TRANSGENDER PARENTHOOD IN INDIA: A RIGHT RECOGNISED OR A RIGHT RESTRICTED?

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ABSTRACT

This article examines the legal recognition of transgender parenthood in India, focusing on the relationship between constitutional rights, adoption law, reproductive healthcare and administrative documentation. It analyses the Transgender Persons (Protection of Rights) Act, 2019, the legislative developments concerning its 2026 amendment, the Juvenile Justice (Care and Protection of Children) Act, 2015, the Adoption Regulations, 2022, and the Assisted Reproductive Technology (Regulation) Act, 2021. Through an examination of relevant judicial decisions, including National Legal Services Authority v Union of India, *K. Prithika Yashini v Union of India*, *Hari Devageeth v Union of India* and *Zahhad v State of Kerala, the article explores the legal and administrative barriers faced by transgender persons seeking to become parents. It argues that recognition of gender identity does not, by itself, resolve the distinct legal questions surrounding adoption eligibility, reproductive autonomy and the recognition of parentage.*

Keywords: Transgender Persons Act, Family Formation, CARA.

INTRODUCTION

Parenthood is an important aspect of personal autonomy and family life. However, for transgender persons in India, the ability to form and maintain a family may involve legal and administrative challenges; in fact, the real question is whether we even recognise this right for them. This article examines that question through the relevant legislation, judicial decisions and administrative procedures governing adoption, assisted reproduction, fertility preservation and birth registration.

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The Transgender Persons (Protection of Rights) Act, 2019, was introduced by the Indian Parliament as a means to protect transgender people legally so that they do not face any indifference in society. The act protects the transgender community's rights to residence, employment, education and health care. The Act also guarantees a certificate of identity for the transgender person. The Act also recognises the offences against them and gives penalties. The Act also introduced the National Council for transgender persons; the council monitors the impact of the policies, legislation and projects with respect to transgender persons. While that Act explicitly prohibits discrimination in areas like employment, education, and healthcare, it is entirely silent on civil family rights.

However, this section of society has been denied the right to family formation not only by Indian society but also by the law, cause the law explicitly does not mention their rights to form a family under the transgender persons act. The paradox here is that this section of the society identifies themselves as the hijras, kothis etc which was accepted in the society yet in modern India even if we do recognise the 3rd gender identities and fully accept them as a part of the society.

Section 8 of the Transgender Persons (Protection of Rights) Act, 2019, states the obligation of the appropriate government is to secure full and effective participation of the transgender persons and their inclusion in the society. It also mentions that the government shall take such welfare measures that protect the rights and interests of transgender persons. The state itself fails its statutory duty to include them as eligible to become parents.

The Transgender Persons (Protection of Rights) Amendment Bill 2026 proposes substantial changes to the original legislation. The amendment revises the definition of a transgender person by specifying particular categories covered by the law and excluding certain identities previously encompassed by the broader definition. It also changes the process for obtaining legal recognition of gender identity by introducing medical-board involvement in the certification process. But neither the Transgender Persons Act 2019 nor the Amendment Bill addresses transgender parenting or family formation rights.

JUVENILE JUSTICE ACT 2015

The Juvenile Justice (Care and Protection of Children) Act 2015 (JJ Act) is India's primary legislation governing children who come into conflict with the law and those in need of care and protection. Under Section 57(3), single individuals are allowed to adopt. However, it fails

to define the parameters for transgender applicants to adopt, and assigning parenting qualifications based entirely on cisgender binaries violates the basic theory of equality. The central adoption resource authority (CARA) is a statutory body that operates under the Juvenile Justice Act 2015. The body is designated to monitor and regulate adoptions; it is structured strictly around a male-female binary, and transgender and non-binary identities or queer/same-sex relationships are not explicitly accommodated or legally recognised for joint/single adoptions in the same manner.

DIFFICULTIES FACED

In India, transgender persons may face several documentation-related difficulties when trying to adopt a child, become a parent through assisted reproductive technology (ART), or establish legal parentage. These difficulties often involve identity documents, gender markers, marital status, medical records, and parentage or birth certificates. The issue is not simply that transgender persons have to provide documents. It is whether the adoption rules and registration system recognise them as eligible applicants and can process their documents consistently with their gender identity, as the system lacks to include a 3rd gender category to complete an application without misgendering themselves.

