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From Womb to Law: Motherhood under Surrogacy, IVF, and PCPNDT Frameworks

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ABSTRACT

Motherhood in India has traditionally been understood through biological birth, where the woman who gives birth is regarded as the legal mother. With the development of in vitro fertilisation, surrogacy, and other assisted reproductive technologies, this understanding has changed. Motherhood may now involve different persons, such as the genetic, gestational, and intended mother, which creates legal uncertainty and new challenges for Indian law. This paper examines how motherhood is treated under the Surrogacy (Regulation) Act, 2021, the Assisted Reproductive Technology (Regulation) Act, 2021, and the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. It demonstrates that these statutes are concerned mainly with regulation and the prevention of misuse, but do not clearly define legal motherhood in cases of assisted reproduction. The paper also analyses constitutional principles such as dignity, privacy, and reproductive autonomy under Article 21, together with significant judicial decisions that support reproductive rights. It shows that a gap exists between constitutional ideals and statutory law, producing uncertainty in determining legal motherhood. The paper further discusses ethical, social, and gender-related issues, including consent, exploitation, and the inequality faced by women involved in surrogacy and assisted reproduction. It concludes that motherhood should be understood in a broader sense that incorporates intention, care, and responsibility alongside biology, and recommends a clear, unified, and rights-based legal framework to address the changing nature of motherhood in the era of modern reproductive technology.

Keywords: *Motherhood, Surrogacy, IVF (In Vitro Fertilisation), Assisted Reproductive Technology (ART), Reproductive Autonomy, Legal Parenthood.*

I. INTRODUCTION

Motherhood in the Indian imagination has never been confined to biology alone. Long before modern reproductive technologies entered legal and ethical debate, Indian mythology offered a powerful counter-narrative through Maiya Yashoda, who nurtured and raised Krishna as her own despite having no biological connection to him. Yashoda's motherhood was defined not by

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gestation but by care, responsibility, and emotional bond. This ancient recognition of non-biological motherhood stands in sharp contrast to the contemporary legal discomfort surrounding surrogacy in India, where motherhood is still predominantly regulated through rigid biological and marital frameworks.

For a long time, the concept of motherhood in law appeared straightforward: the woman who gave birth to a child was recognised as the legal mother. This understanding was rooted in biological certainty and reinforced by social norms that associated motherhood with pregnancy, childbirth, and caregiving within a traditional family structure. Legal systems, including that of India, largely reflected this assumption, leaving little room for alternative interpretations.[1] That clarity has gradually eroded. Scientific developments, particularly in vitro fertilisation (IVF), gamete donation, and surrogacy, have reshaped how reproduction occurs and, consequently, how motherhood is understood. A child may now be linked to multiple "mothers": one who provides the egg, another who carries the pregnancy, and a third who intends to raise the child. These possibilities destabilise the previous equation between biology and legal identity, raising a fundamental yet difficult question: who is the mother in the eyes of the law? Indian law has attempted to respond to these changes, though not always in a unified or consistent manner. The Surrogacy (Regulation) Act, 2021,[2] and the Assisted Reproductive Technology (Regulation) Act, 2021,[3] regulate various aspects of assisted reproduction, while the Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994,[4] addresses concerns regarding sex selection and the misuse of technology. Each of these laws reflects a specific policy concern, such as preventing exploitation, ensuring medical standards, or correcting gender imbalances, yet, collectively, they fail to provide a clear and coherent definition of motherhood within the complex landscape of reproductive technologies.

At the same time, constitutional developments have introduced a more rights-based perspective. The recognition of privacy and personal autonomy in *K.S. Puttaswamy v. Union of India*[5] has expanded the understanding of reproductive decision-making as an integral aspect of individual liberty. This shift suggests that choices regarding whether and how to bear children should primarily reside with individuals, rather than being dictated entirely by the State. Nevertheless, a gap persists between this constitutional ideal and the restrictive nature of specific statutory

[1] The traditional legal maxim *mater semper certa est* establishes that the birth-giving woman is the legal mother.
[2] The Surrogacy (Regulation) Act, 2021, No. 47, Acts of Parliament, 2021 (India).
[3] The Assisted Reproductive Technology (Regulation) Act, 2021, No. 42, Acts of Parliament, 2021 (India).
[4] The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, No. 57, Acts of Parliament, 1994 (India).
[5] *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India).

