches for possibilities to start a business that can help eradicate poverty and other social inequities. According to Dees (1998), the major incentive for social entrepreneurs is the social mission, because the entrepreneur does not pursue profit as an end goal, but rather as a way of sustaining his or her purpose of effecting social transformation and creating jobs.

Peredo and McLean (2006) agree with the author, stating that the sole purpose of social businesses is to modify a social reality and to identify the beneficial consequences of such change. Social groups implement commercial strategies, while having different aims than regular businesses. They employ market strategies in order to create financial stability and so achieve their objective (Mair, 2010). However, maintaining management openness, particularly financial transparency, is critical for social institutions in order to demonstrate their credibility and gain partners.

However, measuring qualitative outcomes of social businesses is challenging, making indicator planning and structure problematic. There is a void in the study pertaining to measuring studies findings acquired by social businesses, as can be shown. It's also worth noting that there aren't many studies on these social companies, which necessitates empirical study (Barbosa, Dias, and Walchhutter, 2014). Fischer (2011) adds to the topic by emphasising the necessity of undertaking research that can demonstrate the ability of social businesses to reduce problems like unhappiness and poverty while also contributing to long-term local development. It is feasible to comprehend the significance of this discovery by filling up these theoretical gaps. Because it offers a case study to analyse the local development created by a social enterprise. The actors in the process must undertake their roles in order for sustainable development to occur. Beyond civic activities, citizen involvement is essential, as is making human beings protagonists of society's transformative activity via critical thinking. (Sen,2010)

According to Paula (2008), the development of these variables: i) human capital; ii) social capital; iii) business capital; and iv) natural capital promotes local development. The growth of human connections is aided by human capital, or people's qualifications. The same author also emphasises the link between local growth and social capital, as measured in dollars. It is the ability of social agents to participate. Another element influencing local development is entrepreneurial capital, which is defined as people's entrepreneurial behaviour. According to the author, the entrepreneurial culture is reawakening. Natural capital entails a shift in production and consumption patterns, such as the utilisation of recycled materials and establishing a network in which one factor relies on the other to materialise with higher efficiency. Franco (2002) emphasises the need of cultural and political transformation, as well as the necessity to reawaken local enterprise. Paula (2008) emphasises the importance of comprehending:

- i) local
- ii) integrated
- iii) separately sustainable.

As a result, "local" refers to each locality's physical, economic, ethnocultural, and political territorial delimitations. It is a relationship between the local elements provided in respect to the integrated. The term "sustainability" refers to an effort to fulfil present demands without jeopardising future generations' requirements (Paula, 2008).

## METHODOLOGY

The goals of this study are exploratory and descriptive.

The initial goal is to make the theme more simple and explicit, and it is generally accomplished by using a data collecting tool:

- (i) collection of bibliographic data
- (ii) interviews with experts on the subject
- (iii) Analysis of examples that allow the ease of assimilation of knowledge (Gil, 2002).
- (iv) The second one, through a survey of various information, has the purpose of describing the facts and phenomena of the empirical object, as an instrument of data collection, usually using: i) questionnaires; iii) interviews (Triviños, 1987).

Because the empirical object is an educational institution, the research approach used was a case study, with the goal of better understanding the contributions of this institution to regional development based on its distinctive and fundamental features. In-depth interviews were employed as a data gathering tool, as well as bibliographic and documentary analysis (Gil, 2002).

**Table 3. Profile of the Interviewees**

Fictitious Name	Relationship	Gender	Length of Service
E01	Direction	Male	26 years
E02	Direction	Female	35 years
E03	Coordination	Female	10 years
E04	Psychologist	Female	3 years
E05	Psychologist	Female	2 years
E06	Psychologist	Female	6 years
E07	Social Worker	Female	11 years
E08	Mother and Employee	Female	26 years
E09	Mother and Employee	Female	8 years
E10	Mother	Female	10 years
E11	Egress	Female	7 years
E12	Egress	Male	9 years

Source: Own elaboration.

### **SURROGACY AND FEMINISM:**

For feminists, surrogacy has always been a touchy subject. Western feminists theorised surrogacy in two phases, according to Alison Bailey: an intensely normative phase in the 1980s, when they offered liberal, Marxist, and radical feminist analyses of commercial surrogacy; and a discernible biomedical ethnographic transform since the mid-1990s, to understand how surrogacy work is lived and embodied.

