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# **EVOLVING FAMILY LAW IN INDIA: EMPHASIS ON COHABITATION, SURROGACY, AND PARENTHOOD**

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## **ABSTRACT:**

The landscape of family law is continually evolving, reflecting societal changes and emerging family structures. This research delves into three critical areas of modern family law: cohabitation and surrogacy, addressing their legal implications and the challenges faced by individuals within these frameworks.

Cohabitation, as a living arrangement where couples live together without being legally married, has garnered significant attention in family law. This section examines the distinctions between cohabitation and marriage, particularly in legal contexts. Unlike marriage, cohabitation does not universally confer automatic legal rights and obligations. Cohabiting partners often encounter legal ambiguities regarding property rights, inheritance, and financial support upon separation. The study also explores child custody and support issues, highlighting the legal hurdles cohabiting parents face compared to their married counterparts.

Surrogacy, a complex and often contentious area of family law, involves the arrangement where a woman carries and delivers a child for another individual or couple. This section examines the legal frameworks governing surrogacy agreements, focusing on the rights and responsibilities of both intended parents and surrogates. The research highlights the variations in surrogacy laws across jurisdictions, emphasizing the legal intricacies and potential conflicts that arise in cross-border surrogacy arrangements. International legal challenges, including citizenship issues and the enforcement of surrogacy contracts, are explored to underscore the need for comprehensive and harmonized legal standards.

This research underscores the dynamic nature of family law as it adapts to contemporary societal norms and family structures. By examining these areas in detail, this study aims to contribute to the ongoing discourse on family law reforms, advocating for legal frameworks that are inclusive, equitable, and reflective of modern family dynamics.

**Keywords:** Family law, Cohabitation, Surrogacy, Child Custody, Marriage, Parents, Legal Reforms

## **INTRODUCTION:**

One of the main pillars of the legal system, family law, has changed significantly over time to reflect changing family dynamics and society standards. Family law has seen tremendous changes throughout time due to changes in cultural standards, technological breakthroughs, and changing views on what defines a family. Family law has historically focused on matters related to marriage, divorce, child custody, and inheritance, frequently following a traditional conception of family structures. It was based on a traditional conception of the family, which was primarily focused on nuclear families, heterosexual marriage, and biological parenting. However, the 21st century has witnessed profound changes in family dynamics, necessitating a corresponding evolution in family law to address the complexities of contemporary relationships.

The development of non-traditional family structures including cohabitation and blended families, as well as improvements in reproductive technology, have had an impact on the growth of family law. The well-being of the kid is given higher priority in modern family law, which is deviating from conventional assumptions about parental responsibilities. The way that family law is developing is a reflection of the larger cultural movement towards equality, inclusion, and acceptance of all types of families.

## **COHABITATION IN INDIA: LEGAL RECOGNITION AND CHALLENGES**

Cohabitation, where two individuals live together in a consensual, intimate relationship without formal marriage has become increasingly common in India, particularly among urban, educated populations. While societal acceptance has grown, the legal framework remains ambiguous, leaving cohabiting partners vulnerable in matters of property, inheritance, financial support, and child custody. Unlike marriage, which is extensively regulated under personal and secular laws, cohabitation lacks statutory recognition, forcing courts to intervene on a case-by-case basis.

## Legal status of cohabitation in India

### A. Judicial Recognition of Live-in Relationships

Indian courts have gradually acknowledged cohabitation, though without granting it the same legal sanctity as marriage. Key judicial developments include:

1. *Indra Sarma v. V.K.V. Sarma* (2013):

The Supreme Court differentiated between marriage-like cohabitation and casual relationships, ruling that long-term live-in partners could claim maintenance under the Protection of Women from Domestic Violence Act (PWDVA), 2005.<sup>1</sup> The Court laid down five categories of live-in relationships, with only those resembling marriage qualifying for legal protection.

2. *Velusamy v. D. Patchaiammal* (2010)

The Supreme Court held that a live-in relationship would be legally recognized only if:

- i. The couple lived together for a significant period.
- ii. They were legally eligible to marry (i.e., not already married to others).
- iii. They presented themselves as spouses socially.<sup>2</sup>

3. *Badri Prasad v. Dy. Director of Consolidation* (1978)

The Court recognized a 50-year cohabitation as a “valid marriage” under Hindu customs, granting inheritance rights to the surviving partner.<sup>3</sup>

### B. Statutory Recognition Under PWDVA, 2005

The Protection of Women from Domestic Violence Act (PWDVA), 2005, is the only law that explicitly includes live-in relationships under its purview.