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provisions.[6] The transition from a purely biological conception of motherhood to a legally constructed one is, therefore, neither seamless nor complete. It entails a constant dialogue among evolving technologies, entrenched social values, and competing legal principles.[7] Questions of identity, rights, responsibilities, and ethics converge in this space, rendering motherhood not merely a personal or biological fact, but also a legal status shaped by policy and interpretation.

This paper proceeds from the premise that, today, motherhood cannot be confined solely to the physical act of giving birth. Instead, it must be examined as a layered concept that encompasses intent, genetics, gestation, and social recognition.[8] Tracing this evolution, from a biological phenomenon to a legal construct, provides the foundation for analysing how Indian law responds to the realities of modern reproduction, and where it falls short.

II. RESEARCH PROBLEM

The concept of motherhood in Indian law has traditionally been based on biological and gestational identity. The emergence of assisted reproductive technologies such as surrogacy and IVF has challenged this understanding by introducing multiple forms of motherhood, including genetic, gestational, and intended motherhood. Existing legal frameworks, such as the Surrogacy (Regulation) Act, 2021, the Assisted Reproductive Technology (Regulation) Act, 2021, and the Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994, regulate different aspects of reproduction but operate in a fragmented manner. This creates ambiguity in determining legal motherhood and leads to inconsistencies in application. Although judicial decisions such as *K.S. Puttaswamy v. Union of India* recognise reproductive autonomy as a fundamental right, statutory law often imposes restrictive controls. The absence of a unified legal framework therefore results in tension between State regulation and women's reproductive autonomy.

III. OBJECTIVES OF THE STUDY

This paper aims to examine how the idea of motherhood has changed with the development of IVF, surrogacy, and other assisted reproductive technologies in India. It analyses the legal framework governing motherhood under the Surrogacy (Regulation) Act, 2021, the Assisted

[6] The Surrogacy (Regulation) Act, 2021; The Assisted Reproductive Technology (Regulation) Act, 2021 (illustrating statutory restrictions on access and eligibility in assisted reproduction).
[7] AMRITA PANDE, WOMBS IN LABOR: TRANSNATIONAL COMMERCIAL SURROGACY IN INDIA (Columbia University Press 2014).
[8] *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1 (India) (affirming a woman's right to make reproductive choices as a dimension of personal liberty).

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Reproductive Technology (Regulation) Act, 2021, and the PCPNDT Act, 1994. It further studies the different forms of motherhood, such as genetic, gestational, and intended motherhood, and the legal issues connected with them. The paper evaluates the impact of constitutional principles such as privacy, dignity, and reproductive autonomy on reproductive rights in India, identifies the gaps and conflicts within the existing laws relating to surrogacy, IVF, and reproductive technologies, and suggests reforms for creating a clearer, more balanced, and rights-oriented legal framework on motherhood and reproductive technologies.

IV. Research Questions

This paper addresses the following questions. How have IVF and surrogacy changed the traditional legal understanding of motherhood in India? Do the Surrogacy Act, the ART Act, and the PCPNDT Act provide a clear and consistent definition of motherhood? How do Indian laws balance State regulation with women's reproductive autonomy and constitutional rights? What legal and ethical challenges arise from the existence of genetic, gestational, and intended mothers? Are the current reproductive laws in India sufficient to protect the rights and dignity of women involved in assisted reproduction?