Even though there is no chronological boundary between these endeavours, Indian feminists offer both normative and anthropological theory on surrogacy. Liberal feminists are in favour of commercial surrogacy if it is accompanied by sufficient protections. Reproductive tourism, according to radical feminists, is at the crossroads of reproductive, sexual, and labour trafficking, as well as commercial surrogacy being a commerce in reproductive bodily parts that is exploitative. Commercial surrogacy is also seen as a kind of reproductive slavery by Marxist feminists. Kumkum Sangari is a post-Fordist

manufacturing model characterised by flexibility that maps how commercial surrogacy equates to the expropriation of women's reproductive labour by "biocapital". The women bear the brunt of insecurity and failure, as their voices are drowned out by the triple rhetoric of "remediable poverty, calibrated entrepreneurialism, and familial charity."

The majority of Indian feminists have a materialist feminist stance, in which surrogates are seen as victims of capitalism and patriarchy. Several feminist ethnographers, for example, see surrogates as fulfilling highly gendered, particularly bodily, and stigmatised functions. A fiercely anti-nationalist state, part of a wider agenda of neo-eugenics and "stratified reproduction," in which the international division of labour and deliberate state policies maintain a race-based reproductive hierarchy. These feminists are pragmatic in their approach to legislation and reject commercial surrogacy bans, informed by a view that the market will be driven underground if surrogacy is banned, in turn harming surrogates.

This materialist feminist perspective is mirrored in our own

viewpoint. Surrogates' job is technologically-assisted, emotional reproductive labour in the context of gestational surrogacy (when the surrogate cannot utilise her oocytes) provided through a highly medicalized ART business. We acknowledge that surrogacy is performed under very unequal capitalist patriarchal settings. However, I do not believe it is unique enough in comparison to a variety of other types of gendered reproductive labour, such as domestic work, erotic dance, sex work or unpaid care, and housewives' domestic work, to deserve special treatment by the state. We recognise the power imbalances, restricted options, and exploitative relationships that a globalised setting has created, and we think that women's rights must be.

Respected people who wish to be surrogates for a price cannot be disregarded as delusory. Finally, we oppose prohibitionism and blanket prohibitions, which ignore surrogates' daily circumstances in favour of focusing on how the law might secure economic fairness for them.

## LANDSCAPE OF REGULATIONS

In the last fifteen years, India is likely one of the few nations in the world that have embraced every imaginable regulation approach to surrogacy. The National Guidelines for Accreditation, Supervision, and Regulation of Assisted Reproductive Technology Clinics in India, published by the Indian Council of Medical Research (ICMR) in 2005, was an early effort. Following that, between 2008 and 2013, distinct chapters on surrogacy were incorporated in successive versions of the Draft Assisted Reproductive Technologies (Regulation) Bill (hence the ART Bill). These laws were permissive in their attitude to ARTs and surrogacy regulation.

However, between 2012 and 2016, the proposed legislation became more stringent. The plans evolved from being very favourable to fertility clinics (but not so much to surrogates) to severely restricting individuals who may use ART based on marital status, sexual orientation, and nationality/citizenship, with surrogates receiving increased protection. Administrative orders issued by the Ministry of Home Affairs regulated the visa requirements for foreign intending couples seeking surrogacy services in India between 2012 and 2015, introducing a new visa category before moving to a prohibition<sup>13</sup> for such couples in 2015 in response to a public interest litigation<sup>14</sup> filed to prohibit commercial surrogacy.

The government chose to separate the regulation of ARTs and surrogacy in 2016, and the Surrogacy (Regulation) Bill, 2016 was tabled in the Lok Sabha on November 21, 2016. On September 14, 2020, a draught Assisted Reproductive Technology (Regulation) Bill was tabled in Parliament (2020 ART Bill). In the meanwhile, a Department-related Parliamentary Standing Committee (PSC) on Health and Family Welfare received the 102nd report on the 2016 Bill, which aimed to outlaw commercial surrogacy and allow only altruistic surrogacy under strict conditions. The Committee's recommendations are based on extensive discussions with a

variety of stakeholders (both governmental and non-governmental).

It advocated for a "paid" surrogacy model over an altruistic one, stating that surrogates did not have to be close relatives of the intended parents. It also broadened the surrogacy eligibility criteria for intended parents, allowing live-in couples, divorced women, widows, non-resident Indians ("NRIs"), Persons of Indian Origin ("PIOs"), and Overseas Citizens of India to participate.

