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PARENTHOOD RESERVED FOR THE MARRIED: THE EXCLUSION OF QUEER AND SINGLE PERSONS UNDER THE SURROGACY (REGULATION) ACT, 2021

~ Arpita Chaudhary & A. Sai Deepti

Abstract

The Surrogacy (Regulation) Act, 2021 permits surrogacy for only two groups of people: married heterosexual couples, and Indian women between 35 and 45 who are widowed or divorced. A woman who has never married, a single man, a couple living together without marriage, and queer and transgender persons are all left out, even where there is a genuine medical need and nothing to suggest they could not raise a child. This paper asks whether these eligibility rules can stand alongside what the Supreme Court has said about reproductive autonomy, equality and dignity. It looks at the scheme of the Act and how it came to be drafted, tests the rules against Articles 14, 15 and 21, deals with the difficulty created by *Supriyo v. Union of India*, and considers how courts in the United Kingdom and Israel have handled similar exclusions. The paper concludes that the law should ask about medical need and the ability to care for a child, and should stop asking about marital status and sexuality.

Keywords: surrogacy, reproductive autonomy, Article 14, queer rights, single parenthood, family law

I. Introduction

Until about a decade ago, India was one of the main destinations for people around the world looking for a surrogate. Clinics in Anand, Mumbai and Delhi ran a booming trade, and with no statute in place, the industry more or less set its own rules. Ethnographers who spent long periods in these clinics, and in the hostels where surrogates lived, have recorded what this meant for the women involved, most of whom were poor and carried children for people they

barely knew.[1] After years of debate, Parliament responded with the Surrogacy (Regulation) Act, 2021. The Act came into force on 25 January 2022, prohibited commercial surrogacy and allowed only the altruistic kind.[2]

There are good reasons for the ban on commercial surrogacy, and this paper does not question it. Our concern is with a different decision, one that attracted far less public attention: the decision about who is allowed to become a parent through surrogacy in the first place. The Act opens the door only to a "couple", which it defines as a legally married Indian man and woman,[3] and to an "intending woman", meaning an Indian widow or divorcee aged between 35 and 45.[4]

Consider what these two definitions do in practice. A divorced woman of 40 can apply. Her colleague of the same age who has never married cannot. A man cannot apply on his own at any age, whether he is widowed, divorced or has never married. Two men who have lived together for fifteen years are excluded, as is a transgender woman, and so is a man and a woman who share a home but have decided not to marry. In none of these cases does the law ask whether there is a medical reason for surrogacy. The only questions it asks are about marriage, sex and sexual orientation. We find this deeply troubling. A law that was meant to protect vulnerable women has ended up deciding which families are respectable enough to be allowed to exist.

This is no longer just an academic debate. Several petitions challenging the Act are pending before the Supreme Court, among them pleas by single women, a transgender doctor and a divorced man. This paper argues that the eligibility rules do not meet the standards the Court has itself developed. Part II explains how the Act works and where it conflicts with related laws. Part III looks at how the Act was drafted and the reasons given for the exclusion. Parts IV and V examine the rules under Articles 21, 14 and 15. Part VI discusses *Supriyo* and the litigation now before the Court. Part VII turns to foreign law, Part VIII responds to the arguments the State is likely to make, and Part IX sets out some recommendations.

[1]Amrita Pande, *Wombs in Labor: Transnational Commercial Surrogacy in India* (Columbia University Press 2014); Sharmila Rudrappa, *Discounted Life: The Price of Global Surrogacy in India* (NYU Press 2015).
[2]Surrogacy (Regulation) Act 2021.
[3]ibid s 2(1)(h).
[4]ibid s 2(1)(s).

II. The Statutory Scheme: Who May and May Not Commission Surrogacy

Under the Act, only two kinds of people can commission a surrogacy. The first is an "intending couple", which means a couple with a medical condition that makes gestational surrogacy necessary.[5] Since a "couple" must be a married man and woman, every intending couple is by definition married and heterosexual. The wife has to be between 23 and 50 years old and the husband between 26 and 55.[6] The second is the "intending woman", who must be an Indian widow or divorcee aged 35 to 45.

The rules made under the Act go a step further. Since the Surrogacy (Regulation) Amendment Rules, 2024, a married couple can use donor eggs or sperm if a District Medical Board certifies that one of them has a medical condition requiring it, as long as one gamete still comes from the couple. A single woman has no such option. She must use her own eggs, with donor sperm.[7] So the law does not stop at limiting surrogacy to people who are or were married. Even among those it admits, it treats the single woman less favourably than the married one.

