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Research Article

## Queer Parenthood and Surrogacy in India: Parentage, Intersectionality, And Policy Reform in The Post-2021 Landscape

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### Abstract

This paper examines the legal, social and institutional barriers faced by LGBTQ+ and single individuals in accessing surrogacy in India, highlighting the gap between formal legal recognition and lived realities. Although constitutional and human rights frameworks affirm equality, dignity and privacy for non-heteronormative families, statutory surrogacy regulations restrict access to legally married heterosexual couples, thereby rendering queer and single parents legally invisible. This creates a paradox of rights expansion versus practical exclusion. The study situates this invisibility within an intersectional framework, showing how caste, class, region and socioeconomic status compound barriers to surrogacy. Upper-class urban couples can navigate legal, medical and administrative channels, including cross-border options, while marginalised, rural or lower-income individuals face systemic exclusion. The paper also explores surrogate women's experiences, emphasising economic vulnerability, familial pressures and class-based dynamics, which intersect with access to surrogacy and reproduce inequities in reproductive labour. Drawing on comparative insights from South Africa, the United Kingdom and Canada, the study identifies best practices in inclusive statutory language, gender-neutral parental recognition, surrogate welfare safeguards and institutional preparedness. It argues that legal reform alone, without administrative readiness, training, clear protocols and grievance mechanisms, risks symbolic rather than substantive inclusion. Using a doctrinal, socio-legal and comparative methodology, this paper proposes a rights-based, inclusive reproductive justice framework for India. By integrating legal analysis, intersectional barriers, and lessons from other jurisdictions, it outlines practical pathways for reform that ensure equitable access to surrogacy while safeguarding surrogate welfare, emphasising the need for comprehensive policies that address both recognition and protection.

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## 1. INTRODUCTION

The debate around surrogacy and assisted reproduction in India highlights a clear gap between the constitutional promise of equality and the laws that regulate family formation. The Surrogacy (Regulation) Act, 2021 and the Assisted Reproductive Technology (Regulation) Act, 2021, are India's first major attempts to control and standardise reproductive technologies. Yet, both laws reinforce narrow ideas of family by allowing only a legally married man and woman to be 'intending parents. This definition excludes queer individuals, unmarried partners and single persons, keeping queer parenthood outside the scope of legal recognition. This paper argues that such exclusion is not accidental but reflects deeper biases in how the law defines family, care and legitimacy. Using insights from constitutional jurisprudence, feminist and queer legal theory, and examples from countries like Canada, the United Kingdom and South Africa, the study explores how parentage laws, social inequalities and institutional practices together sustain this invisibility. It suggests that meaningful reform must go beyond formal inclusion and move toward a reproductive-justice approach, one that combines recognition with real protection through inclusive laws, fair treatment of surrogates, institutional awareness and effective grievance systems. Located within the post-2021 legal framework, this study aims to show how India's surrogacy regime can shift from exclusion and control to an inclusive model based on dignity, consent and equality.

### Reproductive Justice and Legal Exclusion - Interrogating the Surrogacy (Regulation) Act, 2021 in India:

Surrogacy has become a prominent aspect of India's assisted reproductive technology (ART) sector. In the early twenty-first century, India emerged as a global destination for surrogacy, attracting domestic and international couples due to its advanced medical facilities, English-speaking practitioners and relatively low costs. At its peak, reproductive tourism generated around \$500 million annually, earning India the label of a "global baby factory."<sup>1</sup> This growth was facilitated by an abundant supply of labour, affordable medical procedures, and competent hospitals offering services at a fraction of the cost in wealthier countries. However, the rapid expansion of surrogacy raised ethical and legal concerns, including the commodification of motherhood, exploitation of women and human rights issues.<sup>2</sup> Cases such as *Baby Manji Yamada v.*

*Union of India* (2008)<sup>3</sup> and *Jan Balaz v. Anand Municipality*, (2009)<sup>4</sup> brought attention to challenges of citizenship, paternity and surrogate welfare. Scholars highlighted that unregulated commercial surrogacy often limits the autonomy and informed consent of women, underscoring the urgent need for statutory oversight. Courts noted that India previously lacked any law regulating artificial insemination, egg donation or surrogacy agreements, while affirming that children born to surrogates in India were Indian citizens, even when both intending parents were foreign nationals.<sup>5</sup>

In response, the Surrogacy (Regulation) Act, 2021 was enacted to regulate surrogacy, protect surrogate mothers, and safeguard the rights of intended parents and children. The Act criminalises commercial surrogacy and restricts eligibility to married heterosexual couples who meet certain age and medical criteria and do not have biological children from prior unions. Surrogates are also required to meet specific conditions, including marital status and prior motherhood. While unmarried women between 35 and 45 years may qualify as intended parents, widows, single men and LGBTQ+ individuals remain excluded. Although the Act aims to prevent exploitation of surrogates, critics argue that it is overly restrictive and discriminatory.<sup>6</sup> By barring queer individuals and single men from surrogacy, the law arguably conflicts with Article 14 of the Constitution, which guarantees equal protection under the law. Legal principles require that legislative classifications be based on intelligible differentia and bear a rational relation to the statute's objectives. On the other hand, critics contend that the Act fails this test by excluding otherwise capable individuals from parenthood.<sup>7</sup> For the LGBTQIA+ community, which gained the right to cohabit and form families following the judgment in the case of *Navtej Singh Johar v. Union of India* (2018),<sup>8</sup> this exclusion highlights the persistent gap between constitutional recognition and statutory regulation. While the Surrogacy (Regulation) Act, 2021 sets out these eligibility rules, it raises pressing questions about how its

<sup>3</sup> *Baby Manji Yamada v Union of India*, (2008) 13 SCC 518.

<sup>4</sup> *Jan Balaz v Anand Municipality*, [2010] AIR 21 (Guj).

<sup>5</sup> Astha Srivastava, 'The Surrogacy Regulation (2019) Bill of India: A Critique' (2021) 22 *Journal of International Women's Studies* 140; Amrita Pande, "'It May Be Her Eggs But It's My Blood': Surrogates and Everyday Forms of Kinship in India' (2009) 32 *Qualitative Sociology* 379.

<sup>6</sup> The Surrogacy (Regulation) Act, 2021 s 4 r/w 38.

<sup>7</sup> Soumya Kashyap and Priyanka Tripathi, 'The Surrogacy (Regulation) Act, 2021: A Critique' (2022) 15 *Asian Bioethics Review* 5.

<sup>8</sup> *Navtej Singh Johar v Union of India*, (2018) 10 SCC 1.

<sup>1</sup> Shonotra Kumar, 'India's Proposed Commercial Surrogacy Ban Is an Assault on Women's Rights' (*The Wire*, 9 November 2019) <<https://thewire.in/law/surrogacy-ban-assault>> accessed 8 October 2025.

<sup>2</sup> France Winddance Twine, *Outsourcing the Womb: Race, Class and Gestational Surrogacy in a Global Market* (Second edition, Routledge 2015).

restrictions align or conflict with the constitutional rights recently extended to LGBTQ+ individuals.

### The Paradox of Recognition - Constitutional Progress and Statutory Exclusion in LGBTQ+ Access to Surrogacy:

A key limitation of the Surrogacy (Regulation) Act, 2021, is its exclusion of LGBTQIA+ individuals. By permitting only heterosexual couples and single women to access surrogacy, the Act denies queer individuals the opportunity to form families through legal, regulated means. This restriction conflicts with the right to equality under Article 14 of the Constitution and contrasts sharply with landmark rulings such as *Navtej Singh Johar*'s case, which decriminalised consensual same-sex relations and affirmed the rights and dignity of LGBTQ+ citizens.<sup>9</sup> The exclusion also diverges from international human rights standards, including the Universal Declaration of Human Rights (Article 16), the ICCPR (Article 17) and the ICESCR (Article 10), all of which recognise the right to marry, form a family and enjoy privacy in reproductive choices.<sup>10</sup> Despite constitutional recognition of same-sex relationships, Indian statutory frameworks, including the Surrogacy Act and CARA guidelines, continue to assume that families must consist of a legally married man and woman. Queer couples, single men and widowers are thus excluded from surrogacy and adoption, highlighting a persistent gap between constitutional principles and statutory law. Judicial precedents further illustrate this paradox.<sup>11</sup> In *Supriyo Chakraborty v. Union of India* (2023), the Supreme Court acknowledged discrimination against same-sex couples but deferred substantive reform to the legislature, demonstrating judicial restraint that nonetheless leaves queer

families without access to legal parenthood.<sup>12</sup> Cultural assumptions, particularly the belief that children require both male and female parental figures, continue to shape legislative and judicial reasoning, subjecting LGBTQ+ parents to moral scrutiny rather than assessment based on parenting capability.<sup>13</sup> The Act therefore codifies a heteronormative model of family, excluding same-sex and non-binary couples while restricting intended parents to heterosexual married couples. Empirically, such provisions risk driving surrogacy demand underground or abroad, potentially undermining protections for surrogate mothers and raising concerns about child welfare, documentation, and trafficking.<sup>14</sup> Comparative examples show that inclusive regulation is feasible. In the United States, certain state laws allow surrogacy regardless of sexual orientation, gender identity, marital status or genetic connection, balancing equal access with surrogate protections.<sup>15</sup> In the United Kingdom, surrogacy is legal on an altruistic basis, and same-sex couples and single individuals can become legal parents through parental orders, despite procedural complexities.<sup>16</sup> These cases demonstrate that laws can simultaneously protect surrogates and accommodate diverse family structures, challenging the notion that exclusion is necessary for protection. These tensions between constitutional recognition of LGBTQ+ rights and statutory exclusion underscore the need to examine how existing scholarship has addressed or overlooked issues of queer parenthood, surrogacy and legal recognition in India, forming the basis for the following literature review.