The 2016 Bill, however, expired when the 16th Lok Sabha was dissolved in 2019. The Bill was reintroduced in the Lok Sabha on 15 July 2019 and approved on 5 August 2019 (Bill No. 156-C of 2019) without including any of the PSC report's recommendations. On November 19 and 20, 2019, it was presented and discussed in the Rajya Sabha

Several MPs spoke eloquently on many of the key issues that the Bill fails to address during the Rajya Sabha debates on the Bill. Here are a few examples: who can be an intending parent, particularly in terms of marital status and citizenship, how infertility is defined, the patriarchal stigma surrounding infertility, and the potential of leveraging technological advancements

The lack of attention paid to the rights of children born via surrogacy, the issue of surrogate pay, and the Bill's disdain for the PSC Report's recommendations. In the absence of the ART Bill, as Rajya Sabha MPs repeatedly pointed out, discussion of this Bill was grossly inadequate. As a result of these misgivings raised by a number of MPs, The Bill was referred to a Rajya Sabha Select Committee, which studied it, conducted field trips around the nation, and delivered its findings on February 5, 2020.

The RSC emphasised the necessity of enacting the ART Bill ahead of the Surrogacy Bill since the medical processes involved in the latter are best governed by the ART Bill. Several of the PSC's recommendations were repeated in this report. It underlined the necessity to extend the surrogacy eligibility requirements, allowing PIOs and OCIs to participate. Any "willing woman" within the prescribed age limit and meeting other criteria can act as a surrogate without having to be a "close relative." Widowed and divorced women can commission a surrogacy, and any "willing woman" within the prescribed age limit and meeting other criteria can act as a surrogate without having to be a "close relative." Surrogacy can be medically warranted rather than the intending couple proving infertility over an extended period of unprotected coitus, according to the RSC.

The Bill's policy of permitting only altruistic surrogacy and rejecting both commercial and compensating surrogacy was supported in this report. It highlighted that the noble instinct of motherhood might be exploited and commodified, and in a rhetorical manoeuvre, queried "whether such a lofty and heavenly instinct of motherhood could be permitted to be transformed into a mechanical paid service. Into a machine-like paid procreation service bereft of heavenly love and affection. It did, however, allow for an increase of the surrogate's insurance coverage to include medical expenditures (rather than only loss, damage, illness, or death as specified in the Bill) and other

"prescribed expenses" for a longer period of 36 months, rather than the 16 months originally planned.

## INSTITUTIONAL PROFILE FOR SOCIAL EMPOWERMENT

To achieve the objective of "promoting and delivering social change via integral formation and social aid, with humanised educational processes for children, adolescents, young people, and their families," we require a focused and competent management team ("Bairro da Juventude," 2018). In order to reach a previous conclusion, it is necessary to examine the institution through the eyes of the administration.

**Table 1.** Institutional Review

Fantasy Name	Bairro da Juventude
Corporate Name	Bairro da Juventude of Rogationist Fathers
Legal Nature	Non-profit and non-economic entities
Number of people assisted	1.500
Average number of staff	230
Age group of people assisted	4 months to 18 years old
Average number of Neighborhoods assisted	83 neighborhoods in Situation of Social Vulnerability
Average Annual Gross Income	BRL 6.500.000,00
Average cost per person assisted (year)	BRL 4.300,00

Source: Own elaboration.

According to the BNDES classification (2016), Bairro da Juventude is a small company since its annual gross revenues surpass BRL 2.4 million, the maximum value for starting a firm as a micro-enterprise, but are less than BRL 16 million, the maximum value for the classification in the category. Aside from the yearly gross income, the institution is classified as tiny. Aside from the yearly gross income, the organisation is deemed modest according to the amount of individuals it helps, 1,500 young people aged 4 months to 18 years, and the 230 staff it employs. Another important element to consider is the number of communities in Cricima and other surrounding towns that have received assistance from the organisation. It is important to note that the Bairro da Juventude recognises social vulnerability in all of its forms. For example, if a child needs to stay home alone despite living in a socially vulnerable neighbourhood, this child is at risk, and this factor is characterised as a situation of vulnerability that requires the institution's attention.

Education is one of the major services given by the Youth Neighborhood. The school was allocated to the Youth Neighborhood, which is run by the municipality in

theory. The employment of teachers is still the responsibility of the Cricima municipality.

