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REIMAGINING PARENTHOOD: REPRODUCTIVE RIGHTS, ADOPTION, AND SURROGACY IN THE TRANSFORMING LANDSCAPE OF INDIAN FAMILY LAW

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1. Introduction:

Family law in India has changed significantly in recent decades. This shift mirrors broader developments in constitutional values, gender equality, and human rights. Indian law is gradually responding to changing social conditions, acknowledging privacy and reproductive freedom, and updating regulations on adoption and surrogacy. However, this progress is often met with challenges. Legislative reforms face moral, cultural, and religious concerns, and sometimes the judiciary's progressive rulings conflict with conservative laws.

A central question in this discussion is: What does family mean in today's India? Traditional definitions—defined by heterosexual, patriarchal, and biological ties—are being questioned. New family structures include single parents, same-sex couples, childless families, and those formed through assisted reproductive technologies (ART). This article looks at reproductive rights, adoption, and surrogacy as key areas of change in family law in India, examining the constitutional, legislative, and ethical aspects of this evolution.

2. Reproductive Rights in India: Constitutional and Judicial Developments

Reproductive rights in India are based on the constitutional guarantee of personal liberty and dignity under Article 21. The phrase "reproductive rights" may not be in the Constitution, but courts have gradually broadened its meaning.

- Privacy, Autonomy, and Bodily Integrity:

The landmark ruling in Justice K.S. Puttaswamy (Retd.) v. Union of India (2017)¹ 10 SCC 1 recognized privacy as a fundamental right. The court determined that decisions about one's body, sexuality, and reproduction fall under personal autonomy. It highlighted that

1. ¹ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

choices regarding whether to conceive, carry, or end a pregnancy are vital to individual dignity.

In *Suchita Srivastava v. Chandigarh Administration* (2009) 9 SCC 1², the Supreme Court affirmed that a woman's right to make reproductive decisions is part of personal liberty under Article 21.³ The judgment stressed the need for informed consent and bodily autonomy, especially for women with mental challenges and in institutional pregnancies.

- The Medical Termination of Pregnancy (MTP) Act, 1971 and the 2021 Amendment:

The MTP Act, 1971⁴, updated in 2021, relaxed the reasons for abortion, extending the limit to 24 weeks for certain women and recognizing pregnancies from contraceptive failures. A significant ruling in *X v. Principal Secretary, Health & Family Welfare Dept., Delhi* (2022)⁵ interpreted "woman" broadly to include unmarried women, supporting their reproductive rights regardless of marital status.

Nonetheless, challenges persist. Access to safe abortion services is limited in rural areas; stigma and moral policing continue; and healthcare providers often act as barriers rather than supporters of choice. While courts and laws have recognized reproductive rights, implementation often reflects traditional and moral biases.

3. Surrogacy and Assisted Reproductive Technologies: Legal and Ethical Challenges:

- Evolution of Surrogacy Law in India:

In the early 2000s, India became a global center for commercial surrogacy, attracting foreign couples due to lower costs and fewer regulations. However, concerns arose about the exploitation of poor women, the commercialization of women's bodies, and citizenship issues for children born of surrogacy, leading to legislative action.

²*Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1.

³ The Constitution of India, Art. 21.

⁴ The Medical Termination of Pregnancy Act, 1971 (Act No. 34 of 1971).

⁵ *X v. Principal Secretary, Health & Family Welfare Department, Government of NCT of Delhi*, 2022 SCC OnLine SC 1321.

The Surrogacy (Regulation) Act, 2021, along with the Assisted Reproductive Technology (Regulation) Act, 2021, introduced significant changes. The laws allow only altruistic surrogacy, banning commercial arrangements and limiting eligibility to Indian heterosexual married couples with proven infertility. Single individuals, LGBTQ+ people, and foreigners are excluded.

- Critiques of the Altruistic Model

While the aim is to protect surrogate mothers, this law raises important constitutional and ethical issues. Limiting surrogacy to married heterosexual couples goes against equality (Article 14) and non-discrimination (Article 15) principles. Moreover, excluding single and queer people contradicts the recognition of different types of families established in cases like *Navtej Singh Johar v. Union of India* (2018) 10 SCC 1⁶, which decriminalized homosexuality, and *Deepika Singh v. Central Administrative Tribunal* (2022)⁷, which affirmed the rights of non-traditional families.

The altruistic model also imposes moral views about motherhood, placing emotional and social pressures on women in family relationships. By banning compensation beyond medical costs, the Act inadvertently undervalues the effort, time, and risks involved for surrogate mothers.

- ART Act and Overlapping Regulation

The ART (Regulation) Act, 2021⁸ covers fertility clinics, gamete donation, and ART procedures. However, its overlap with the Surrogacy Act creates inconsistencies, particularly regarding donor anonymity, child rights, and procedural approvals. Critics argue that these fragmented laws do not adequately address the complexities of reproductive technology, leading to confusion for clinics, parents, and surrogate mothers.

⁶ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

⁷ *Deepika Singh v. Central Administrative Tribunal*, (2022) 7 SCC 680.

⁸ The Assisted Reproductive Technology (Regulation) Act, 2021 (Act No. 45 of 2021).