### Existing Discourse and Scholarly Perspectives:

Existing scholarship on surrogacy, assisted reproductive technologies (ART), and related family formation laws in India provides valuable insights into legal, social and ethical dimensions, yet leaves critical gaps regarding LGBTQ+ parenthood and intersectional barriers. Feminist critiques, such as Madhusree Jana and Prabha Kotiswaran's *Legal*

<sup>9</sup> *ibid.*

<sup>10</sup> United Nations, 'Universal Declaration of Human Rights' <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>> accessed 8 October 2025; 'International Covenant on Economic, Social and Cultural Rights' <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>> accessed 8 October 2025; Nishka Kapoor, 'Surrogacy in India: The Need for Inclusive Laws' (OHRH, 2022) <<https://ohrh.law.ox.ac.uk/surrogacy-in-india-the-need-for-inclusive-laws/>> accessed 8 October 2025.

<sup>11</sup> Admin, 'Parents by Heart, Not Law: The Fight for Adoption and Surrogacy Rights in India for Same-Sex Couples' (*Jus Corpus*, 18 August 2025) <<https://www.juscorpus.com/parents-by-heart-not-law-the-fight-for-adoption-and-surrogacy-rights-in-india-for-same-sex-couples/>> accessed 8 October 2025.

<sup>12</sup> *Supriyo Chakraborty v Union of India*, WP(C) No 1011/2022.

<sup>13</sup> Admin (n 11).

<sup>14</sup> Lavanya R Fischer and others, 'Surrogacy Needs to Be Regulated, Not Prohibited' [2024] *BMJ* e079542.

<sup>15</sup> 'Surrogacy Laws By State' (*Legal Professional Group (a Professional Group of the American Society for Reproductive Medicine)*)

<<https://connect.asrm.org/lpg/resources/surrogacy-by-state?ssopc=1>> accessed 8 October 2025.

<sup>16</sup> Kirsty Horsey, 'The Future of Surrogacy: A Review of Current Global Trends and National Landscapes' (2024) 48 *Reproductive BioMedicine* Online <[https://www.rbmojournal.com/article/S1472-6483\(23\)00863-5/fulltext](https://www.rbmojournal.com/article/S1472-6483(23)00863-5/fulltext)> accessed 8 October 2025.

(Dis)Orders<sup>17</sup> and Soumya Kashyap and Priyanka Tripathi's analysis of the Surrogacy (Regulation) Act, 2021,<sup>18</sup> highlight how restrictive, altruism-based provisions undermine women's reproductive autonomy and perpetuate patriarchal norms. These studies emphasise the unintended consequences of the law, including underground or exploitative reproductive practices, but rarely examine the experiences or barriers faced by LGBTQ+ individuals seeking surrogacy or ART services. Comparative and global perspectives, as in Kirsty Horsey's review of international surrogacy trends, underscore the diversity of regulatory frameworks worldwide and offer lessons for equitable policy design.<sup>19</sup> Yet, such analyses often overlook India-specific challenges for queer parents, particularly in navigating legal recognition and social acceptance. Similarly, empirical studies, including Narendra Malhotra et al.'s retrospective ART data<sup>20</sup> and Jaydeep Tank et al.'s survey of

healthcare providers<sup>21</sup>, provide insight into infrastructure, practice and implementation issues but do not address patient experiences of marginalised communities or intersectional barriers.

Social dimensions of parenthood and family formation are addressed in works like Astha Bhatt's study on single women<sup>22</sup>, Patricia Hill Collins' examination of systemic inequalities<sup>23</sup> and Sunita Reddy et al.'s exploration of political and commercial framings of surrogacy.<sup>24</sup> These contributions illuminate stigma,

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success rates. It highlights the rapid expansion of ART services and the need for standardized protocols and a national registry.

<sup>21</sup> Jaydeep Tank and others, 'Voices from Health Care Providers: Assessing the Impact of the Indian Assisted Reproductive Technology (Regulation) Act, 2021 on the Practice of IVF in India' (2023) 73 *Journal of Obstetrics and Gynaecology of India* 301.

The study surveys medical professionals to assess the impact of India's ART (Regulation) Act, 2021 on IVF practices. It highlights healthcare providers' challenges in understanding and implementing the law, emphasizing the need for clearer guidelines to ensure ART services remain accessible and effective.

<sup>22</sup> Astha Bhatt, 'Is Single Womanhood Perceived a Deviation in India?' (Freie Universität, Department of Political and Social Sciences, Institute of Sociology 2020) <<http://rgdoi.net/10.13140/RG.2.2.25840.17928>> accessed 8 October 2025.

The article explores how single women in India experience societal perceptions of their singlehood, highlighting a gap between their positive self-perceptions and prevailing social stigma. Using interviews with women aged 35–60, the study illuminates coping strategies and the social pressures faced by widowed, divorced, never-married, and separated women.

<sup>23</sup> Patricia Hill Collins, *Another Kind of Public Education: Race, Schools, the Media, and Democratic Possibilities* (Beacon Press 2009).

The book examines how race, education, and media intersect to perpetuate systemic inequalities, highlighting the subtle yet pervasive influence of "color-blind racism." It emphasizes the role of public education in either reinforcing or challenging these inequities and advocates for a system that fosters critical consciousness and democratic engagement.

<sup>24</sup> Sunita Reddy and others, 'Surrogacy in India: Political and Commercial Framings' in

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<sup>17</sup> Madhusree Jana and Prabha Kotiswaran, 'Legal (Dis)Orders: A Feminist Assessment of India's Assisted Reproductive Technology and Surrogacy Laws' (2025) 6 *Amicus Curiae* 300. The article critically examines the ART and Surrogacy Acts of 2021, highlighting how restrictive, altruism-based provisions undermine women's reproductive autonomy and labour rights. It combines constitutional analysis with empirical insights, revealing the laws' unintended consequences, including underground and potentially exploitative reproductive practices.

<sup>18</sup> Kashyap and Tripathi (n 7). The article critically examines India's 2021 Surrogacy Act, highlighting its restrictive provisions and exclusion of non-heteronormative family structures. It emphasizes how the law perpetuates patriarchal norms and limits reproductive rights, particularly for LGBTQ+ individuals.

<sup>19</sup> Horsey (n 16). The article provides a comprehensive comparative overview of surrogacy regulations worldwide, highlighting the diversity of national legal frameworks and their implications for practice, ethics, and the experiences of those involved. It contributes to the literature by analyzing reforms, such as the UK's ongoing legal review, and situates these developments within broader debates on reproductive rights and justice.

<sup>20</sup> Narendra Malhotra and others, 'Assisted Reproductive Technology in India: A 3 Year Retrospective Data Analysis' (2013) 6 *Journal of Human Reproductive Sciences* 235.