The scheme looks even odder when read with the Assisted Reproductive Technology (Regulation) Act, 2021, which was passed in the same session. That Act allows ART services to be provided to a woman above the legal age of marriage and does not require her to be married.[8] A woman who has never married can therefore have IVF with donor sperm and carry the child herself. If she has no functioning uterus, though, the Surrogacy Act closes the only door left to her for having a genetically related child. One statute treats her as fit to be a single mother, and the other does not. Commentators have pointed to this inconsistency between the two laws and have suggested gender-neutral definitions that would cover individuals as well as couples.[9] In our view, this mismatch is the clearest sign that the exclusion was never worked out as a matter of principle. Had Parliament genuinely believed that single women make unsuitable mothers, it would not have opened IVF to them in a statute passed in the very same session.

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[5] ibid s 2(1)(r).

[6] ibid s 4(iii)(c)(I).

[7] Surrogacy (Regulation) Amendment Rules 2024, GSR 119(E) (21 February 2024) <https://egazette.gov.in/WriteReadData/2024/252270.pdf> accessed 12 November 2026.

[8] Assisted Reproductive Technology (Regulation) Act 2021, s 21(g).

[9] Soumya Kashyap and Priyanka Tripathi, 'Assisted Reproductive Technology (Regulation) Act 2021: Critique and Contestations' (2024) 16 Asian Bioethics Review 149.

Adoption law points in the same direction. Under the Juvenile Justice (Care and Protection of Children) Act, 2015 and the Adoption Regulations, 2022, single and divorced persons may adopt. A single woman can adopt a child of any gender, and a single man can adopt a boy.[10] Parliament has, in other words, already accepted that a child can be raised well by one parent, and that the parent can be an unmarried man. The Surrogacy Act's exclusion is not part of some general legislative view about single parents. It applies to one route to parenthood only, and that makes it much harder to justify.

III. Legislative History and the "Indian Family" Rationale

The story of surrogacy regulation in India begins with a single child. In *Baby Manji Yamada v. Union of India*, a Japanese couple engaged a surrogate in Gujarat but separated before the baby was born, leaving an infant whose nationality and guardianship no existing law could resolve.[11] The case made the absence of regulation impossible to ignore. Soon afterwards, the Law Commission's 228th Report recommended legislation to govern ART clinics and the rights and duties of everyone involved in a surrogacy.[12] At that stage, the debate centred on two worries: that surrogate mothers were being exploited, and that the legal status of the children was uncertain.

Neither worry has anything to do with whether the intending parent is married, or with their sexuality. Yet with each new draft of the Bill, eligibility shrank further towards the married heterosexual couple. When the Rajya Sabha Select Committee examined the 2019 Bill, some members and stakeholders argued that single men, live-in couples and gay couples should be included, since excluding them violated their reproductive autonomy.[13] The Committee did not accept this. It opened access only to widows and divorcees aged 35 to 45, and the reason it gave was the interest of the child.[14] The final Act followed that recommendation. With respect, the Committee never explained how the interest of a child is served by making sure that the child is never born. A child who does not yet exist has no interest in being kept out of existence,

[10]Juvenile Justice (Care and Protection of Children) Act 2015, s 57; Adoption Regulations 2022, reg 5.

[11]*Baby Manji Yamada v Union of India* (2008) 13 SCC 518.

[12]Law Commission of India, *Need for Legislation to Regulate Assisted Reproductive Technology Clinics as well as Rights and Obligations of Parties to a Surrogacy* (Law Com No 228, 2009).

[13]Rajya Sabha, *Report of the Select Committee on the Surrogacy (Regulation) Bill, 2019* (February 2020) para 4.31.

[14]ibid para 4.35.

and the children who are born to widows and divorcees under the Act are not shown to be any better off than they would be with a parent who never married.

When the exclusion has been defended in court, the defence has relied more on social norms than on evidence. The Union has told the Supreme Court that, given prevailing societal norms, the law in its current form is appropriate.[15] This is at least a candid explanation, but its candour is also its weakness. It admits that the line between those who may use surrogacy and those who may not has been drawn by conventional morality, and not by any identified risk to the surrogate or the child.

Three justifications can be drawn out of this history: protecting surrogates from exploitation, protecting the welfare of the child, and protecting the institution of marriage. The next two Parts ask whether excluding people on the basis of marriage and sexuality has any rational connection with the first two, and whether the third is a legitimate constitutional aim in the first place.