- a. Section 2(f): Defines a “domestic relationship” as one where two persons live together in a “shared household,” irrespective of marriage.<sup>4</sup>
- b. Section 2(a): An “aggrieved person” includes women in live-in relationships facing abuse.<sup>5</sup>
- c. Remedies Available: A cohabiting woman can seek “protection orders, residence orders, and monetary relief” under the Act.

However, the PWDVA does not grant automatic inheritance rights, spousal status under personal laws (Hindu, Muslim, Christian, etc.) and paternity presumptions for children born out of cohabitation.

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<sup>1</sup> *Indra Sarma v. V.K.V. Sarma*, (2013) 15 SCC 755.

<sup>2</sup> *D. Velusamy v. D. Patchaiammal*, (2010) 10 SCC 469.

<sup>3</sup> *Badri Prasad v. Dy. Director of Consolidation*, AIR 1978 SC 1557

<sup>4</sup> Protection of Women from Domestic Violence Act, 2005, § 2(f).

<sup>5</sup> *Id.* at § 2(a).

## **Rights and liabilities of cohabiting partners**

### **A. Property and Inheritance Rights**

Unlike married couples, cohabiting partners have no statutory right to each other's property. However, courts have intervened in certain cases:

a. **Constructive Trust Doctrine:**

Courts have applied the constructive trust principle to prevent unjust enrichment. In *Tulsa v. Durghatiya* (2008), the Supreme Court ruled that a woman who contributed to household expenses could claim a share in the property.<sup>6</sup>

b. **Will-Based Inheritance**

A cohabiting partner can inherit only if named in a valid will. Under the Indian Succession Act, 1925, an unwed partner has no automatic succession rights.

### **B. Maintenance and Financial Support**

No Automatic Right to Maintenance unlike divorcees, cohabiting partners cannot claim maintenance under personal laws (e.g., Section 125 CrPC applies only to legally wedded wives).

Exception: Under PWDVA, a woman can seek monetary relief if subjected to domestic violence.

### **C. Child Custody and Legitimacy**

Legitimacy of Children: Under Section 112 of the Indian Evidence Act, 1872, a child born to cohabiting parents is presumed legitimate if born during a "continuing relationship."<sup>7</sup>

Custody Battles: Courts decide custody based on the welfare of the child principle (Guardians and Wards Act, 1890), but cohabiting parents face greater scrutiny than married ones.

## **Challenges faced by cohabiting couples**

### **A. Legal Ambiguities**

No Uniform Law: Unlike marriage, cohabitation lacks codified rights, leading to inconsistent judicial rulings.

Property Disputes: Unregistered partnerships often result in lengthy litigation over asset division.

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<sup>6</sup> *Tulsa v. Durghatiya*, (2008) 4 SCC 520.

<sup>7</sup> Indian Evidence Act, 1872, § 112.

## **B. Social Stigma and Bureaucratic Hurdles**

Police and Administrative Bias: Cohabiting couples often struggle to prove their relationship for legal purposes (e.g., obtaining joint loans, visas).

Family Pressure: Many couples face ostracization, particularly in conservative communities.

## **C. Lack of Financial Security**

No Pension or Insurance Benefits: Unlike spouses, cohabiting partners are excluded from employee benefits.

Tax Disadvantages: Married couples enjoy joint filing benefits; cohabiting partners do not.

## **Comparative perspectives and recommendations**

### **A. Global Approaches to Cohabitation**

UK: The Cohabitation Rights Bill (2022) proposes financial protections for long-term partners.<sup>8</sup>

Canada: Common-law partners have near-equal rights to married couples after one year of cohabitation.<sup>9</sup>

### **B. Proposed Reforms for India**

#### **i. Legislative Recognition**

Enact a Cohabitation Rights Act defining rights in property, maintenance, and inheritance.

#### **ii. Simplified Registration**

Allow couples to register live-in relationships (similar to Delhi's 'Live-in Relationship Registry' proposal).

#### **iii. Inclusion in Personal Laws**

Amend Hindu Marriage Act, Special Marriage Act to include cohabitation clauses.

While Indian courts have taken progressive steps in recognizing cohabitation, legislative gaps persist, leaving partners without adequate legal safeguards. A uniform legal framework, balancing individual autonomy and social realities is urgently needed to protect the rights of cohabiting couples.