The study provides empirical insights into ART trends across India, including the growth of ART centers, the number of cycles, and

social assumptions and structural inequities affecting family formation. However, they largely ignore LGBTQ+ experiences and intersectional factors such as caste, class, region and disability, leaving a gap in understanding how these variables interact with legal and institutional structures. Sriraam's *Revitalising Adoption Laws* analyses India's adoption legislation, tracing its evolution and assessing its effectiveness in facilitating adoption. The article highlights gaps and inefficiencies in the legal framework, advocating for reforms to create a more streamlined and inclusive adoption process. However, it does not specifically address the experiences of LGBTQ+ individuals or other marginalised communities navigating adoption, leaving an important intersectional gap in the literature.<sup>25</sup>

Feminist critiques of surrogacy legislation, such as Sneha Banerjee and Prabha Kotiswaran's *Divine Labours, Devalued Work*,<sup>26</sup> further stress the need for safeguarding surrogate rights, economic justice and ethical oversight. Yet, like much of the literature, these analyses stop short of examining operational pathways for inclusive surrogacy access that balance surrogate protection with the rights of queer and single parents. Taken together, this body of literature highlights significant insights into surrogacy regulation, ART infrastructure, and socio-legal implications. At the same time, it consistently overlooks the lived experiences of LGBTQ+ individuals, single parents and other marginalised groups, as well as the intersectional and systemic barriers they encounter. This underscores the need for

a focused examination of these gaps, forming the foundation for the next section on research gaps.

### Rationale for the Study

Most existing critiques of the Surrogacy (Regulation) Act, 2021 remain primarily doctrinal, focusing on statutory text, eligibility criteria, prohibitions, regulatory mechanisms and constitutional principles such as equality, privacy and dignity. While these analyses provide valuable insight into what the law prescribes, they largely overlook the lived realities of those affected, particularly LGBTQ+ individuals and single prospective parents. Consequently, the practical consequences of statutory exclusion, i.e. social, administrative and familial, remain underexplored.

#### • Recognition Gaps:

- Legal recognition: By excluding LGBTQ+ individuals, single men and unmarried women from domestic surrogacy, the Act creates substantial barriers to legal parentage. Even when intended parents pursue surrogacy abroad, Indian law provides no clear mechanism for recognising them as the child's legal parents, leading to delays or complications in obtaining birth certificates, passports and other official documents.<sup>27</sup> These gaps can impede children's rights to inheritance, healthcare and social benefits, while generating uncertainty for parents. In contrast, jurisdictions such as the UK and Canada offer structured legal frameworks for recognising LGBTQ+ and single parents, highlighting a significant gap between India's statutory regime and constitutional principles of equality, dignity and family autonomy.<sup>28</sup>
- Social recognition: Social acknowledgement of LGBTQ+ families in India remains limited. Although courts increasingly affirm the legitimacy of 'chosen families' and recognise the freedom to form familial bonds under Article 21, institutional and societal barriers persist.<sup>29</sup> Administrative hurdles often prevent LGBTQ+ parents

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Sayani Mitra, Silke Schicktanz and Tulsi Patel (eds), *Cross-Cultural Comparisons on Surrogacy and Egg Donation* (Springer International Publishing 2018) <[http://link.springer.com/10.1007/978-3-319-78670-4\\_8](http://link.springer.com/10.1007/978-3-319-78670-4_8)> accessed 8 October 2025.

The article examines India's shift from unregulated commercial surrogacy to a legal framework permitting only altruistic surrogacy for Indian couples. It highlights the political and commercial forces shaping these regulations and the ethical tensions inherent in policy decisions.

<sup>25</sup> Sangeetha Sriraam, 'Revitalizing Adoption Laws' (2022) 6 *Indian Law Review* 110.

<sup>26</sup> Sneha Banerjee and Prabha Kotiswaran, 'Divine Labours, Devalued Work: The Continuing Saga of India's Surrogacy Regulation' (2021) 5 *Indian Law Review* 85.

The article critically examines India's Surrogacy (Regulation) Bill, 2019, highlighting its limited understanding of surrogacy complexities, inadequate safeguards, and insufficient compensation for surrogate women. It emphasizes the need for legal frameworks that respect surrogates' rights and economic justice.

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<sup>27</sup> Dr Souvik Chatterji, Mrs. Moumala Bhattacharjee, and Samrat Samaddar, 'Examination of Legally Recognized Parental Rights of the LGBT Community in India' (2023) 10 *International Journal of Innovative Research in Technology* 94.

<sup>28</sup> Poorvi Chothani, 'Surrogacy Abroad: Legal Pathways and Challenges for Indian Couples Seeking Parenthood Beyond Borders' *The Economic Times* (14 July 2025) <<https://economictimes.indiatimes.com/industry/healthcare/biotech/healthcare/the-first-90-days-a-doctors-checklist-for-people-newly-diagnosed-with-type-2-diabetes/articleshow/124226471.cms>> accessed 8 October 2025.

<sup>29</sup> *M A v Superintendent of Police & Others*, [2025] SCC OnLine 2542 (Mad).

from being listed on official documents, and children of queer parents may face challenges in accessing education, healthcare, and inheritance rights.<sup>30</sup>

- Cross-border recognition: Many LGBTQ+ and single parents turn to international surrogacy due to domestic prohibitions. However, Indian authorities often fail to automatically recognise their parental rights, resulting in delays or refusals in issuing birth certificates, passports and other documentation. Courts occasionally intervene, but remedies are inconsistent. Comparative jurisdictions, such as the UK, have formal mechanisms for cross-border surrogacy recognition, underscoring systemic gaps in India.<sup>31</sup>
- Intersectional Barriers: Legal exclusion under the Surrogacy Act interacts with multiple social identities, including sexual orientation, marital status, citizenship, disability, caste and socioeconomic status, creating compounded disadvantages. LGBTQ+ single parents, particularly NRIs, face heightened challenges in cross-border recognition and documentation, while individuals with disabilities or health conditions encounter additional barriers in accessing ART. Socioeconomic privilege further mediates access, as surrogacy remains prohibitively expensive for lower-income individuals. An intersectional lens highlights how legal and systemic barriers intersect with social and economic inequalities, emphasising the

need for nuanced policy reform beyond formal statutory amendments.<sup>32</sup>

- Systemic Capacity: Even if statutory reforms expanded access for LGBTQ+ and single parents, India's existing regulatory and institutional framework may be ill-equipped to implement such changes. Registered clinics are limited and concentrated in urban centres, raising questions of equitable access.<sup>33</sup> Oversight mechanisms, including Surrogacy Boards and Ethics Committees, are oriented toward heteronormative married couples and often lack expertise or protocols to manage diverse family forms.<sup>34</sup> Registrars, courts and social workers frequently receive minimal training on recognising non-traditional families, resulting in administrative delays and inconsistent application of policy. Existing literature rarely examines whether infrastructure and human resources are adequate to implement inclusive reforms realistically.<sup>35</sup>
- Operational Reform Gaps: While much scholarship critiques the Surrogacy Act, few analyses propose concrete, operational pathways that balance surrogate protection with expanded access for LGBTQ+ and single parents. Key questions remain, such as how surrogate rights and welfare can be safeguarded while recognising diverse families. Comparative jurisdictions, including Canada, the UK and the USA, offer instructive models combining legal parentage recognition, ethical oversight and regulated agency frameworks. Adapting these lessons to India requires attention to socio-legal realities, administrative capacity, cultural attitudes and healthcare infrastructure. Potential reforms could include read-downs of exclusionary provisions, targeted statutory amendments or regulatory innovations coupled with robust oversight and training. Without such operational proposals, the discourse remains largely aspirational, highlighting a critical gap in scholarship and policy planning.<sup>36</sup> Building on the gaps in existing literature and the limitations of current legal and institutional frameworks,

<sup>30</sup> Gaurang Narayan and others, 'The Surrogacy Regulation Act of 2021: A Right Step Towards an Egalitarian and Inclusive Society?' [2023] Cureus <<https://www.cureus.com/articles/148645-the-surrogacy-regulation-act-of-2021-a-right-step-towards-an-egalitarian-and-inclusive-society>> accessed 3 June 2025.

<sup>31</sup> U Sudhakar Reddy, Read more at., and [http://timesofindia.indiatimes.com/articleshow/124167642.cms?&utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/124167642.cms?&utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst), 'ED Raids Clinics, Seizes Evidence in Illegal Surrogacy Racket' *The Times of India* (27 September 2025) <<https://timesofindia.indiatimes.com/city/hyderabad/ed-raids-clinics-seizes-evidence-in-illegal-surrogacy-racket/articleshow/124167642.cms?>> accessed 8 October 2025; 'Why Exclude Single Women from Opting for Surrogacy: Delhi HC' *The Hindu* (16 October 2023) <<https://www.thehindu.com/news/cities/Delhi/why-exclude-single-women-from-opting-for-surrogacy-delhi-hc/article67426774.ece>> accessed 8 October 2025.