V. Hypothesis

This paper is based on the hypothesis that the development of IVF, surrogacy, and other assisted reproductive technologies has transformed the traditional understanding of motherhood in India. Motherhood can no longer be defined only through biological birth, as modern reproductive methods create different forms of motherhood, including genetic, gestational, and intended motherhood. Although the Indian legal system has introduced statutes such as the Surrogacy (Regulation) Act, 2021, the Assisted Reproductive Technology (Regulation) Act, 2021, and the PCPNDT Act, 1994, these laws do not provide a clear and uniform framework for determining legal motherhood. The paper further assumes that, while constitutional principles recognise reproductive autonomy, privacy, and dignity as part of fundamental rights, the existing statutory framework continues to impose restrictive controls on women's reproductive choices. There is, therefore, a need for a more balanced, rights-oriented, and inclusive legal framework that recognises the changing realities of motherhood in contemporary society.

VI. Research Methodology

This paper is purely doctrinal in nature and is based on secondary sources of information. The research focuses on analysing the legal concept of motherhood in relation to surrogacy, IVF,

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and assisted reproductive technologies in India. For this purpose, it examines significant legislation such as the Surrogacy (Regulation) Act, 2021, the Assisted Reproductive Technology (Regulation) Act, 2021, and the Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994. The research also studies constitutional provisions and landmark judicial decisions relating to reproductive rights, privacy, dignity, and personal autonomy. Relevant case law has been analysed to understand the approach of Indian courts towards legal motherhood and reproductive technologies. The paper further relies on books, journal articles, legal commentaries, research papers, government reports, and online legal databases for collecting and analysing information. The methodology is analytical and descriptive, as it explains the existing legal framework while also examining the gaps, conflicts, and limitations within the current law.

The purpose of this doctrinal research is to evaluate critically whether the present legal framework adequately addresses the changing meaning of motherhood in the context of modern reproductive technologies, and to identify the need for a clearer and more balanced legal approach.

VII. Review of Literature

Amrita Pande, in her work on commercial surrogacy in India, explains how surrogate mothers are often treated mainly as carriers of children rather than as women with independent rights and dignity. Her study highlights the unequal relationship between wealthy intended parents and economically weaker surrogate mothers. She argues that, although the Surrogacy (Regulation) Act, 2021 was enacted to prevent exploitation, the complete ban on commercial surrogacy may also restrict women's reproductive autonomy and financial choice.

Martha Albertson Fineman argues that motherhood should not be understood only in biological terms. In her view, motherhood is also shaped by care, responsibility, and social relationships. Her feminist approach challenges the traditional legal idea that the woman who gives birth is the only mother. This view becomes important in the context of IVF and surrogacy, where genetic, gestational, and intended motherhood may belong to different women.

Several legal scholars discussing the PCPNDT Act, 1994 observe that the law has played an important role in preventing sex-selective practices and addressing gender imbalance in India. They also point out, however, that the strict regulation under the Act sometimes increases State control over women's reproductive decisions. These studies highlight the tension between protecting social interests and respecting women's reproductive rights, privacy, and autonomy under the Constitution.

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VIII. CONCEPTUAL FRAMEWORK OF MOTHERHOOD IN LAW

The concept of motherhood in law has traditionally been linked with biology and childbirth. For a long time, the legal system recognised the woman who gave birth to the child as the natural and legal mother. This understanding was based on the belief that motherhood was a simple biological fact connected with pregnancy, delivery, and care of the child within a family structure. Both society and law treated maternity mainly as a natural role of women, leaving little space for alternative forms of parenthood.[9] With the development of assisted reproductive technologies such as IVF, surrogacy, and egg donation, the traditional understanding of motherhood has changed significantly. Modern reproductive methods have made it possible for different women to perform different roles in the birth of a child. One woman may provide the egg, another may carry the pregnancy, and a third may intend to raise the child. As a result, motherhood is no longer limited to a single biological connection. The law now faces the difficult task of deciding who should be recognised as the legal mother in such situations.[10]

The conceptual framework of motherhood today includes three important dimensions: genetic motherhood, gestational motherhood, and intended motherhood. Genetic motherhood refers to the woman whose egg is used in conception. Gestational motherhood refers to the woman who carries and gives birth to the child. Intended motherhood refers to the woman who plans to raise the child and accepts parental responsibility. These categories often overlap, but in cases of surrogacy and IVF they may belong to different individuals, creating legal and ethical complexities.[11]