Due to the Bairro do Juventude's status as a social aid organisation, they were unable to get the necessary paperwork to open their own school.

Bairro da Juventude's administration is private for public reasons, thus it must function in two ways:

- 1) concentrating on fund-raising, either through open tenders or collaborations with other institutions;
- 2) Define the amount of capital required to deliver ever better service to internal management. Both methods seek to improve the service offered to the customer.

The institution is currently undergoing another round of strategic reorganisation with the help of private consulting firms that specialise in non-profits. Bairro do Juventude credits their management success to continuous strategic planning. The entire crew thought about it, researched it, and integrated it. The major task

is to be a market pioneer in Brazil, if not the globe, while also continually exploring and establishing new markets. The recipient is then included into the institution's deliberative council via an assembly.

### **PROMOTION OF LOCAL DEVELOPMENT:**

It was discussed, studied, and included by the entire team. The main goal is to be a market pioneer in Brazil, if not the world, as well as to constantly explore and create new markets. Following that, the beneficiary is included into the institution's deliberative council by an assembly. As a result, certain lines from the interview will be used in this study to determine how Bairro do Juventude contributed to the betterment of these people's lives and what those improvements were. The registration of the children at the Bairro da Juventude in the instance of Interviewee 08, a mother of eight children and an employee of the institution.

### **CASE STUDY**

Interviewee 12 considers the Bairro do Juventude to be one of the most important aspects in her personal growth, claiming that the institution has provided her with all of the essential resources. Bairro do Juventude is involved in drug prevention, and the institution's work assists young people in staying out of trouble.

Based on the facts, Bairro do Juventude may be considered a local development institution, since its activities toward assisting children and their families result in human capital development, employability, strengthening, and empowerment. The remarks of interviewees make it obvious that the institution's support is not paternalistic in character, but, What makes each family in need of Bairro da Juventude support capable of self-development and no longer need assistance to meet fundamental requirements. According to Sen (2010), progress occurs when people's lives improve and the deprivation of their liberties decreases. Individuals become "full social creatures" with the growth of liberties, according to the author. As a result, one understands that when social capital develops sustainably, there is also local development, either directly or indirectly, because this individual is able to live socially in a healthy manner, and thus becomes an agent of economic and social relations, avoiding or no longer being on the margins of this process.

### **CONCLUSION**

Many nations have controlled the use of ARTs, including surrogacy, during the last 40 years or more,

since the first IVF birth in 1978. Surrogacy regulation has seldom been successful without a corresponding regulation of ARTs in general. We've already seen the dangers of attempting to regulate ARTs and surrogacy separately in earlier sections. We will reach a conclusion to this paper taking lessons from other jurisdictions' surrogacy experiences.

This study stressed efficient and transparent administration as one of the key drivers of social businesses in terms of social empowerment. As a result, one might conclude that Bairro do Juventude's success is due to a team of management who are devoted to growth, knowing that the more the institution expands, the more children and families would have their lives altered. For this reason, the management team is concerned with maintaining a strong, lean, and objective organisational structure in which each sector understands that the activity done is critical to the organization's quality. Every effort made to maintain good management seeks to have a beneficial impact on the lives of young people who are socially vulnerable. Bairro da Juventude's presence in the lives of these young people and their families means social transformation, because it provides full-time assistance to the child through compulsory basic education and playful and socio-educational activities that allow these young people to develop in a variety of ways, including turning them into more independent, responsible, and proactive individuals. Indirectly, their parents or guardians receive social support since they are expected to be more involved in their children's lives and may seek help from the institution if they have a problem. As a result of this social shift, three elements of local development emerge.

In the first instance, consider that parents or guardians have a secure location to leave their children full-time while they work. As a result, family income allows for purchases in local and/or regional commerce, which tends to enhance money circulation and local development.

The second interpretation is that a young person who receives vocational education from the institution is placed in the labour market after completing the course, resulting in increased family income and, as a result, increased consumption, local growth, and improved social circumstances.

Finally, the third analysis asserts that when a child is removed from a socially vulnerable environment and placed in a healthy environment where he or she is taught to live a life free of drugs and violence, to name a few examples, this action helps to reduce cases of violence, drug use, extreme poverty, and other forms of fragility in the neighbourhood and city which certainly generates more and more local development.

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