<sup>8</sup> Cohabitation Rights Bill [HL] 2022 (UK).

<sup>9</sup> Family Law Act, RSO 1990, c F.3 (Canada).

## **SURROGACY IN INDIA: LEGAL COMPLEXITIES AND ETHICAL DILEMMAS**

Surrogacy, a reproductive arrangement where a woman carries and delivers a child for intended parents has been a contentious issue in Indian family law. Once a global hub for commercial surrogacy due to lax regulations and affordable medical services, India has undergone significant legal reforms to curb exploitation while balancing reproductive rights. The Surrogacy (Regulation) Act, 2021, and the Assisted Reproductive Technology (Regulation) Act, 2021, now govern surrogacy, but ethical dilemmas and legal ambiguities persist.

### **Evolution of surrogacy laws in India**

#### **A. The Unregulated Era (Pre-2015)**

Before 2015, India was a popular destination for commercial surrogacy, attracting foreign couples due to low costs compared to Western countries, advanced medical infrastructure in cities like Mumbai and Delhi and absence of strict laws, allowing clinics to operate with minimal oversight.

However, this led to widespread exploitation of surrogate mothers, including poor compensation (as low as ₹2-3 lakhs per pregnancy), lack of legal safeguards in surrogacy contracts and health risks due to unregulated medical practices.

#### **B. The ICMR Guidelines (2005) and Draft Bill (2016)**

Indian Council of Medical Research (ICMR) Guidelines (2005): Provided basic ethical standards but lacked enforceability.<sup>10</sup>

Surrogacy (Regulation) Bill, 2016: Proposed a ban on commercial surrogacy, permitting only altruistic surrogacy for Indian married couples.

#### **C. The Surrogacy (Regulation) Act, 2021**

The Act, passed after years of debate, introduced strict regulations:

##### **a. Prohibition of Commercial Surrogacy:**

Only altruistic surrogacy (no monetary compensation beyond medical expenses) is allowed.

Commercial surrogacy (paying the surrogate) is a punishable offense (up to 10 years imprisonment).<sup>11</sup>

##### **b. Eligibility Criteria for Intended Parents:**

- Must be Indian, heterosexual, and married for at least 5 years.

<sup>10</sup> ICMR Guidelines on ART Clinics (2005).

<sup>11</sup> Surrogacy (Regulation) Act, 2021, § 4(iii).

- Age restriction: Wife (23-50 years), Husband (26-55 years).
  - Must prove infertility (certified by a district medical board).<sup>12</sup>
- c. Conditions for Surrogates
- Must be a close relative of the intended parents.
  - Married with at least one biological child.
  - Can only be a surrogate once in her lifetime.<sup>13</sup>

## Judicial interventions and global comparisons

### A. Key Indian Judgments

*Baby Manji Yamada v. Union of India* (2008): A Japanese couple's child was stranded in India due to legal disputes. The SC ruled in favour of the child's welfare, allowing emigration.<sup>14</sup>

*Jan Balaz v. Anand Municipality* (2010): A German couple's twins were denied passports. Gujarat HC granted citizenship under Article 14 (right to equality).<sup>15</sup>

### B. Global Surrogacy Laws

Country	Model	Key Features
UK	Altruistic	Only expenses covered; strict regulations
USA	Commercial	Legal in some states (e.g., California).
Canada	Hybrid	Altruistic, but reasonable compensation allowed.

While the 2021 Act curbs exploitation, its exclusionary clauses and unrealistic altruism model need revision. A balanced, rights-based approach learning from global best practices is essential for ethical surrogacy in India.

## PARENTHOOD IN MODERN FAMILY LAW: BEYOND BIOLOGICAL TIES

The traditional concept of parenthood, rooted in biological connections and marital legitimacy, is undergoing radical transformation in contemporary family law. With advancements in assisted reproductive technologies (ART), changing social structures, and evolving notions of family, legal systems worldwide are grappling with redefining parenthood. In India, while statutory frameworks remain largely anchored to biological parenthood, judicial interventions have begun recognizing alternative parental relationships.

<sup>12</sup> Id. at § 2(1)(zg).

<sup>13</sup> Id. at § 35.

<sup>14</sup> *Baby Manji Yamada v. UOI*, (2008) 13 SCC 518.

<sup>15</sup> *Jan Balaz v. Anand Municipality*, 2010 (1) GLR 649.