A significant development is the Madras High Court proceedings reported in December 2025. The Court asked the Union government to explain the absence of appropriate adoption guidelines for transgender persons after a petitioner challenged the exclusion of transgender applicants from the CARA system. This illustrates the difference between possessing valid identity documents and being able to use those documents to access a legal process.

The NALSA v. Union of India (2014) judgment was a historic turning point that changed the legal, social, and constitutional status of transgender people in India. Before this ruling, transgender individuals were not legally recognised, leaving them vulnerable to severe discrimination, harassment, and exclusion. The Supreme Court delivered several monumental advancements for the community:

Legal Recognition as the 'Third Gender' –

Beyond the Binary: The Court officially recognised transgender individuals as a distinct 'Third Gender' under Indian law [National Legal Services Authority v. Union of India].

Official Documentation: It mandated that all government documents, including passports, voter ID cards, driving licenses, and ration cards, must feature a 'Third Gender' or 'Transgender' option alongside male and female.

The Right to Self-Determination –

No Medical Requirement: The Court ruled that gender identity is entirely psychological and emotional, not biological [National Legal Services Authority v. Union of India].

Bodily Autonomy: It declared that a person has the absolute right to self-identify their gender. The state cannot force someone to undergo Sex Reassignment Surgery (SRS), medical examinations, or hormone therapy to be legally recognised.

Granting of Fundamental Constitutional Rights –

The Court explicitly extended the protections of the Indian Constitution to transgender citizens [National Legal Services Authority v Union of India]:

Article 14 (Equality): Guaranteed them equal protection under the law [National Legal Services Authority v Union of India].

Articles 15 & 16 (Anti-Discrimination): Clarified that the constitutional ban on discrimination based on 'sex' includes **gender identity** [National Legal Services Authority v. Union of India]. This made it illegal to discriminate against them in housing, healthcare, or workplaces.

Article 19(1)(a) (Freedom of Expression): Protected their right to express their gender through their choice of dress, words, behaviour, and clothing.

Article 21 (Right to Life and Dignity): Affirmed that living with dignity, privacy, and personal autonomy is a fundamental right that applies to every transgender person [National Legal Services Authority v Union of India].

Mandate for Welfare and Affirmative Action –

Social Benefits: The Court directed central and state governments to frame social welfare schemes to tackle poverty, illiteracy, and social stigma within the community.

Educational and Job Reservations: It ordered the government to treat transgender individuals as Socially and Educationally Backward Classes (SEBCs)**,** paving the legal pathway for them to receive quotas (reservations) in government jobs and educational institutions.

Public Health: It ordered the creation of dedicated HIV sero-surveillance centres and separate public toilets to ensure their safety and health.

MEDICAL COMPLICATIONS

The authority requires transgender people who wish to have kids to use their dead names; it forces them to use the gender markers assigned to them at birth. The issue is also that birth certificates use the labels "mother" and "father." It is that a transgender person's gender marker, medical records and reproductive circumstances may not fit the categories used by fertility clinics, hospitals and legal regulations.

Hari Devageeth v Union of India: The issue being dealt with was whether a transgender man who has not completed gender-affirming surgery can preserve his eggs (oocytes) through assisted reproductive technology (ART) for possible future reproduction. The Kerala High Court directed the petitioner to approach an authorised ART bank, which was directed to take steps to retrieve and cryopreserve his oocytes. The Court left open the constitutional challenge to Section 21(g) of the Assisted Reproductive Technology (Regulation) Act, 2021.

Hari Devageeth is a transgender man who was assigned female at birth but identifies as male. He underwent hormone therapy and chest surgery but had not completed the gender-affirming procedures involving removal of his reproductive organs. He wished to preserve his oocytes before undergoing further surgery so that he could potentially use them for reproduction in the future. He held an identity certificate recognising his gender as male under Section 7 of the Transgender Persons (Protection of Rights) Act, 2019. When he approached a Fertility Centre in Kerala for oocyte cryopreservation, the facility declined to provide the service, citing the restrictions and definitions under the ART Act and its implementing framework. He challenged the legal framework before the Kerala High Court, arguing that denying fertility preservation infringed his constitutional rights to equality and reproductive autonomy. The principal statutory difficulty was that the ART Act refers to a "woman" and a "commissioning couple", without expressly clarifying how its provisions apply to transgender persons seeking fertility preservation.

Hari Devageeth argued that reproductive autonomy is a fundamental right. Article 21 protects personal liberty, dignity, privacy and reproductive choice. He also relied on the Government's medical guidelines, which discuss fertility preservation for transgender persons before certain gender-affirming surgeries.