IV. Reproductive Autonomy under Article 21

The Supreme Court has more than once treated reproductive choice as part of personal liberty. In *Suchita Srivastava v. Chandigarh Administration*, it recognised a woman's right to make reproductive choices as a facet of Article 21, a right that covers the decision to have children as well as the decision not to.[16] The nine-judge bench in *K.S. Puttaswamy v. Union of India* took this further. It held that the right to privacy includes autonomy over the most personal decisions a person makes, among them decisions about family, marriage and procreation.[17] In *Devika Biswas v. Union of India*, the Court also treated access to reproductive health care as part of the same set of rights.[18]

The authority closest to the present question is *X v. Principal Secretary, Health and Family Welfare Department*.[19] The Court there read the Medical Termination of Pregnancy Rules to include unmarried women, holding that they enjoy the same reproductive autonomy as married

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[15]'Govt Tells SC Why It Won't Change Surrogacy Law' (*ThePrint*) <https://theprint.in/judiciary/govt-tells-sc-why-it-wont-change-surrogacy-law-given-societal-norms-law-in-its-current-form-appropriate/1497222/> accessed 12 November 2026.

[16]*Suchita Srivastava v Chandigarh Administration* (2009) 9 SCC 1.

[17]*KS Puttaswamy v Union of India* (2017) 10 SCC 1.

[18]*Devika Biswas v Union of India* (2016) 10 SCC 726.

[19]*X v Principal Secretary, Health and Family Welfare Department, Govt of NCT of Delhi* (SC, 29 September 2022) Civil Appeal No 5802 of 2022.

women. In the Court's own words, the "artificial distinction between married and single women is not constitutionally sustainable."[20] The Court was also critical of laws resting on assumptions about which women are entitled to make decisions about reproduction. If marital status cannot decide whether a woman may end a pregnancy, it is hard to see how it can decide whether she may have a child through surrogacy.

The State might reply that Article 21 does not require it to provide surrogacy to anyone. That may be so, but it misses the point. The Act does more than decline to fund or support surrogacy for certain people. It makes it a criminal offence for clinics to perform surrogacy for anyone outside the permitted groups. A prohibition of this kind restricts liberty, and after *Puttaswamy* any such restriction must pass the proportionality test. It must be backed by law and pursue a legitimate aim; the measure must be rationally connected to that aim; no less restrictive measure should be available that would work equally well; and the restriction must strike a fair balance between the right and the public interest. We think it significant that Parliament chose the criminal law here. Making a doctor liable to prosecution for helping a single woman have a child is about as heavy a burden as the State can place on a private reproductive decision, and it ought to require an equally strong justification.

The eligibility rules run into trouble at almost every step. Protecting surrogates and children are legitimate aims, but excluding unmarried people does not rationally advance either of them, for reasons discussed in Part VIII. Even if some connection could be shown, there are obvious less restrictive options. Assessing each applicant's ability to parent, as adoption law already does, would protect children without shutting out entire categories of people. A blanket rule that denies a medically infertile woman her only route to a genetically related child, simply because she never married, can hardly be called a fair balance.

V. Equality: Articles 14 and 15

Under the classic test laid down in *State of West Bengal v. Anwar Ali Sarkar*, a classification is valid under Article 14 only if it is based on an intelligible differentia and that differentia has a rational nexus with the object of the law.[21] The Act draws at least three lines: between married and unmarried people, between single women and single men, and between heterosexual and queer persons.

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[20] ibid [95].

[21] *State of West Bengal v Anwar Ali Sarkar* AIR 1952 SC 75.

Start with the line between a widow or divorcee and a woman who has never married. Both are single. If either is allowed to use surrogacy, she will bring up the child on her own. The only difference between them is that one was married at some point and the other was not. A past marriage tells us nothing about how well a woman can parent today, or about whether her surrogate is more or less likely to be exploited. The differentia may be intelligible, but it has no nexus with any object the Act is trying to achieve. Scholars studying the pending petitions have described this as the Act giving undue importance to marriage, with the result that never-married women cannot hope to become mothers through this route.[22]

The line between single women and single men suffers from the same defect. A divorced woman of 40 may commission a surrogacy, while a divorced man of 40 may not. The Act seems to assume that a man without a wife cannot be trusted to raise a child, an assumption adoption law gave up long ago. The Court has also moved beyond the nexus test and now asks whether a law is manifestly arbitrary, that is, capricious, irrational or lacking any adequate determining principle.[23] In *Joseph Shine v. Union of India*, it struck down the offence of adultery partly because it was built on outdated stereotypes about men, women and marriage.[24] A surrogacy law that treats marriage as the only entry point to parenthood rests on a similar stereotype.