## **Traditional vs. Modern concepts of parenthood**

### **A. Biological Presumptions in Indian Law**

Section 112 of Indian Evidence Act, 1872: Establishes conclusive presumption that a child born during marriage is legitimate and does not account for ART-conceived children or same-sex parents

Personal Laws:

- Hindu law recognizes only biological or adopted children
- Muslim law follows patrilineal legitimacy rules

### **B. Judicial Expansion of Parental Rights**

Shabnam Hashmi v. Union of India (2014): Recognized right to adopt irrespective of religion under Juvenile Justice Act and laid foundation for secular adoption laws<sup>16</sup>

Arif Hossain v. State of West Bengal (2020): Calcutta HC upheld rights of commissioning parents in surrogacy arrangements and established “intentional parenthood” as valid legal concept<sup>17</sup>

## **Non-traditional parental relationships**

### **A. Assisted Reproductive Technology (ART) Parenthood**

ART (Regulation) Act, 2021 recognizes commissioning parents as legal parents, but fails to address posthumous conception cases, gamete donor rights and same-sex parentage.

Baby Manji Yamada case highlighted legal vacuum in transnational surrogacy parentage.

Gaurav Gulati v. Union of India (2023) recognized single father’s rights in surrogacy case.

### **B. LGBTQ+ Parenthood**

Current Legal Barriers:

- a. No recognition of same-sex couples as joint parents
- b. Adoption barred under CARA guidelines for queer individuals

Supriyo v. Union of India (2023) recognized queer relationships but stopped short of parenting rights

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<sup>16</sup> Shabnam Hashmi v. Union of India, (2014) 4 SCC 1

<sup>17</sup> Arif Hossain v. State of West Bengal, 2020 SCC OnLine Cal 790

### Comparative global perspectives

Jurisdiction	Approach to Non-Biological Parenthood
United States	“De Facto Parent” status in many states
United Kingdom	Civil partnership parental orders
Canada	Presumption of parentage for same-sex couples
South Africa	Express constitutional protection for alternative families

Indian family law must evolve beyond biological determinism to accommodate diverse family structures. While judicial activism has filled some gaps, comprehensive legislative reform is imperative to secure the rights of all children and parents regardless of biological connections. The law must balance traditional values with contemporary realities of assisted reproduction, blended families, and LGBTQ+ parenting.

### CONCLUSION:

The transformation of family structures in contemporary India demands an equally dynamic evolution in legal frameworks governing relationships, reproduction, and parenthood. This comprehensive examination of cohabitation, surrogacy, and modern parenthood reveals both the progressive strides and persistent shortcomings in Indian family law. While landmark judicial decisions have incrementally expanded rights for live-in partners, surrogate parents, and non-traditional families, the legislative framework remains anchored to archaic notions of biological legitimacy and marital sanctity. The Surrogacy (Regulation) Act, 2021, despite its intentions to prevent exploitation, creates new forms of exclusion by barring single parents, LGBTQ+ couples, and foreign nationals. Similarly, the lack of statutory recognition for cohabitation leaves millions of couples vulnerable in matters of property, inheritance, and child custody. The concept of parenthood, still largely defined by genetic connections in Indian law, fails to account for the realities of assisted reproduction, blended families, and same-sex parenting.

These legal gaps have tangible consequences - children born through surrogacy face citizenship limbo, cohabiting partners struggle for basic financial protections, and non-biological parents remain legally invisible. The judiciary has attempted to bridge these gaps through creative interpretations of constitutional rights, as seen in cases recognizing the validity of long-term cohabitation and upholding the rights of commissioning parents. However, piecemeal judicial solutions cannot replace systematic legislative reform. India must draw lessons from

comparative jurisdictions that have implemented cohabitation statutes, regulated surrogacy markets, and expanded parental recognition while balancing ethical considerations.

The path forward requires a fundamental reimagining of family law that prioritizes functional relationships over formal status, children's welfare over biological technicalities, and individual autonomy over societal prejudices. Proposed reforms should include: a uniform cohabitation law providing property and maintenance rights; amendments to surrogacy regulations permitting compensated altruism while protecting surrogate welfare; and comprehensive parenthood legislation recognizing intentional, psychological, and de facto parents. As Indian society continues to diversify in its expressions of family life, the law must evolve from its restrictive, heteronormative foundations to embrace a pluralistic vision that grants equal dignity and protection to all family forms. Only then can India's legal system fulfil its constitutional mandate of justice, equality, and dignity for every citizen, regardless of how they choose to form their most intimate relationships.