In India, laws relating to surrogacy and assisted reproductive technologies attempt to regulate these changing forms of motherhood. The legal framework, however, still largely depends on traditional ideas of family, marriage, and biological connection. The Surrogacy (Regulation) Act, 2021 and the Assisted Reproductive Technology (Regulation) Act, 2021 focus mainly on regulation and the prevention of misuse, but they do not provide a complete and uniform understanding of motherhood.[12] At the same time, constitutional principles such as dignity, privacy, equality, and reproductive autonomy have expanded the discussion beyond biology.

[9] MARTHA ALBERTSON FINEMAN, THE NEUTERED MOTHER, THE SEXUAL FAMILY AND OTHER TWENTIETH CENTURY TRAGEDIES (Routledge 1995).
[10] AMRITA PANDE, WOMBS IN LABOR: TRANSNATIONAL COMMERCIAL SURROGACY IN INDIA (Columbia University Press 2014).
[11] JANICE G. RAYMOND, WOMEN AS WOMBS: REPRODUCTIVE TECHNOLOGIES AND THE BATTLE OVER WOMEN'S FREEDOM (HarperCollins 1993).
[12] The Surrogacy (Regulation) Act, 2021; The Assisted Reproductive Technology (Regulation) Act, 2021.

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Judicial decisions have recognised that reproductive choices form an important part of personal liberty under Article 21 of the Constitution.[13]

The concept of motherhood in modern law is therefore not only biological but also social, emotional, and legal in nature. Motherhood today is understood through intention, care, responsibility, and legal recognition, alongside biological connection. This changing framework reflects the impact of technology, constitutional values, and evolving social realities on the legal understanding of motherhood in India.

IX. IVF AND ASSISTED REPRODUCTIVE TECHNOLOGIES: LEGAL AND ETHICAL DIMENSIONS

In vitro fertilisation (IVF) and other assisted reproductive technologies (ART) have brought major changes to the field of reproduction. These technologies help individuals and couples who are unable to conceive naturally. While they provide new hope for parenthood, they also raise important legal and ethical questions, especially in relation to motherhood, parentage, and the rights of all parties involved.[14] From a legal point of view, IVF and ART have created uncertainty regarding the identity of the legal mother. Earlier, motherhood was clear because it was based on childbirth. In IVF cases, however, different women may be involved in the process, such as the egg donor, the surrogate mother, and the woman who intends to raise the child. This creates uncertainty in deciding who should be legally recognised as the mother. In India, laws such as the Assisted Reproductive Technology (Regulation) Act, 2021 seek to regulate clinics and procedures, but they do not fully settle issues relating to legal parenthood and the custody of the child.[15]

Another legal concern is the protection of the rights of surrogate mothers and donors. In many cases, surrogate mothers come from weaker economic backgrounds, which raises concerns about exploitation and unequal bargaining power. The law therefore seeks to ensure informed consent, medical safety, and fair treatment. Critics argue, however, that strict regulations and bans on commercial arrangements may also reduce the autonomy of women who choose surrogacy as a source of income.[16]

[13] *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1; *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.
[14] WORLD HEALTH ORG., INFERTILITY AND ASSISTED REPRODUCTIVE TECHNOLOGIES: OVERVIEW REPORT (2023).
[15] The Assisted Reproductive Technology (Regulation) Act, 2021 (India).
[16] AMRITA PANDE, WOMBS IN LABOR: TRANSNATIONAL COMMERCIAL SURROGACY IN INDIA (Columbia University Press 2014).