The Union Government and KIMS Fertility Centre raised several objections: The ART Act defines eligible recipients by reference to a woman or a commissioning couple, and does not expressly provide for the petitioner's situation. The Government argued that a person holding an identity certificate reflecting male gender could not claim ART services under the statutory category of "woman".

The Court concluded that the petitioner had a right to seek preservation of his oocytes while his reproductive organs remained intact. It held that denying this opportunity would violate his right to life insofar as it included reproductive choice.

Second, the Court distinguished the functions of ART clinics and ART banks. Under the statutory framework, an ART bank is responsible for collecting, storing and supplying gametes, whereas an ART clinic performs ART procedures.

Final Order:

- The petitioner could approach an ART bank of his choice.
- The ART bank was directed to take steps to retrieve and cryopreserve his oocytes for possible future reproduction.
- The constitutional challenge to Section 21(g) of the ART Act was left open.

The petition was therefore partly allowed, and the petitioner received specific relief concerning fertility preservation. Therefore, the definitions and eligibility provisions of the Assisted Reproductive Technology (Regulation) Act, 2021should be examined to establish whether a particular restriction applies to transgender applicants; it would be inaccurate to conclude that every transgender man is automatically excluded.

ADOPTION REGULATIONS 2022

Supriyo @ Supriya Chakraborty v Union of India (2023): It is an important Supreme Court Judgement concerning LGBTQ+ rights in India, and one among them was the right of queer

couples to adopt children. One of the questions addressed here was: Can queer couples jointly adopt children under the existing adoption framework? The judgment held that unmarried couples, including queer couples, can jointly adopt children under the applicable framework. The Court read down Regulation 5(3) of the Adoption Regulations, 2022, removing the requirement that a couple must have a marital relationship lasting at least two years. Adoption remains subject to eligibility requirements and the child's welfare. The Madras High Court directed the Ministry of Women and Child Development to explain why transgender persons are effectively barred from adopting under current CARA guidelines and the JJ Act.

K. Prithika Yashini (Transgender) v Union of India: The issue was whether a transgender person can legally adopt a child as a single prospective adoptive parent under Indian adoption law. This case shows us the lack of explicit recognition of transgender persons as eligible adoptive parents. But the Madras High Court dismissed the petition, upholding the rejection of the petitioner's adoption application referring to her transgender identity. However, it permitted her to approach the Central Government and the Central Adoption Resource Authority (CARA) to seek amendments to the relevant legislation and regulations. She argued that she was a government employee capable of providing a child with a secure and nurturing home, and that being transgender should not prevent her from adopting. The central legal question was whether the word person in Section 57(3) included a transgender person for adoption, given the gender categories used in Regulation 5, the Adoption Regulations 2022.

Prithika Yashini argued that Section 57(3) uses the gender-neutral term person, which should include transgender individuals. The Juvenile Justice Act does not expressly prohibit transgender persons from adopting. She was financially capable of caring for a child and could provide a safe and supportive home. Rejecting her application because she was transgender unfairly restricted her ability to become an adoptive parent.

The Union Government and CARA argued that the adoption regulations did not expressly recognise transgender persons as eligible adoptive parents. The regulations specifically referred to single males and single females. In the absence of a clear legal provision including transgender persons, CARA's rejection of the application should not be overturned. Consequently, the Court held that CARA's rejection could not be considered misconceived, perverse or arbitrary under the existing regulatory framework.

Final Order:

- The writ petition was dismissed.
- CARA's rejection of the adoption application was upheld.
- The petitioner was permitted to make a representation to the Union Government and CARA seeking amendments to Section 57 of the Juvenile Justice Act and Regulation 5 of the Adoption Regulations to enable transgender persons to adopt.

The case becomes important for the Recognition of transgender family rights; it raises the question of whether transgender persons should have equal rights to legal parenthood and whether this eligibility is attached to the gender identity or the individual's capacity to raise the child.

PRESENTING A CASE THAT LED TO A CRUCIAL CHANGE FOR THE TRANSGENDER COMMUNITY

Zahhad v State of Kerala –

Core Issue: Can a child born to two transgender parents receive a birth certificate that identifies both adults simply as "parents", without categorising either as "mother" or "father" or stating their gender?

The case involved Zahhad and Ziya Paval, two transgender individuals who were living together as a family.

Zahhad is a transgender man who was assigned female at birth. Ziya Paval is a transgender woman who was assigned male at birth. