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WHO IS A PARENT? WHEN BIOLOGY, BIRTH AND INTENTION POINT TO DIFFERENT PEOPLE

-Pratik Kumar Chaubey

I. Introduction

A child took birth. One person has given the egg, another carried the pregnancy, and another third intended to raise that child. If all three claim a contrasting connection to the child, who, in the purview of law, is the parent?

Parenthood was once mainly understood as a biological fact. Assisted reproductive technologies (ART), however, have unsettled that acceptance. A child may now have unrelated people claiming different parental roles, each with a valid connection to the child.

This creates three unlike forms of parenthood: genetic parenthood, based on the donation of sperm or egg; gestational parenthood, based on bearing and giving birth to the child; and intentional parenthood, based on the decision to bring the child into life and assume responsibility for raising the child. [1]These identities may coexist , but they need not.

Surrogacy makes this difference particularly visible. The woman who gives birth may have no genetic connection to the child, while the intended parents may have neither carried the pregnancy nor contributed genetic material. The question, therefore, is no longer simply who is biologically related to the child, but which relationship should the law recognise as parenthood?

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[1] See generally Susan B. Boyd, *Gendering Legal Parenthood: Bio-Genetic Ties, Intentionality and Responsibility*, 25 Windsor Y.B. Access Just. 63, 63–67 (2007).

II. What Does Indian Law Actually Say?

Indian law indicates that legal parenthood cannot invariably be confined to genetics or childbirth. Section 31 of the Assisted Reproductive Technology (Regulation) Act, 2021 mandates that a child born through ART shall be regarded as the biological child of the commissioning couple, while the donor surrenders parental rights. [2]Thus, the law intentionally distinguishes genetic contribution from legal parenthood.

The same approach is evident is surrogacy. Section 8 of the Surrogacy (Regulation) Act, 2021 provides that a child born through surrogacy shall be deemed the biological child of the intending couple or intending woman and shall entitled to the rights and privileges available to a natural child. [3]The statutory framework therefore gives substantial weight to intentional parenthood.

The Supreme Court has grappled with the intricacies of surrogacy even prior to these enactments. In *Baby Manji Yamada v. Union of India*, the Court acknowledged the unique character of a surrogacy arrangement in which the woman carrying the child may not rear the child.[4] More recently, in *Hamsaanandini Nanduri v. Union of India*, the Court dismissed a restrictive interpretation of motherhood based solely on childbirth, underscoring the value of the bond developed between a mother and child outside the womb.[5]

Indian law thus reflects a expanded notion of parenthood, but it leaves an important question unsettled: when these forms of parenthood differ, whose interests should determine legal recognition?

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[2] Assisted Reproductive Technology (Regulation) Act, No. 42 of 2021, § 31(1)–(2), India Code (2021).

[3] Surrogacy (Regulation) Act, No. 47 of 2021, § 8, India Code (2021).

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

[5] *Hamsaanandini Nanduri v. Union of India*, 2026 INSC 246, W.P. (C) No. 960 of 2021, ¶¶ 52, 105, 128–29 (Mar. 17, 2026).

III. When Intention Becomes Parenthood

Intention appears appealing as intended parents deliberately choose to bring a child into existence and take on duty for raising that child. Yet intention alone cannot constitute an absolute ground for legal parenthood.

A surrogacy arrangement may involve intended parents who have no genetic connection to the child. Should their intention supersede the surrogate's gestational relationship? On the contrary, if the surrogate never intended to raise the child, should childbirth alone determine legal motherhood?

Neither intention nor birth provides a complete solution.

The more persuasive approach is to treat intention as a initial consideration, not an absolute entitlements. Parenthood involves ongoing obligations of care, support and protection. The law should therefore distinguish between the *intention to create a child* and the *responsibility to parent that child*.

That distinction shifts the inquiry from adult entitlement to the consequences for the child.