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Ethically, ART raises questions about dignity, consent, and the commercialisation of reproduction. Some consider that using the human body for commercial surrogacy may lead to exploitation and treat motherhood as a service. Others argue that, if a woman willingly agrees with full understanding and without pressure, her choice should be respected as part of her reproductive freedom. A further ethical issue is the emotional impact on surrogate mothers, intended parents, and the child born through such arrangements.[17] Privacy and confidentiality are also important ethical concerns. Medical procedures involving IVF and surrogacy require sensitive handling of personal and medical information. At the same time, there is a need to prevent the misuse of technology, such as sex selection or other illegal practices, which is why laws such as the PCPNDT Act, 1994 play an important role.[18]

Overall, IVF and ART present a balance between medical advancement and social responsibility. While they offer new possibilities for creating families, they also require strong legal safeguards and ethical awareness. The challenge for the law is to protect the rights and dignity of all individuals involved while adapting to rapidly changing reproductive technologies.[19]

X. THE PCPNDT ACT AND THE STATE REGULATION OF REPRODUCTIVE CHOICE

The Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994 was enacted in India to prevent sex selection before and after conception. The main aim of the law is to stop female foeticide and to improve the declining sex ratio in the country. It regulates the use of diagnostic techniques such as ultrasound to ensure that they are not misused for determining the sex of the foetus. In this way, the Act plays an important role in protecting gender equality and promoting the value of the girl child in society.[20]

The PCPNDT Act also represents strong State regulation over reproductive choices. It places strict controls on doctors, clinics, and pregnant women to ensure compliance with its provisions. While the intention of the law is to prevent the misuse of medical technology, it also increases the monitoring and scrutiny of reproductive decisions. This has led to concerns that women's privacy and autonomy may be affected, especially during pregnancy.[21] From a legal perspective,

[17] MARTHA ALBERTSON FINEMAN, THE NEUTERED MOTHER, THE SEXUAL FAMILY AND OTHER TWENTIETH CENTURY TRAGEDIES (Routledge 1995).
[18] The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (India).
[19] WORLD HEALTH ORG., INFERTILITY AND ASSISTED REPRODUCTIVE TECHNOLOGIES: OVERVIEW REPORT (2023); The Assisted Reproductive Technology (Regulation) Act, 2021 (India); K.K. Verma, *Legal and Ethical Issues in Assisted Reproductive Technologies*, INDIAN J. MED. ETHICS (2022).
[20] The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (India).
[21] FLAVIA AGNES, LAW AND GENDER INEQUALITY: THE POLITICS OF WOMEN'S RIGHTS IN INDIA (Oxford University Press 1999).

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the Act reflects the tension between individual freedom and social interest. On one hand, reproductive choice is part of personal liberty under Article 21 of the Constitution, as recognised by the Supreme Court in various judgments. On the other hand, the State has a duty to prevent the social harm caused by sex-selective practices. The law therefore seeks to balance these two interests, but in practice this balance is often difficult to maintain.[22] Ethically, the PCPNDT Act raises questions about how far the State should interfere in private medical decisions. Some argue that strict regulation is necessary to protect women and to ensure gender justice in society. Others consider that excessive control may lead to fear, the misuse of authority, and reduced trust between patients and healthcare providers.[23]

Overall, the PCPNDT Act shows how reproductive rights in India are not absolute but subject to reasonable restrictions. It highlights the ongoing challenge of balancing women's reproductive autonomy with the State's responsibility to address deep-rooted social problems such as gender discrimination.[24]

XI. COMPARATIVE AND INTERNATIONAL HUMAN RIGHTS PERSPECTIVE

From a global point of view, the regulation of surrogacy, IVF, and assisted reproductive technologies varies widely across countries. Different legal systems have adopted different approaches depending on their social values, cultural beliefs, and understanding of reproductive rights. Some countries allow commercial surrogacy subject to regulation, while others prohibit it entirely. Many nations also differ in how they define legal motherhood in cases involving assisted reproduction.[25]

In countries such as the United Kingdom, surrogacy is permitted but commercial arrangements are prohibited, similar to India. The law generally recognises the woman who gives birth as the legal mother, and parentage is transferred only after a court order.[26] In contrast, some states in the United States permit commercial surrogacy and recognise intended parents as legal parents through pre-birth or post-birth orders, depending on the agreement. This reflects a more flexible approach, in which intention plays a stronger role in determining parenthood.[27]

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[22] *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1; *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

[23] COMM. ON THE PCPNDT ACT IMPLEMENTATION, GOV'T OF INDIA, REPORT ON SEX SELECTION AND REGULATION (2015).

[24] *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1; *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1; The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (India).

[25] REBECCA PROBERT, SURROGACY AND THE LAW: A COMPARATIVE ANALYSIS (Cambridge University Press 2020).

[26] Human Fertilisation and Embryology Act 2008 (UK).

[27] RICHARD F. STORROW, GOVERNING PARENTHOOD IN THE UNITED STATES: SURROGACY AND FAMILY LAW (NYU Press 2015).

International human rights instruments also provide important guidance on reproductive rights. Documents such as the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights recognise the right to health, dignity, and family life. These principles are often interpreted to include reproductive autonomy, meaning that individuals should have the freedom to make decisions about reproduction without unnecessary interference from the State.[28] These instruments do not specifically regulate surrogacy or IVF, however, leaving it to national laws to decide how these technologies should be governed. At the same time, international bodies such as the World Health Organization emphasise that assisted reproductive technologies should be safe, ethical, and accessible. They highlight the importance of protecting women from exploitation, ensuring informed consent, and maintaining medical standards.[29] These global guidelines encourage countries to balance technological advancement with the protection of human rights.[30]

Overall, the comparative perspective shows that there is no single global model for regulating motherhood in assisted reproduction. While some countries prioritise biological connection, others focus on intention and contractual arrangements. International human rights law supports the idea of reproductive autonomy but also allows States to regulate these technologies in line with public interest and social values.[31]

XII. CONSTITUTIONAL PERSPECTIVES ON REPRODUCTIVE AUTONOMY

The Constitution of India does not directly mention reproductive rights, but these rights have been developed through the judicial interpretation of fundamental rights. Over time, the Supreme Court has recognised reproductive autonomy as an important part of personal liberty under Article 21, which guarantees the right to life and personal freedom. This means that decisions relating to pregnancy, childbirth, and reproduction are considered part of an individual's private and personal choice.[32]

The idea of reproductive autonomy is closely linked with the values of dignity, privacy, and bodily integrity. In *K.S. Puttaswamy v. Union of India*, the Supreme Court clearly stated that the right to privacy includes decisional autonomy over intimate matters such as reproduction. This

[28] UNIVERSAL DECLARATION OF HUMAN RIGHTS (1948); INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (1966).
[29] WORLD HEALTH ORG., ETHICAL ISSUES IN ASSISTED REPRODUCTIVE TECHNOLOGIES: GUIDELINES REPORT (2023).
[30] WORLD HEALTH ORG., ETHICAL ISSUES IN ASSISTED REPRODUCTIVE TECHNOLOGIES: GUIDELINES REPORT (2023).
[31] UNIVERSAL DECLARATION OF HUMAN RIGHTS (1948); INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (1966).
[32] *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1.

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judgment strengthened the view that the State should not unnecessarily interfere in personal reproductive choices.[33]

Earlier, in *Suchita Srivastava v. Chandigarh Administration*, the Court held that a woman has the right to make reproductive choices, including the decision to carry or terminate a pregnancy. The Court recognised that such choices are part of her personal liberty and should be respected by law.[34] These decisions together form a strong constitutional foundation for reproductive rights in India. In practice, however, a gap remains between constitutional principles and statutory law. Laws relating to surrogacy, IVF, and the PCPNDT Act often place restrictions on reproductive choices in the name of regulation and social welfare. This creates a balance between individual freedom and State control that is sometimes difficult to maintain.[35]

Overall, the constitutional framework in India supports reproductive autonomy as part of fundamental rights, but its application in reproductive technologies is still evolving. The challenge is to ensure that laws respect individual choice while also addressing social concerns such as exploitation, gender imbalance, and the ethical use of medical technology.[36]