<sup>32</sup> Dipika Jain and Shampa Sengupta, 'Reproductive Rights and Disability Rights through an Intersectional Analysis' (2021) 12 *Jindal Global Law Review* 337; Hinduja S and Dr JO Jeryda Gnanajane Eljo, 'Redefining Motherhood in India: A Feminist and Intersectional Perspective on Maternal Identities and Social Change' <<https://zenodo.org/doi/10.5281/zenodo.15743580>> accessed 8 October 2025.

<sup>33</sup> Malhotra and others (n 20).

<sup>34</sup> Horsey (n 16).

<sup>35</sup> Jana and Kotiswaran (n 17).

<sup>36</sup> Sandeep Kumar Sharma and Narendra Bahadur Singh, 'Legal Recognition and Rights of Live-in Partnerships: A Judicial Perspective in India' (2024) 6 *International Journal of Law, Policy and Social Review*.

the study now formulates targeted research questions to explore the experiences of LGBTQ+ and single parents, systemic preparedness, and pathways for inclusive surrogacy reform.

### Framework of Inquiry and Methodology:

This study examines queer parenthood in India against the backdrop of constitutional recognition of LGBTQ+ rights and the exclusionary provisions of the Surrogacy (Regulation) Act, 2021. It focuses on how queer families are made invisible in law, policy and practice. To address this, the study examines four interlinked dimensions. First, it investigates parentage recognition, asking how the exclusion of queer intended parents from the surrogacy framework affects the conferment of legal parenthood, issuance of birth certificates and access to other vital records. Second, it considers intersectionality, analysing how queerness intersects with caste, class, regional disparities and socioeconomic status to create uneven access to surrogacy and shape the vulnerabilities of surrogate women. Third, it examines policy reform pathways, asking what statutory amendments and institutional safeguards could reconcile surrogate protection with inclusive recognition of diverse family forms. Finally, the study probes system preparedness, assessing whether healthcare institutions, ART clinics and regulatory boards are structurally and administratively equipped to meet the needs of queer intended parents. These questions are interdependent, collectively illuminating the multiple layers through which queer families experience exclusion, such as law denying recognition, social structures deepening disadvantage, policy lagging behind constitutional principles and institutions ill-prepared to implement reform.

To answer these questions, the study uses a combined methodology of doctrinal, socio-legal and comparative approaches. The doctrinal approach reviews statutes, regulations and court decisions, focusing on provisions affecting LGBTQ+ and single parents. The socio-legal approach looks at real-world experiences of parents, institutional practices and social recognition, using case studies, media reports, NGO publications and secondary literature to highlight barriers. The comparative approach examines laws in Canada, the UK and South Africa to see how other countries allow LGBTQ+ and single parents access to surrogacy while protecting surrogates. Using these three approaches together helps identify gaps in law, policy and practice and suggest reforms that are practical, inclusive and legally sound. With the research questions and methodology set, the study now examines parentage and legal recognition, the first key area for understanding the challenges faced by queer intended parents in India.

### CONSTRUCTING LEGAL PARENTHOOD - RECOGNITION AND EXCLUSION:

Parenthood in India is largely defined through statutory frameworks that assume a heteronormative, marital model. The Surrogacy (Regulation) Act, 2021 (SRA) grants legal parentage only to the 'intending parents' specified in a surrogacy agreement, who must be a legally married heterosexual

couple.<sup>37</sup> Surrogate mothers and gamete donors are explicitly denied parental rights once the child is born. By excluding LGBTQ+ individuals, single parents and unmarried couples, the SRA leaves children born to these groups via domestic surrogacy without statutory recognition. The law was designed to prevent the exploitation of economically vulnerable surrogate mothers and to ensure children are raised within what legislators deemed a 'stable family unit'.<sup>38</sup> Parliamentary debates emphasised that surrogacy is intended for 'infertile married couples' and aimed to protect traditional family structures. Even after the *Navtej Singh Johar* judgment decriminalized homosexuality, lawmakers continued to equate 'family' with heterosexual marriage, making the exclusion of LGBTQ+ and single parents a socio-cultural policy choice rather than a legal necessity.<sup>39</sup>

The Assisted Reproductive Technology (Regulation) Act, 2021 (ART Act) regulates ART procedures, including IVF, gamete donation and embryo transfer, but does not independently confer parentage. Parenthood under ART is recognised only when aligned with the SRA or within traditional marital contexts. LGBTQ+ individuals and single men are not contemplated, and there is no statutory route for recognising them as parents domestically or abroad.<sup>40</sup> Legal recognition in such cases depends on other frameworks, such as the Registration of Births and Deaths Act, 1969 (RBD Act), and adoption or guardianship laws like the Hindu Adoption and Maintenance Act, 1956 and the Guardians and Wards Act, 1890. Administrative consequences illustrate the practical impact of this exclusion.<sup>41</sup> The RBD Act requires all births to be registered with parental details. Birth certificates record the

<sup>37</sup> Krishnadas Rajagopal, 'Same Sex Couples, Live-in Partners Not Included in Surrogacy and Assisted Reproduction Laws, Says Govt. in Supreme Court' *The Hindu* (9 May 2023) <<https://www.thehindu.com/news/national/same-sex-couples-live-in-partners-not-included-in-surrogacy-and-assisted-reproduction-laws-says-govt-in-supreme-court/article66831323.ece>> accessed 8 October 2025.

<sup>38</sup> Jana and Kotiswaran (n 17); The Surrogacy (Regulation) Act, 2021 ss 3, 4.

<sup>39</sup> 'Report of the Select Committee on the Surrogacy (Regulation) Bill, 2019' <[https://prsindia.org/files/bills\\_acts/bills\\_parliament/2019/Select%20Comm%20Report-%20Surrogacy%20Bill.pdf?>](https://prsindia.org/files/bills_acts/bills_parliament/2019/Select%20Comm%20Report-%20Surrogacy%20Bill.pdf?>); Swati Gola, 'One Step Forward or One Step Back? Autonomy, Agency and Surrogates in the Indian Surrogacy (Regulation) Bill 2019' (2021) 17 *International Journal of Law in Context* 58.

<sup>40</sup> The Assisted Reproductive Technology (Regulation) Act, 2021 ss 12–36.

<sup>41</sup> Rajagopal (n 37).

names of the father and mother, but for children born via surrogacy, registrars rely on SRA recognition. Since the Act recognises only married heterosexual couples, registrars may refuse or delay issuing certificates for children of same-sex couples or single parents.<sup>42</sup>

Cross-border surrogacy adds further complexity, as Indian authorities often apply SRA eligibility criteria when issuing passports, Aadhaar cards or other documentation. Families are frequently dependent on judicial remedies such as guardianship orders or habeas corpus petitions, which are ad hoc, case-specific and dependent on access to legal resources, creating legal invisibility for both children and parents. These administrative barriers disproportionately affect economically disadvantaged families.<sup>43</sup> Judicial interventions have begun to address these gaps. Courts in Delhi, Kerala and other states have allowed same-sex or single intended parents to be listed on birth certificates and passports. In *Supriyo @ Supriya Chakraborty v. Union of India* (2023), the Supreme Court recognised the dignity and autonomy of LGBTQ+ individuals to form familial bonds, cohabit and exercise intimate relationships, laying the groundwork for future recognition of non-traditional families.<sup>44</sup> High courts have also followed suit. In 2025, the Madras High Court recognised the right of a lesbian partner to form a 'chosen family' under Article 21,<sup>45</sup> while the Andhra Pradesh High Court affirmed a transgender woman's parental status.<sup>46</sup> The Kerala High Court further recognised the parentage rights of a transgender couple.<sup>47</sup> These cases illustrate a judicial shift toward inclusivity, even as statutory recognition remains limited.

Thus, India's statutory framework for parentage enforces a heteronormative model of family, systematically excluding LGBTQ+ and single intended parents. Administrative

mechanisms often reinforce these exclusions, and judicial remedies, while progressive, are ad hoc and inconsistent. This legal and administrative invisibility limits access to vital records, social benefits and legal protections, underscoring the urgent need for inclusive reforms in both statutory law and institutional practice. Having established how statutory and administrative frameworks restrict parentage recognition for queer and single parents, the study now turns to the intersectional barriers that shape access to surrogacy, highlighting the compounded social, economic and regional inequalities faced by non-traditional families.