Article 15(1) makes the argument stronger still. In *Navtej Singh Johar v. Union of India*, the Court accepted that discrimination based on sexual orientation is discrimination on the ground of sex.[25] In *NALSA v. Union of India*, it extended the protection of Articles 14, 15 and 21 to gender identity.[26] A rule that admits every married heterosexual couple but no queer couple, and that allows only women among single persons, discriminates on a prohibited ground. Transgender persons are excluded twice over: they cannot be part of a "couple" as the Act defines it, and the definition of "intending woman" does not account for them. As one

[22]Maya Unnithan and Jayna Kothari, 'The Undue Importance of Marriage in India's Current Surrogacy Legislation: Why Single Women Cannot Aspire to Motherhood' (2025) 6 Amicus Curiae 324.
[23]*Shayara Bano v Union of India* (2017) 9 SCC 1.
[24]*Joseph Shine v Union of India* (2019) 3 SCC 39.
[25]*Navtej Singh Johar v Union of India* (2018) 10 SCC 1.
[26]*National Legal Services Authority v Union of India* (2014) 5 SCC 438.

commentator has argued, after *Navtej* it has become increasingly difficult to defend heteronormative eligibility rules in laws on parenthood.[27]

Classifications based on prohibited grounds call for closer scrutiny. In *Anuj Garg v. Hotel Association of India*, the Court held that laws which claim to protect people on the basis of sex must be strictly examined, because protective laws often end up reinforcing the very stereotypes they claim to guard against.[28] The eligibility rules in the Surrogacy Act fit this description closely. What they protect is an idea of what a family should look like, rather than any particular person.

VI. The *Supriyo* Problem and the Pending Challenge

A. Reading *Supriyo*

Anyone arguing for queer access to surrogacy has to deal with *Supriyo v. Union of India*.[29] The Constitution Bench was unanimous in refusing to recognise a fundamental right to marry, and it left the question of marriage equality to Parliament. By a majority of three to two, it also upheld the adoption regulation that prevents unmarried couples, and therefore queer couples, from adopting jointly. The minority, led by Chief Justice Chandrachud, would have struck that regulation down as discriminatory. At first glance, *Supriyo* appears to settle the matter against the petitioners.

On a closer reading, it does not, and there are three reasons why. First, *Supriyo* was about whether the State must create or recognise a legal institution. The surrogacy challenge asks for much less: that the State stop prohibiting a medical procedure for people who are otherwise able to use it. Lifting a prohibition is a different thing from creating a new legal status. Second, the majority itself accepted that queer persons must not be discriminated against in exercising the rights they already have. Third, the adoption ruling in *Supriyo* concerned joint adoption by couples. A single gay man can still adopt a boy under the present regulations. If the law trusts him to bring up an adopted son on his own, it cannot sensibly claim that he is unfit to bring up a son born through surrogacy.

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[27] Anonza Priyadarshini, 'Right to Be a Parent and Heteronormative Laws: Aftermath of Navtej Singh Johar Judgment' [2022] ILI Law Review (Summer) 18.
[28] *Anuj Garg v Hotel Association of India* (2008) 3 SCC 1.
[29] *Supriyo v Union of India* 2023 INSC 920.

B. The Litigation Before the Supreme Court

The case now before the Supreme Court is a batch of petitions led by *Arun Muthuvel v. Union of India*, a public interest petition filed by a fertility specialist from Chennai. In October 2025, a bench of Justices B.V. Nagarathna and K.V. Viswanathan held that the Act's age limits do not apply retrospectively to couples who had frozen embryos before the Act came into force.[30] That judgment dealt only with this narrow issue. The validity of the eligibility rules is still undecided.

Some of the earlier hearings, however, are worrying. In February 2024, while hearing the plea of a 44-year-old unmarried woman, the bench remarked orally that the institution of marriage needed to be protected in India, and that becoming a mother outside marriage was not the norm in Indian society.[31] Since then, the Court has issued notice in several related petitions. These include pleas by single unmarried women,[32] a petition by Dr. Aqsa Shaikh, a transgender doctor, challenging the exclusion of single women and transgender persons,[33] and a petition by a divorced man challenging the exclusion of single men.[34]

Remarks made during a hearing are not a judgment, and it would be wrong to read them as one. They do, however, show what the petitioners are up against. Speaking with respect, we find these remarks hard to reconcile with the Court's own reasoning in *X v. Principal Secretary*, where the same idea of motherhood within marriage was rejected as an artificial basis for denying a woman control over her own reproductive life. The task of a constitutional court is to test the law against the Constitution, not to keep watch over social norms. The real question before the Court is not whether marriage deserves protection. It is whether the State can protect

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[30] *Arun Muthuvel v Union of India* 2025 INSC 1209.

[31] '"Can't Have Everything in Life": SC to Unmarried Woman Seeking Permission to Use a Surrogate' *The Wire* (6 February 2024) <https://thewire.in/rights/cant-have-everything-in-life-sc-to-unmarried-woman-seeking-permission-to-use-a-surrogate> accessed 12 November 2026.

[32] Sohini Chowdhury, 'Supreme Court Issues Notice on Plea Challenging Surrogacy (Regulation) Act Provisions Precluding Unmarried Women from Becoming Intending Mothers' (*LiveLaw*, 20 January 2023); Sheryl Sebastian, 'Supreme Court Seeks Centre's Response on Plea to Allow Surrogacy for Single Unmarried Women' (*LiveLaw*, 5 December 2023).

[33] *Aqsa Shaikh v Union of India* WP (C) No 380 of 2024 (SC, pending).

[34] Ruchi Bhattar, 'SC Asks Govt to Respond to Divorced Man's Plea Against Surrogacy Act' (*ThePrint*, 3 May 2025) <https://theprint.in/judiciary/sc-asks-govt-to-respond-to-divorced-mans-plea-against-surrogacy-act-how-law-regulates-access-in-india/2613726/> accessed 12 November 2026.

marriage by denying parenthood to people who are not married. *Joseph Shine* and *Navtej* both make clear that this question must be answered by constitutional morality, and not by the social morality of the majority.

VII. Comparative Perspectives

Other countries that care about family life just as much as India have also found exclusions of this kind hard to defend.

A. United Kingdom

Under the Human Fertilisation and Embryology Act, 2008, only couples could apply for a parental order, the order that transfers legal parenthood from the surrogate to the intended parent. In *Re Z (A Child) (No. 2)*, a single father whose son had been born through surrogacy in the United States challenged this restriction. The High Court declared the provision incompatible with the guarantees of non-discrimination and respect for family life under the European Convention on Human Rights.[35] Parliament then passed a remedial order allowing single persons to apply for parental orders.[36] The English court could find no principled reason why a child should be able to have a secure legal relationship with two parents but not with one.

B. Israel

Israel's surrogacy law also began by allowing only heterosexual couples. A 2018 amendment extended access to single women but continued to exclude single men and same-sex couples. In *Arad-Pinkas v. Committee for Approval of Embryo Carrying Agreements*, the Supreme Court held that this exclusion was a disproportionate violation of the rights to parenthood and equality, and in July 2021 it ordered that the exclusion be removed within six months.[37] The parallel with India is close: a law that admits single women but not single men, defended on social grounds, and found wanting by the court. To our minds, the Israeli case matters for another reason as well. Israel, like India, is a society that places great value on family and community, and its court did not see those values as a reason to deny people the chance to

[35] *Re Z (A Child) (No 2)* [2016] EWHC 1191 (Fam).
[36] Human Fertilisation and Embryology Act 2008 (Remedial) Order 2018, SI 2018/1413.
[37] *Arad-Pinkas v Committee for Approval of Embryo Carrying Agreements* HCJ 781/15 (Supreme Court of Israel, 11 July 2021).

become parents. Respect for the family and respect for different kinds of families are not in conflict.

C. European Court of Human Rights

In *Mennesson v. France*, the European Court of Human Rights held that France's refusal to recognise the legal parentage of children born through surrogacy abroad violated the children's right to respect for their private life, which includes their identity.[38] *Mennesson* dealt with recognition and not with access, and it should not be stretched beyond that. What makes it useful here is its focus on the child who has actually been born. A child born to a single father through surrogacy abroad and brought to India gains nothing from a domestic law that treats his family as one that ought not to exist.

Foreign decisions do not bind Indian courts. They do show, however, that the arguments based on child welfare and social norms have been tested elsewhere and have not held up.