XIII. JUDICIAL INTERPRETATION OF REPRODUCTIVE RIGHTS AND MOTHERHOOD

The judiciary in India has played an important role in shaping the understanding of reproductive rights and motherhood. As the Constitution does not clearly define these concepts, courts have interpreted fundamental rights to include reproductive autonomy, dignity, and privacy. Through various judgments, the Supreme Court has expanded the meaning of personal liberty under Article 21 to include the right to make decisions relating to reproduction and motherhood.[37]

In *Suchita Srivastava v. Chandigarh Administration*, the Supreme Court clearly stated that a woman has the right to make reproductive choices. This includes the decision to continue or terminate a pregnancy. The Court recognised that such decisions are deeply personal and form part of her individual liberty. This judgment strengthened the idea that the State should respect a woman's autonomy in matters of reproduction.[38]

Later, in *K.S. Puttaswamy v. Union of India*, the Court further expanded this principle by recognising privacy as a fundamental right. The judgment made it clear that privacy includes bodily integrity and decisional autonomy, especially in intimate matters such as reproduction

[33] *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.
[34] *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1.
[35] The Surrogacy (Regulation) Act, 2021 (India); The Assisted Reproductive Technology (Regulation) Act, 2021 (India); The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (India).
[36] *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.
[37] M.P. JAIN, INDIAN CONSTITUTIONAL LAW (LexisNexis, latest ed.).
[38] *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1.

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and family life.[39] This case became a strong constitutional foundation for reproductive rights in India.

In cases relating to assisted reproductive technologies and surrogacy, courts have also sought to address questions of legal motherhood. The judiciary has often faced challenges, however, because laws such as the Surrogacy (Regulation) Act, 2021 and the ART Act, 2021 are relatively new and still developing. As a result, there is no fully settled position on issues such as who should be considered the legal mother in complex reproductive arrangements.[40]

Overall, judicial interpretation in India shows a clear shift from a purely biological understanding of motherhood to a rights-based approach. Courts now recognise that motherhood and reproductive choices are closely linked with dignity, privacy, and personal freedom. The application of these principles in modern reproductive technologies is still evolving, however, and various legal questions remain open for future interpretation.[41]

XIV. ETHICAL, SOCIAL, AND GENDERED IMPLICATIONS

Assisted reproductive technologies such as IVF and surrogacy raise important ethical, social, and gender-related issues. These technologies have made it possible for many people to become parents, but they also bring new challenges that affect women, families, and society as a whole.[42] From an ethical point of view, one of the main concerns is consent and dignity. Surrogacy and egg donation involve the use of a woman's body for reproduction, which requires clear understanding and free consent. In many cases, however, questions are raised about whether women, especially those from weaker economic backgrounds, are fully aware of their rights and medical risks. This creates a concern about possible exploitation and unequal power relations.[43]

Socially, these technologies have changed the traditional idea of family and motherhood. Earlier, family was understood mainly in biological terms, but it now includes intended parents, donors, and surrogates. While this provides new opportunities for childless couples, it also creates uncertainty about identity, parentage, and the emotional bond between the child and the

[39] *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.
[40] The Surrogacy (Regulation) Act, 2021 (India); The Assisted Reproductive Technology (Regulation) Act, 2021 (India).
[41] *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1; *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1.
[42] AMRITA PANDE, WOMBS IN LABOR: TRANSNATIONAL COMMERCIAL SURROGACY IN INDIA (Columbia University Press 2014).
[43] MARTHA ALBERTSON FINEMAN, THE NEUTERED MOTHER, THE SEXUAL FAMILY AND OTHER TWENTIETH CENTURY TRAGEDIES (Routledge 1995).