IV. The Child at the Centre

The child should not become the arena upon which conflicting adult assertion to parenthood are resolved. The best interests of the child must instead organise the inquiry. This requires attention to legal certainty, continuity of care, identity and the child's relationship with biological origins. In *Mennesson v. France*, the European Court of Human Rights recognised that a child's private life includes an interest in establishing aspects of personal identity connected with biological parentage.[6]

Indian jurisprudence likewise demonstrates that genetic veracity cannot invariably supersede the child's legal and socialstatus. In *Aparna Ajinkya Firodia v. Ajinkya Arun Firodia*, the Supreme Court considered the implications of DNA testing for the legitimacy and status of a child and

[6] *Mennesson v. France,* App. No. 65192/11, ¶¶ 96–101 (Eur. Ct. H.R. 2014).

cautioned against allowing genetic testing to become an tool for resolving adult marital conflicts.[7]

The principle is thus dual: legal stability must not obliterate biological identity, but biological truth should not automatically undermine an entrenched parent-child relationship.

V. Comparative Jurisprudence: What Can India Learn?

Comparative jurisprudence illustrates why no solitary test can settle every parentage dispute.

In *Mennesson*, the European Court found that France's refusal to acknowledge the legal relationship between children born through surrogacy and their biological father violated the children's right to respect for private life. [8] *Labassee v. France* similarly underscored the significance of the child's legal relationship with a biological parent. [9] These cases highlight the child's interest in identity rather than merely the adult's biological claim.

Conversely, *Paradiso & Campanelli v. Italy* highlights the limits of intention and biology. The Grand Chamber considered the severance of a familial relationship concerning intended parents who had no biological connection with the child[10]. The case shows that the mere existence of an intended family relationship does not ipso facto resolve the question of legal protection.

The United Kingdom adopts a more structured framework. Section 54 of the Human Fertilisation and Embryology Act 2008 allows intended parents to secure a parental order conferring legal parenthood from the surrogate, contingent upon statutory requirements and judicial oversight.[11]

The comparative insight for India is hence clear: legal parenthood should not be confined to genetics, gestation or intention alone.

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[7] *Aparna Ajinkya Firodia v. Ajinkya Arun Firodia*, (2024) 7 SCC 773.

[8] *Mennesson v. France*, App. No. 65192/11, ¶¶ 96–101 (Eur. Ct. H.R. 2014).

[9] *Labassee v. France*, App. No. 65941/11, ¶¶ 60–79 (Eur. Ct. H.R. 2014).

[10] *Paradiso & Campanelli v. Italy*, App. No. 25358/12, ¶¶ 135–58 (Eur. Ct. H.R. 2017) (Grand Chamber).

[11] Human Fertilisation and Embryology Act 2008, c. 22, § 54 (U.K.).

VI. Toward a Child-Centred Test for Legal Parenthood

A child-centred framework should evaluate five considerations.

First, best interests: the child's welfare must be the foremost factor.[12]

Second, legal certainty: the child ought to have a fixed and identifiable legal status regarding custody, maintenance, inheritance and parental responsibility.

Third, identity: acknowledgement of intended parents should not require effacing the child's awareness of genetic origins.[13]

Fourth, continuity of care: the law should examine who has actually furnished, or is feasible capable to provide, continued care and emotional security.

Fifth, parental responsibility: intention should carry more significance where it has converted into an enduring assumption of parental duties.

This approach avoids two polarities. Biology should not automatically dictate legal parenthood, and intention should not be converted into an adult entitlement to parenthood. Each factor should instead be evaluated in light of its implications for the child.

VII. Conclusion

Assisted reproduction has demonstrated the constraints of viewing parenthood as a singular biological phenomenon. Genetics, gestation, intention and caregiving may now indicate different people. The law should therefore resist the inclination to choose one factor universally. Biology may be relevant to identity; gestation may forge a substantial bond; intention may evince a dedication to parenthood; and caregiving may constitute an existing parental bond.

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[12] Convention on the Rights of the Child art. 3(1), Nov. 20, 1989, 1577 U.N.T.S. 3.

[13] *Mennesson*, App. No. 65192/11, ¶¶ 96–101; *Labassee*, App. No. 65941/11, ¶¶ 60–79.

But the ultimate inquiry should be posed from the child's standpoint: Which legal arrangement best secures this child's identity, stability, relationships and future? Parenthood should thus be comprehended not merely as a status flowing from the circumstances of conception or birth, but as a legal relationship whose final objective is to protect the child who results from it.