VIII. Answering the State's Justifications

A. The Welfare of the Child

The strongest argument in favour of the exclusion is that children do best when raised by two married parents. The Act itself undermines this argument. By allowing widows and divorcees to use surrogacy, Parliament has accepted that a child born through surrogacy may be raised by a single parent from birth. Adoption law accepts the same for single men and single women. If growing up with one parent were truly harmful, the law would not knowingly allow it in these cases. What the welfare argument really protects is marriage, not the presence of two parents. A child's welfare is better served by looking closely at the person who will raise the child than by checking whether that person holds a marriage certificate. We would add a simple observation. Many children in India are already being raised by a single parent, whether because of death, desertion or separation, and no one suggests that the State should treat those homes as a danger to the children in them. It is difficult to see why a single parent who has planned carefully for a child should be viewed with more suspicion.

B. Protecting Surrogates from Exploitation

Preventing exploitation is a serious and legitimate aim. But exploitation arises from the relationship between the intending parent and the surrogate: from money changing hands, from

[38] *Mennesson v France* App no 65192/11 (ECtHR, 26 June 2014).

pressure, from information kept back. The Act already deals with these risks. It bans payment beyond medical expenses and insurance, requires surrogates to obtain eligibility certificates, and allows a woman to act as a surrogate only once in her life. These safeguards work in the same way whoever the intending parent is. There is no reason to think a single man is any more likely to exploit a surrogate than a married one.

C. Preserving the Institution of Marriage

Marriage is an important social institution, and the State is free to support it. Supporting marriage, however, cannot mean refusing parenthood to everyone outside it. In *Navtej* and *Joseph Shine*, the Court drew a clear distinction between constitutional morality and popular morality, and held that rights cannot be denied simply because the majority finds a way of life unusual. Writers on queer legal theory have long pointed out that Indian family law treats the married heterosexual household as the norm and every other arrangement as an exception, to be tolerated at best.[39] The Surrogacy Act takes that assumption and turns it into a criminal prohibition.

D. Deference to Parliament

Finally, it may be argued that who can use surrogacy is a policy question best left to Parliament. Courts do defer to the legislature on matters of policy, but not where the policy restricts fundamental rights on prohibited grounds. In *X v. Principal Secretary* itself, the Court did not wait for Parliament to amend the MTP Rules; it read them to include unmarried women. The petitioners in the surrogacy cases are asking for nothing more radical than that.

IX. Recommendations and Conclusion

The protective core of the Act can be kept intact while its exclusions are removed. Four changes would achieve this.

1. **Make medical need the test.** Eligibility should turn on a certified medical need for gestational surrogacy, as it already does for married couples, and not on whether the applicant is or has been married.
2. **Assess each applicant individually.** Where the State has real concerns about a child's welfare, it should assess the individual applicant's ability to parent, as adoption

[39]Arvind Narrain and Alok Gupta (eds), *Law Like Love: Queer Perspectives on Law* (Yoda Press 2011).

authorities already do, and apply the same assessment to married and unmarried applicants alike.

3. **Open eligibility to all persons.** Section 2(1)(s) should be amended to cover any Indian person, whatever their sex, gender identity or marital status. Partners who wish to raise a child together should not have to fit within the definition of "couple" to do so.
4. **Bring the two Acts into line.** The Surrogacy Act and the ART Act, which were passed together, should apply a common and non-discriminatory test of eligibility, and the rules on gametes should not treat single applicants less favourably than married ones.[40]

None of these changes affects the ban on commercial surrogacy or the protections given to surrogate mothers. Feminist scholars writing about surrogacy in India have rightly argued that the surrogate's interests must be at the heart of any regulation.[41] Nothing in that argument requires single or queer intending parents to be shut out. What protects the surrogate is the way the arrangement is regulated, not the identity of the person who commissions it.

The Surrogacy (Regulation) Act was meant to put an end to the exploitation of women. Its eligibility rules, however, do something quite different. They take a contested social preference for the married heterosexual family and make it a matter of criminal law. A woman who has never married and has no uterus, a widowed father, a gay couple and a transgender woman are all excluded for the same reason: their families do not match the picture the legislature had in mind. The Supreme Court's own judgments on autonomy, privacy and equality give it everything it needs to hold that this is not a reason the Constitution can accept. We recognise that these proposals will not settle every question about surrogacy, and that reasonable people hold strong views on the subject. But in our view, the Constitution does not let the State decide whose family is worthy of existing. Parenthood should not be reserved for those who are married.

[40]Kashyap and Tripathi (n 9).

[41]Sheela Saravanan, *A Transnational Feminist View of Surrogacy Biomarkets in India* (Springer 2018).