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persons involved.[44] From a gender perspective, surrogacy and reproductive technologies place a major burden on women's bodies. Women are often the ones who undergo medical procedures, pregnancy, and related risks. This raises concerns about whether reproduction is becoming a form of labour performed mainly by women. At the same time, some argue that restricting surrogacy may also limit women's choice and economic independence.[45] Another important issue is inequality. In many cases, women who become surrogates come from lower-income groups, while the intended parents are financially stronger. This imbalance can lead to unequal bargaining power and raises questions about fairness and justice.[46]

Overall, while assisted reproductive technologies offer hope and new possibilities, they also require careful ethical consideration and strong legal safeguards. The challenge is to ensure that these technologies respect women's dignity, protect vulnerable groups, and promote equality in society.[47]

XV. SUGGESTIONS AND RECOMMENDATIONS

The legal framework on motherhood under surrogacy, IVF, and assisted reproductive technologies needs greater clarity and uniformity. A single, comprehensive law should clearly define legal motherhood and parentage in order to avoid uncertainty in cases involving genetic, gestational, and intended mothers.[48]

Stronger safeguards are also needed to protect surrogate mothers and donors. Their consent must be fully informed, free from pressure, and supported by proper medical guidance and monitoring to prevent exploitation.[49] At the same time, laws should respect reproductive autonomy and should not become overly restrictive. A balance should be maintained between regulation and individual choice.[50] Public awareness about assisted reproductive technologies should also be improved, so that people can make informed decisions.[51]

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[44] SUSAN MARKENS, SURROGATE MOTHERHOOD AND THE POLITICS OF REPRODUCTION (University of California Press 2007).
[45] FLAVIA AGNES, LAW AND GENDER INEQUALITY: THE POLITICS OF WOMEN'S RIGHTS IN INDIA (Oxford University Press 1999).
[46] WORLD HEALTH ORG., ETHICAL ISSUES IN ASSISTED REPRODUCTIVE TECHNOLOGIES: POLICY REPORT (2023).
[47] WORLD HEALTH ORG., ETHICAL ISSUES IN ASSISTED REPRODUCTIVE TECHNOLOGIES: POLICY REPORT (2023); AMRITA PANDE, WOMBS IN LABOR: TRANSNATIONAL COMMERCIAL SURROGACY IN INDIA (Columbia University Press 2014).
[48] The Surrogacy (Regulation) Act, 2021 (India); The Assisted Reproductive Technology (Regulation) Act, 2021 (India).
[49] AMRITA PANDE, WOMBS IN LABOR: TRANSNATIONAL COMMERCIAL SURROGACY IN INDIA (Columbia University Press 2014).
[50] *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.
[51] WORLD HEALTH ORG., ASSISTED REPRODUCTIVE TECHNOLOGIES: ETHICAL AND SOCIAL CONSIDERATIONS (2023).

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Overall, a rights-based and gender-sensitive legal approach is needed to ensure dignity, equality, and fairness in modern reproductive practices.[52]

XVI. CONCLUSION

Motherhood in India has changed significantly with the development of IVF, surrogacy, and other assisted reproductive technologies. It is no longer limited to biological birth alone, as modern practices involve genetic, gestational, and intended forms of motherhood. This change has created new legal, social, and ethical challenges for the Indian legal system.[53]

The existing legal framework, including the Surrogacy (Regulation) Act, 2021, the ART Act, 2021, and the PCPNDT Act, 1994, focuses mainly on regulation and the prevention of misuse. These laws do not clearly define legal motherhood in a complete and unified manner, however. This leads to uncertainty and gaps in the law, especially in complex reproductive arrangements.[54] At the same time, constitutional principles such as privacy, dignity, and reproductive autonomy have strengthened the idea that reproductive choices are part of personal liberty under Article 21. Judicial decisions have supported this rights-based approach, but its full reflection in statutory law is still limited.[55]

Overall, there is a clear need to balance technological advancement with legal certainty and the protection of human rights. A clearer, more consistent, and rights-based legal framework is required to address the changing realities of motherhood in the modern reproductive era.[56]

In Indian mythology, motherhood is not only biological, as seen in Yashoda raising Krishna with full love and responsibility. This shows that care and intention also define motherhood. Today, this idea helps in understanding legal motherhood under IVF and surrogacy, where genetics, gestation, and intention may belong to different persons.[57]

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