4. Adoption and the Expanding Concept of Parenthood

- Legal Framework of Adoption in India

Adoption in India is mainly governed by two laws: the Hindu Adoption and Maintenance Act, 1956 (HAMA) and the Juvenile Justice (Care and Protection of Children) Act, 2015⁹. HAMA applies to Hindus and allows for personal rights to adopt, while the JJ Act offers a secular method under the supervision of the Central Adoption Resource Authority (CARA).

The Adoption Regulations, 2022, aim to promote transparency and child welfare. However, the process remains bureaucratic and restrictive. Single women can adopt, but single men cannot adopt girls. Same-sex couples, despite advancements in equality jurisprudence, are still excluded because of the traditional definition of “couple” in the regulations.

- Judicial and Policy Developments

In *Shabnam Hashmi v. Union of India* (2014) 4 SCC 1¹⁰, the Supreme Court confirmed that the JJ Act provides a secular right to adopt, regardless of religion. This ruling marked a significant step in prioritizing child welfare over strict adherence to personal laws.

The Delhi High Court in *Gaurav Goel v. Union of India* (2023)¹¹ highlighted the necessity for inclusive adoption laws for unmarried and LGBTQ+ individuals. However, legislative updates have been slow, revealing a gap between progressive judicial decisions and slow-moving laws.

- Adoption, Identity, and Child Welfare

Adoption is no longer just a welfare action; it is a matter of reproductive freedom and the right to family life. The challenge is balancing the best interests of the child with the rights of prospective parents. Ensuring that adoption procedures are inclusive, gender-neutral, and clear is essential for achieving the constitutional promise of equality and dignity.

⁹ The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act No. 2 of 2016).

¹⁰ *Shabnam Hashmi v. Union of India*, (2014) 4 SCC 1.

¹¹ *Gaurav Goel v. Union of India*, 2023 SCC OnLine Del 4738.

5. Intersection of Gender, Autonomy, and Family Law

Family law has historically reinforced gender hierarchy. Yet, the judicial interpretation of Article 21¹² and the principles of constitutional values have created opportunities to dismantle patriarchal structures.

The reproductive and parental choices of women, single people, and same-sex couples are increasingly seen as part of their identity and dignity. Unfortunately, state rules—whether through strict surrogacy laws or moral enforcement of abortion—often reinforce patriarchal control over women's bodies.

The right to form a family is implicit in Article 21's protection of personal liberty. Excluding specific groups from surrogacy or adoption denies them equal rights. True gender justice requires acknowledging that parenthood is a social and emotional bond, not just a biological or marital connection.

6. Comparative and International Perspectives:

Worldwide, reproductive rights and family formation are seen as fundamental human rights under the Universal Declaration of Human Rights (Article 16) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Countries like the United Kingdom and Canada allow regulated paid surrogacy and adoption by same-sex couples, focusing on consent and transparency. In contrast, India's altruistic-only model and restrictive eligibility rules diverge from these inclusive practices. The European Court of Human Rights (ECtHR) recognized in cases like *Mennesson v.*

France (2014)¹³ that children born through surrogacy have the right to legal parentage, prioritizing children's best interests over moral debates. These ideas could influence Indian courts aiming to align local laws with global human rights standards.

7. Challenges:

¹² Maneka Gandhi v. Union of India, (1978) 1 SCC 248

¹³ Mennesson v. France, App. No. 65192/11, European Court of Human Rights (2014).

Despite progressive court rulings, India's family law faces many challenges:

Exclusionary Laws: Current Surrogacy and Adoption Regulations discriminate against certain marital statuses, genders, and sexual orientations.

Fragmented Framework: The mix of personal laws, secular laws, and overlapping regulations creates legal uncertainty.

Implementation Gaps: Bureaucratic delays, moral policing, and lack of public knowledge hinder access to reproductive healthcare and adoption.

Lack of Support for Non-Traditional Families: Laws still privilege traditional family structures, contrary to judicial acknowledgment of diversity.

8. Recommendations:

Create a comprehensive Family Formation Code that brings together adoption, surrogacy, and ART based on equality and autonomy. Broaden eligibility for surrogacy and adoption to include single individuals, LGBTQ+ couples, and foreigners, under strict ethical conditions.

Allow paid surrogacy with protections to guarantee fairness and informed consent, rather than enforcing an altruistic model. Improved access to reproductive healthcare, ensuring that abortion services are based on rights, confidential, and free from stigma. Encourage public education and sensitivity training for authorities to ensure non-discriminatory implementation.

9. Conclusion

Family law in India is evolving, influenced by constitutional values, social morals, and individual freedoms. Reproductive rights, adoption, and surrogacy reflect the shifting understanding of family and parenthood today.

The judiciary has played a crucial role, interpreting dignity, privacy, and equality as essential elements of family life. However, slow legislative progress and social attitudes continue to limit these rights. The future of Indian family law should focus on inclusivity, acknowledging diverse kinship forms, ensuring reproductive justice, and aligning domestic laws with international human rights standards.

Ultimately, redefining parenthood in India is not just a legal task but a moral necessity—to create a society where everyone, regardless of gender, sexuality, or marital status, can have a family of their choice, centred on dignity, freedom, and love.

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