### MAPPING INTERSECTIONAL EXCLUSIONS IN SURROGACY FRAMEWORKS:

Access to surrogacy in India is shaped not only by law but by intersecting social structures, including caste, class, gender and geography. The Surrogacy (Regulation) Act, 2021, formally excludes LGBTQ+ individuals and single parents, but in practice, urban and economically privileged queer individuals can circumvent these restrictions through cross-border arrangements or private ART clinics abroad. By contrast, queer individuals from non-metropolitan areas or lower-income backgrounds face compounded barriers, making their parenthood aspirations doubly invisible, i.e. first through statutory exclusion and then through structural constraints. Surrogate women are predominantly drawn from rural, lower-caste or working-class communities, often entering surrogacy under conditions of limited autonomy and economic coercion. This stratification illustrates that surrogacy in India is as much a social and economic phenomenon as a legal or medical one. Meaning thereby that even if eligibility were expanded, intersectional inequalities would continue to shape who can realistically access assisted reproduction.<sup>48</sup>

Academic literature underscores these inequalities. Early studies emphasised reproductive exploitation, highlighting the limited choice and marginalisation of surrogate women.<sup>49</sup> Other research presents a more nuanced perspective, recognising arrangements that are 'mutually advantageous,' though marked by stark power imbalances.<sup>50</sup> Surrogate women themselves are frequently absent from media and scholarly narratives, leaving their perspectives underexplored. Geography and economic capacity critically shape access since ART clinics are

<sup>42</sup> Arun Kumar & Anr v Inspector General of Registration & Ors, W P (MD) No 4125 of 2019; Kashyap and Tripathi (n 7).

<sup>43</sup> Lindsay B Gezinski and others, 'Commissioning Parents' Experiences with International Surrogacy: A Qualitative Study' (2018) 43 Health & Social Work 175; Inderpal Singh, 'Surrogacy in India: The Fight for Inclusivity and Fundamental Rights in Parenthood' (*The Probe*, 8 March 2024) <<https://theprobe.in/stories/surrogacy-in-india-the-fight-for-inclusivity-and-fundamental-rights-in-parenthood-4317421>> accessed 11 July 2025.

<sup>44</sup> *Supriyo @ Supriya Chakraborty v Union of India*, WP(C) No 1011/2022.

<sup>45</sup> *M A v Superintendent of Police & Others*, (n 29).

<sup>46</sup> *Viswanathan Krishna Murthy v The State of Andhra Pradesh and Another*, [2025] SCC OnLine 2281 (AP).

<sup>47</sup> *Zahhad v State of Kerala*, [2025] SCC OnLine 3510 (Ker).

<sup>48</sup> Jeffrey Kirby, 'Transnational Gestational Surrogacy: Does It Have to Be Exploitative?' (2014) 14 *The American Journal of Bioethics* 24.

<sup>49</sup> Louise Anna Helena Ramskold and Marcus Paul Posner, 'Commercial Surrogacy: How Provisions of Monetary Remuneration and Powers of International Law Can Prevent Exploitation of Gestational Surrogates' (2013) 39 *Journal of Medical Ethics* 397.

<sup>50</sup> Damien Riggs and Clemence Due, *A Critical Approach to Surrogacy: Reproductive Desires and Demands* (Routledge 2019).

concentrated in urban centres, with costs prohibitive for most non-elite individuals.<sup>51</sup> Caste hierarchies further mediate social legitimacy and family support, amplifying disadvantages for marginalized-caste queer persons. Empirical evidence reinforces these observations. Surrogate demographics indicate that most have at least a secondary education, prior employment and family incomes above the extreme poverty line, reflecting a lower to lower-middle income background rather than absolute deprivation.<sup>52</sup> Nonetheless, economic and social pressures constrain real choice, as many surrogates take up reproductive labour due to family expectations or financial necessity.<sup>53</sup> Following the 2021 ban on commercial surrogacy, these pressures persist, often shifting arrangements underground or intensifying altruistic obligations, with women expected to bear children for relatives under emotional or patriarchal pressure. Feminist theory provides a lens to understand these dynamics. Firestone highlighted artificial reproduction as a means to reclaim autonomy over fertility,<sup>54</sup> while de Beauvoir observed that technological empowerment can coexist with societal control.<sup>55</sup> In India, financial incentives for surrogacy occur within structural constraints, raising questions about genuine choice and autonomy. Thus, empowerment narratives must be tempered by recognition of coercion, familial expectations and economic dependence.<sup>56</sup> NGO and advocacy reports corroborate structural disparities. Sama's *Birthing a Market*

(2012),<sup>57</sup> CSR fieldwork in Anand, Surat and Jamnagar,<sup>58</sup> and Human Rights Watch (2012)<sup>59</sup> document that surrogate women predominantly come from marginalised backgrounds, while intended parents are largely urban and upper-class. Opaque contracts, limited agency and ethical concerns persist, with the 2021 altruistic surrogacy framework sometimes intensifying informal pressures or driving arrangements underground. Ethnographic research further illuminates emotional, familial and clinic-based pressures shaping surrogate decision-making.<sup>60</sup> Thus, intersectional barriers, i.e. caste, class, regional disparities and social capital, interact with statutory exclusion to produce uneven access to surrogacy. Even if the law were amended to include LGBTQ+ and single parents, participation would remain stratified. Upper-class and urban queer individuals would continue to benefit disproportionately, while rural, lower-income or marginalized-caste individuals would face persistent exclusion. Surrogate women remain concentrated among vulnerable communities, with financial, familial and social pressures constraining autonomy. Legal reform alone cannot ensure equitable access since meaningful inclusion requires addressing entrenched structural inequalities that determine who can give, receive and benefit from reproductive labour.<sup>61</sup>

#### GLOBAL LESSONS AND POLICY DIRECTIONS FOR INDIA:

The challenges faced by LGBTQ+ and single intended parents in India, outlined in the preceding sections, underscore both statutory and structural barriers to inclusive parentage. To identify practical and legally feasible reform pathways, it is instructive to examine how other jurisdictions navigate similar issues. Effective surrogacy regulation must reconcile two core objectives, i.e. protecting surrogate women from exploitation

<sup>51</sup> Prathima Tholeti and others, 'Fertility Care in Low and Middle Income Countries: The Landscape of Assisted Reproductive Technology Access in India' (2024) 5 *Reproduction and Fertility* e240079.

<sup>52</sup> Virginie Rozée, Sayeed Unisa and Elise de La Rochebrochard, 'Sociodemographic Characteristics of 96 Indian Surrogates: Are They Disadvantaged Compared with the General Population?' (2019) 14 *PLoS ONE* e0214097.

<sup>53</sup> Sheela Saravanan, *A Transnational Feminist View of Surrogacy Biomarkets in India* (Springer Singapore 2018).

<sup>54</sup> Shulamith Firestone, *The Dialectic of Sex: The Case for Feminist Revolution* (1. ed, Farrar, Straus and Giroux 1970).

<sup>55</sup> Debra Bergoffen and Megan Burke, 'Simone de Beauvoir' in Edward N Zalta and Uri Nodelman (eds), *The Stanford Encyclopedia of Philosophy* (Fall 2024, Metaphysics Research Lab, Stanford University 2024) <<https://plato.stanford.edu/archives/fall2024/entries/beauvoir/>> accessed 8 October 2025.

<sup>56</sup> Zairu Nisha, 'Negotiating "Surrogate Mothering" and Women's Freedom' (2022) 14 *Asian Bioethics Review* 271.

<sup>57</sup> 'Birthing A Market A Study on Commercial Surrogacy' (Sama-Resource Group for Women and Health 2012) <<https://feministlawarchives.pldindia.org/wp-content/uploads/SAMA-birthing-a-market-.pdf?>>>.

<sup>58</sup> 'Surrogate Motherhood-Ethical or Commercial' (Centre for Social Research (CSR) 2017) <<https://archive.nyu.edu/bitstream/2451/34217/2/Surrogacy-Motherhood-Ethical-or-Commercial-Delhi%26Mumbai.pdf>>.

<sup>59</sup> Human Rights Watch, 'World Report 2012: India', *World Report 2012* (2012) <<https://www.hrw.org/world-report/2012/country-chapters/india>> accessed 8 October 2025.

<sup>60</sup> Pande (n 5).

<sup>61</sup> Bronwyn Parry and Rakhi Ghoshal, 'Regulation of Surrogacy in India: Whenceforth Now?' (2018) 3 *BMJ Global Health* e000986.

while enabling inclusive access for diverse family forms. The Surrogacy (Regulation) Act, 2021, currently prioritises protection at the expense of inclusivity, restricting parenthood to heterosexual married couples under the pretext of ethics and 'Indian values. Comparative experiences from other jurisdictions show that these goals can coexist, with carefully designed legislation and judicial oversight ensuring both. The experiences of countries such as South Africa, the United Kingdom and Canada reveal models that balance surrogate protection with broader access to diverse family forms, offering valuable lessons for India's evolving surrogacy framework.

### Comparative Perspectives on Surrogacy Regulation:

South Africa offers a rights-based approach under Chapter 19 of the Children's Act, 2005. Surrogacy agreements must be written and approved by the High Court before fertilisation, providing judicial oversight that safeguards both surrogate and commissioning parents. Only altruistic surrogacy is allowed, with compensation limited to reasonable medical and related expenses. Once the court confirms the agreement, commissioning parents are recognised as legal parents from birth, and the surrogate relinquishes all parental rights.<sup>62</sup> The system does not restrict access based on marital status or sexual orientation, although genetic contribution requirements and domicile conditions create practical limitations.<sup>63</sup> South African courts have granted parental orders to same-sex couples, demonstrating recognition of diverse families while maintaining surrogate protection.<sup>64</sup>

The United Kingdom balances regulation, autonomy and post-birth recognition. The Surrogacy Arrangements Act, 1985, prohibits commercial surrogacy, while the Human Fertilisation and Embryology Acts, 1990, 2008 and subsequent Parental Order Regulations, 2018, operationalise inclusive access.<sup>65</sup> Gender-neutral definitions allow same-sex couples, unmarried partners and single parents to obtain parental orders, a court-issued mechanism transferring legal parenthood from the surrogate to the intended parents. While the surrogate remains the legal mother at birth, parental orders ensure full rights for

intended parents once issued.<sup>66</sup> The Law Commission of England and Wales (2023) has proposed recognising intended parents from birth, reducing legal uncertainty while safeguarding surrogate autonomy through pre-conception screening, counselling and informed consent.<sup>67</sup>

Canada combines federal restrictions with provincial flexibility. The federal Assisted Human Reproduction Act, 2004, permits only altruistic surrogacy and prohibits commercial payments beyond reasonable expenses. Parentage is determined provincially, allowing inclusive recognition.<sup>68</sup> Ontario's All Families Are Equal Act, 2016 allows intended parents, including same-sex couples and single individuals, to be listed directly on a birth certificate without a court order, provided there is a pre-conception agreement, independent legal advice and post-birth consent from the surrogate.<sup>69</sup> British Columbia's Family Law Act, 2011, similarly enables recognition of multiple parents in defined circumstances. These provincial innovations demonstrate that ethical safeguards and inclusive access can coexist.<sup>70</sup>

These comparative models demonstrate that India can achieve the dual objectives of protecting surrogate women and ensuring inclusive access for diverse families. Key principles such as judicial oversight, pre and post-birth counselling, clear parentage pathways, and gender and marital-status-neutral definitions, provide concrete guidance for reform. Building on these lessons, the next step for India involves translating these principles into actionable statutory language. The following section explores how India's surrogacy law could be restructured with provisions that maintain gender and marital status neutrality, ensuring that diverse intended parents can be recognised from the outset while maintaining safeguards for surrogate welfare.

### Toward Gender-Neutral and Inclusive Surrogacy Legislation:

Building on lessons from comparative jurisdictions, India's surrogacy law can be reformed to ensure both inclusivity and surrogate protection. Achieving this requires careful attention to

<sup>62</sup> The Children's Act, 2005 (Republic of South Africa) ss 292–303.

<sup>63</sup> 'Navigating the Legal Landscape of Surrogacy in South Africa: Current Law and Recent Developments.' (*Family Laws South Africa*, 14 July 2024) <<https://familylaws.co.za/south-african-surrogacy-law-insights/>> accessed 8 October 2025.

<sup>64</sup> *AB v Minister of Social Development*, (2017) 3 SA 570 (CC); *Ex parte WH*, 2011 6 SA 514 (GNP); *Re A*, [2015] EWHC 1756 (Fam).

<sup>65</sup> The Surrogacy Arrangements Act, 1985 [UK]; Human Fertilisation and Embryology (Parental Orders) Regulations, 2018.

<sup>66</sup> *Re Z (A Child) (No 2)*, [2016] EWHC 1191 (Fam); *Re X*, [2020] EWFC 39.

<sup>67</sup> 'Building Families Through Surrogacy: A New Law Volume II: Full Report' (Law Commission of England and Wales 2023) <[https://www.scotlawcom.gov.uk/files/9416/8001/1648/2\\_Surrogacy\\_full\\_report.pdf](https://www.scotlawcom.gov.uk/files/9416/8001/1648/2_Surrogacy_full_report.pdf)>.

<sup>68</sup> The Assisted Human Reproduction Act, 2004 [Canada].

<sup>69</sup> All Families Are Equal Act (Parentage and Related Registrations Statute Law Amendment), 2016 (Ontario) (SO 2016, c 23).

<sup>70</sup> The British Columbia's Family Law Act, 2011; 'Surrogacy Law - British Columbia' (*Surrogacy in Canada Online*) <<https://surrogacy.ca/surrogacy-law-british-columbia/>> accessed 8 October 2025.

statutory language, ensuring that eligibility and parentage provisions maintain gender and marital status neutrality and are intent-focused, while retaining robust safeguards for surrogate women. Comparative experiences from South Africa, the UK and Canada provide instructive models for balancing these objectives. In South Africa, the Children's Act, 2005 mandates pre-fertilisation judicial confirmation of surrogacy agreements, providing transparency and protection for both surrogate and commissioning parents. Importantly, the law does not restrict eligibility to married or heterosexual couples, although a genetic-link condition limits access for some. India could adopt South Africa's procedural rigour while avoiding exclusionary conditions, embracing a broader, rights-based conception of family aligned with constitutional principles of dignity and equality, as affirmed in the *Navtej Singh Johar* and *Supriyo*'s case.

The UK model demonstrates that inclusive parental recognition can coexist with strong surrogate protections. Through gender and relationship-neutral drafting in the Human Fertilisation and Embryology Acts, and judicial oversight via parental orders, intended parents (including same-sex couples, unmarried partners and single individuals) are legally recognised post-birth, while the surrogate's autonomy and consent are safeguarded. Reforms proposed by the Law Commission of England and Wales (2023) further suggest pathways to legal parenthood from birth, balancing consent, intention and the best interests of the child, elements currently absent from India's Surrogacy (Regulation) Act, 2021. Canada offers additional lessons in combining altruistic surrogacy with inclusive recognition. Federal prohibitions on commercial surrogacy coexist with provincial frameworks that allow intended parents, including LGBTQ+ and single individuals, to be recorded directly on birth certificates, contingent on pre-conception agreements, independent legal advice, and post-birth consent from the surrogate. India could adopt a similar approach by maintaining altruistic, regulated arrangements while decentralising certain administrative parentage processes to reduce litigation and ensure dignified recognition of diverse families.

Currently, India's Surrogacy (Regulation) Act, 2021, defines 'intending couple' as a legally married man and woman, excluding LGBTQ+ persons, single individuals and unmarried partners. This narrow, heteronormative framework conflicts with constitutional guarantees of equality, dignity and autonomy under Articles 14, 15 and 21. Scholars, including Prabha Kotiswaran, Madhusree Jana and Soumya Kashyap, have criticised these restrictions as violating principles of non-discrimination and substantive equality, calling instead for intent-based definitions of parentage.<sup>71</sup> Ethnographic research by Amrita Pande reinforces the need to simultaneously safeguard surrogate women through counselling, insurance and fair compensation,<sup>72</sup> while Sangeetha Sriraam emphasises

harmonising surrogacy reforms with broader family law to recognise diverse caregiving structures.<sup>73</sup>

Based on these comparative and scholarly insights, statutory language in India could be redefined as follows. Instead of "a married couple, man and woman, who are medically infertile," the law could define intending parents as "one or more persons, regardless of gender, sexual orientation or marital status, who seek to have a child through surrogacy and assume full legal and parental responsibility upon birth." Terms like 'husband and wife' could be replaced with 'intending parent(s)' or 'partner(s)', reflecting South Africa's and the UK's inclusive frameworks. Corresponding amendments to the Registration of Births and Deaths Act, 1969, would allow birth certificates to record one or more parents without gendered labels, shifting the focus from marital or biological definitions to a rights-based, consent-driven model. Such inclusive drafting would align Indian law with constitutional guarantees and harmonise it with evolving jurisprudence on queer and non-traditional families. It will further create a framework that balances the twin objectives of access and protection, i.e., recognising diverse family forms while safeguarding the welfare, autonomy and dignity of surrogate women. These reforms naturally lead to practical considerations for implementation, which include counselling, insurance, compensation and grievance redressal mechanisms for surrogate mothers.

#### **Safeguarding Surrogate Rights in Inclusive Surrogacy Frameworks:**

Reforming India's surrogacy framework to include LGBTQ+ and single parents cannot be considered meaningful unless the welfare of surrogate women is simultaneously protected. Expanding access without robust safeguards risks reproducing systemic exploitation and undermining the ethical foundation of surrogacy. Surrogate women, often from economically or socially vulnerable backgrounds, face pressures ranging from familial coercion to opaque contractual arrangements. Ensuring informed consent, fair compensation, health protection and grievance mechanisms is therefore essential, not only for ethical compliance but also to enable sustainable, rights-based inclusion for non-traditional intended parents. Without these protections, inclusive parentage remains symbolic, as structural vulnerabilities constrain both surrogate autonomy and equitable access to surrogacy. While the Surrogacy (Regulation) Act, 2021 and the ART (Regulation) Act, 2021 mandate certain protections, these measures are vague and unevenly enforced. Counselling is required to secure consent, yet independent psychological or legal counselling is not mandatory, leaving surrogates susceptible to pressure from family members or intermediaries.<sup>74</sup> Scholars such as Prabha Kotiswaran and the Sama Resource Group emphasise that effective counselling should be impartial, state-accredited and comprehensive,

<sup>71</sup> Jana and Kotiswaran (n 17); Kashyap and Tripathi (n 7).

<sup>72</sup> Pande (n 5).

<sup>73</sup> Sriraam (n 25).

<sup>74</sup> The Surrogacy (Regulation) Act, 2021 s 11; The Assisted Reproductive Technology (Regulation) Act, 2021 s 21.

covering both medical and legal literacy, ensuring surrogates understand the full implications of their decisions.<sup>75</sup>

Health protection is another critical safeguard. The current Acts provide for health insurance for thirty-six months post-delivery, but details regarding coverage, claim procedures and enforcement are unclear. Evidence from field studies indicates that many surrogates do not receive adequate postnatal care, reflecting poor implementation.<sup>76</sup> Comparative models, including Canadian provincial regulations, require comprehensive coverage, including mental health support, suggesting that India could implement enforceable mechanisms, such as a Surrogacy Insurance Fund under the National Surrogacy Board. Compensation in India remains restricted to reimbursement of medical expenses, with commercial surrogacy prohibited. Critics argue that this framework fails to acknowledge surrogate labour and may incentivise informal arrangements.<sup>77</sup> Lessons from South Africa and the UK show that regulated, reasonable compensation, including medical costs and lost wages, can protect surrogates without commercialising reproduction. India could similarly define clear compensation standards to preserve surrogate dignity and autonomy. Grievance redressal mechanisms are also underdeveloped. While the Acts establish National and State Boards, they provide little guidance on complaint procedures, enforcement or recourse for surrogates facing coercion, negligence or non-payment. Experts recommend independent, accessible bodies, such as a Surrogacy Ombudsperson or quasi-judicial cells under State Boards, to receive complaints confidentially and sanction violators, ensuring accountability and legal protection.<sup>78</sup>

Thus, effective reform must integrate inclusive parentage provisions with enforceable surrogate safeguards. Counselling, health coverage, regulated compensation and grievance redressal form the operational and ethical foundation of a just surrogacy system. Without these measures, expanding eligibility to LGBTQ+ and single parents risks perpetuating exploitation and deepening inequities. Intersectional barriers, including class, caste and geography, further underscore that legal recognition alone cannot guarantee equitable access. A coherent reform pathway must simultaneously address recognition, protection and administrative clarity to ensure that the promise of inclusive parenthood does not come at the cost of surrogate welfare or dignity.

#### INSTITUTIONAL READINESS AND IMPLEMENTATION CAPACITY:

<sup>75</sup> Banerjee and Kotiswaran (n 26); 'Birthing A Market A Study on Commercial Surrogacy' (n 57).

<sup>76</sup> Banerjee and Kotiswaran (n 26).

<sup>77</sup> Amrita Pande, *Wombs in Labor: Transnational Commercial Surrogacy in India* (Columbia University Press 2014).

<sup>78</sup> 'Birthing A Market A Study on Commercial Surrogacy' (n 57).

Effective reform of India's surrogacy framework depends not only on inclusive statutory language and surrogate safeguards but also on the preparedness of institutions tasked with implementing these laws. ART clinics, healthcare providers and regulatory boards must possess the infrastructure, expertise and sensitisation to accommodate diverse family forms. Without this, legal rights risk remaining theoretical rather than practical. Institutional readiness is thus a critical determinant of whether inclusive reforms can meaningfully translate into accessible surrogacy services for LGBTQ+ individuals, single parents and other non-traditional families.

#### Administrative and Operational Preparedness of ART and Regulatory Institutions:

Currently, most ART clinics and surrogacy centres operate with administrative and documentary frameworks that implicitly assume heterosexual, married couples as the default intended parents. Application forms, consent documents and medical protocols frequently exclude or confuse single individuals and LGBTQ+ persons, creating bureaucratic and procedural hurdles even where legal provisions might permit inclusion.<sup>79</sup> The institutional preparedness of India's assisted reproduction and surrogacy sector remains uneven despite the enactment of the ART (Regulation) Act, 2021 and the Surrogacy (Regulation) Act, 2021. Before these statutes, the sector was primarily guided by the ICMR's National Guidelines for Accreditation, Supervision and Regulation of ART Clinics in India (2005), which were voluntary and lacked statutory authority.<sup>80</sup> This regulatory gap contributed to the unregulated proliferation of fertility clinics, concentrated in urban hubs such as Delhi, Mumbai, Chennai and Bengaluru.

The establishment of the National ART and Surrogacy Registry (NARTSR) in April 2022 marked a significant step toward formal oversight, yet early registration data highlighted limited compliance. As of 14 May 2023, only 219 ART clinics and 78 ART banks had registered out of 4,446 and 1,179 applications, respectively, while just 122 surrogacy clinics were approved from 854 applications.<sup>81</sup> State-level progress has also been uneven since in Tamil Nadu, only around 20 per cent of approximately 225 clinics had registered with the national system, while in Karnataka, only 57 clinics were listed as of May 2023.<sup>82</sup> Although the NARTSR dashboard now provides

<sup>79</sup> Reddy and others (n 24).

<sup>80</sup> ICMR, 'National Guidelines for Accreditation, Supervision and Regulation of ART Clinics in India' <[https://www.isarindia.net/file/prilim\\_pages.pdf](https://www.isarindia.net/file/prilim_pages.pdf)>.

<sup>81</sup> Tank and others (n 21).

<sup>82</sup> Navya P K, 'Hundreds of ART Clinics, but Only 57 Registered in Karnataka' (*Deccan Herald*, 4 May 2023) <<https://www.deccanherald.com/india/karnataka/hundreds-of-art-clinics-but-only-57-registered-in-karnataka-1215414.html>>

real-time figures showing gradual improvement, these statistics underscore persistent administrative backlogs and compliance challenges. Beyond registration gaps, broader issues of institutional and human resource preparedness persist.<sup>83</sup>

Many clinics continue to function without trained counsellors, standardised protocols or staff sensitised to non-traditional families. Ethnographic research and recent provider surveys highlight ongoing moral gatekeeping by healthcare workers, insufficient legal awareness and implicit biases that reinforce heteronormative norms in service delivery.<sup>84</sup> Meanwhile, the National and State ART and Surrogacy Boards, though notified, exhibit inconsistent operational capacity and monitoring reach. The National Accreditation Board for Hospitals and Healthcare Providers (NABH) has initiated the development of ART-specific accreditation standards to enhance quality control, but implementation remains in progress. Collectively, these findings demonstrate that legal reform alone has not translated into substantive institutional readiness.<sup>85</sup> Without comprehensive training, infrastructural investment and consistent oversight, India's ART ecosystem risks offering only symbolic compliance rather than genuine inclusivity and protection for diverse intended parents and surrogate women.

#### **Institutional Blind Spots in Documentation and Service Provision:**

Building on the discussion of institutional readiness in ART clinics and surrogacy centres, it is essential to examine how administrative and documentation practices can themselves create barriers to inclusion. Even where laws theoretically permit access, heteronormative bureaucratic frameworks, embedded in forms, registration templates and procedural protocols, often operationalise exclusion from the outset. Application and consent forms under the ART (Regulation)

Rules, 2022, Surrogacy (Regulation) Rules, 2022 and the Registration of Births and Deaths Act, 1969 routinely require details of 'husband' and 'wife', assuming a married heterosexual couple as the default. This rigid design leaves no space for same-sex couples, dual mothers or fathers, or single intending parents, effectively enforcing a binary model of family through paperwork rather than law. Judicial interventions have occasionally mitigated these inequities.<sup>86</sup> In *XYZ v. State of Kerala* (2023), the Kerala High Court directed authorities to issue birth certificates without mandating a father's name for children born to single women via ART, recognising that rigid form design infringed on constitutional rights to dignity and privacy.<sup>87</sup> Similarly, in *Shalu Nigam v. Regional Passport Officer* (2016), the Delhi High Court held that a child's travel documents need not compulsorily list the father, affirming rights within bureaucratic processes. However, these remedies remain ad hoc, case-specific and do not address systemic barriers.<sup>88</sup>

Scholars critique the ART and Surrogacy Acts for embedding 'heteronormative assumptions' into both substantive provisions and administrative templates, enforcing a biological-marital model of parenthood. Legal analyses and commentaries further highlight how paternal identifiers in birth and caste certificates perpetuate patriarchal and exclusionary state practices. Beyond forms, the lack of sensitisation among clinic staff, registrars and local health officials compounds exclusion.<sup>89</sup> Studies indicate that reproductive health professionals often receive no training on gender diversity or inclusive documentation, leading to discretionary refusals, procedural delays and inconsistent service delivery.<sup>90</sup> Consequently, even when statutory reforms promise inclusion on paper, entrenched heteronormative documentation systems and untrained administrative intermediaries ensure that access to ART and surrogacy remains uneven. These bureaucratic and operational gaps highlight that legal reform alone is insufficient. True inclusivity requires both gender-neutral forms and systematic sensitisation of staff to diverse family structures, ensuring that LGBTQ+ individuals and single parents can meaningfully exercise their reproductive rights.

accessed 8 October 2025; 'Only 20 Percent of Tamil Nadu Fertility Clinics Enrolled in National Registry' *The Times of India* (3 December 2019)

<<https://timesofindia.indiatimes.com/city/chennai/only-20-of-tn-fertility-clinics-enrolled-in-national-registry/articleshow/72339557.cms?>> accessed 8 October 2025.

<sup>83</sup> Pande (n 77).

<sup>84</sup> Sharmila Rudrappa, *Discounted Life: The Price of Global Surrogacy in India* (NYU Press 2015)

<<https://www.jstor.org/stable/j.ctt15zc5nx>> accessed 8 October 2025.

<sup>85</sup> Sumi Sukanya Dutta, 'Coming Soon: Accreditation Norms for IVF Clinics to "Ensure Quality Service, Best Patient Outcome"' (*ThePrint*, 19 June 2023) <<https://theprint.in/health/coming-soon-accreditation-norms-for-ivf-clinics-to-ensure-quality-service-best-patient-outcome/1632125/>> accessed 8 October 2025.

<sup>86</sup> PTI, 'Requiring Father's Name in Assisted Reproduction Affects Dignity of Mother, Child: Kerala HC' (*ThePrint*, 16 August 2021) <<https://theprint.in/judiciary/requiring-fathers-name-in-assisted-reproduction-affects-dignity-of-mother-child-kerala-hc/716345/>> accessed 8 October 2025.

<sup>87</sup> *X v State of Kerala, WP(C) NO 13622 of 2021*.

<sup>88</sup> *Shalu Nigam v The Regional Passport Officer*, [2016] SCC OnLine 3023 (Del).

<sup>89</sup> Kashyap and Tripathi (n 7).

<sup>90</sup> Mudasir Maqbool and others, 'Inclusive Reproductive Health: Ensuring Equity for All' (2025) 23 *Journal of Sexual and Mental Health* 101678.

### Bridging Policy and Practice through Training, Protocols and Redressal Systems:

Ensuring that surrogacy and ART frameworks function inclusively requires more than statutory reform; it depends on the preparedness of institutions and personnel to implement the law effectively. Even with gender-neutral and marital-status-neutral provisions, gaps in knowledge, awareness and operational protocols among healthcare providers and regulatory boards can undermine the rights of LGBTQ+ and single intending parents. In India, ART clinics, healthcare professionals, and regulatory authorities frequently lack structured training on gender diversity, queer family structures, and non-traditional reproductive arrangements. Studies indicate that reproductive health staff often receive little to no guidance on inclusive practices, resulting in discretionary refusals, procedural delays and inconsistent recognition of parentage.<sup>91</sup> International examples demonstrate the tangible benefits of structured training and clear protocols. South Africa's HIV Clinicians Society has developed gender-affirming healthcare guidelines and community-led training to enhance cultural competence, particularly for transgender and gender-diverse patients. The UK's NHS Confederation introduced an LGBTQ+ Inclusion Framework, combining workforce training, community engagement and robust grievance mechanisms to foster equitable care. Similarly, Canada's Rainbow Health Ontario provides comprehensive guidance for gender-affirming primary care, promoting standardised procedures and accountability.<sup>92</sup> These experiences show that structured training, standardised protocols and accessible grievance redressal significantly improve provider competence, patient satisfaction and equitable access, even while systemic challenges remain.

In India, the ART (Regulation) Rules, 2022 mandate grievance cells and standardised procedures, but these measures remain limited and continue to reflect heteronormative assumptions

about 'intending couples'. Birth registration processes, clinic forms and surrogacy documentation frequently presume heterosexual and married parents, reinforcing exclusionary practices. Integrating structured training on LGBTQ+ inclusion, implementing gender-neutral operational protocols, and establishing functional grievance mechanisms is therefore essential. These measures ensure consistent, rights-compliant recognition of parentage and child welfare, prevent discretionary bias, and translate statutory inclusion into tangible outcomes. Legal reform alone cannot guarantee meaningful inclusion of queer and single parents in surrogacy frameworks. Statutory rights must be matched by institutional readiness, i.e. through training, clear protocols and grievance redressal, to ensure that inclusive laws are practically effective.<sup>93</sup> Without these mechanisms, even well-intentioned reforms risk remaining largely symbolic, leaving LGBTQ+ and non-traditional families invisible in clinical and administrative processes, and undermining the broader goals of equity, child welfare and surrogate protection. Establishing institutional competence is thus the final, indispensable pillar in creating a surrogacy system that is both inclusive and protective.

### CONCLUSION

Queer parenthood in India exists at the intersection of legal recognition and social invisibility. Despite constitutional guarantees of equality, dignity and the right to family life, statutory frameworks continue to marginalise LGBTQ+ and single parents, leaving many children and families in legal limbo. This paradox is reinforced not only by restrictive definitions of 'intending parents' but also by bureaucratic and administrative barriers, documentation practices assuming heterosexual couples, and insufficient institutional capacity. Parentage recognition remains the first site of invisibility, while intersectional factors such as caste, class, geography and socioeconomic status further mediate access to surrogacy. Even well-intentioned reforms will remain partial if systemic readiness is absent, and surrogate welfare cannot be secured without concurrent safeguards such as counselling, insurance and grievance mechanisms. Comparative lessons from South Africa, the UK and Canada show that inclusive statutory language, standardised protocols, provider training and enforceable grievance mechanisms are essential to operationalise rights. These dimensions of legal recognition, intersectional equity, policy reform and institutional preparedness are deeply interconnected. Failure in any area undermines reproductive justice. Reform in India must therefore move beyond formal inclusivity to embrace a rights-based, intersectional reproductive justice framework that addresses the needs of LGBTQ+ and non-traditional families while safeguarding surrogate welfare. Only by aligning legal

<sup>91</sup> Hyunmin Yu and others, 'LGBTQ + Cultural Competency Training for Health Professionals: A Systematic Review' (2023) 23 BMC Medical Education 558.

<sup>92</sup> Anastacia Tomson and others, 'Southern African HIV Clinicians Society Gender-Affirming Healthcare Guideline for South Africa' (2021) 22 Southern African Journal of HIV Medicine <<https://sajhivmed.org.za/index.php/hivmed/article/view/1299>> accessed 8 October 2025; 'Health and Care LGBTQ+ Inclusion Framework' (NHS Confederation, 2025) <<https://www.nhsconfed.org/publications/health-and-care-lgbtq-inclusion-framework>> accessed 8 October 2025; 'Promoting 2SLGBTQI+ Health Equity: Best Practice Guideline' <[https://rnao.ca/sites/rnao-ca/files/bpg/2SLGBTQI\\_BPG\\_June\\_2021.pdf](https://rnao.ca/sites/rnao-ca/files/bpg/2SLGBTQI_BPG_June_2021.pdf)>.

<sup>93</sup> Yu and others (n 91).

reform with social, administrative and systemic realities can queer parenthood in India be recognised not merely on paper, but fully realised in practice.

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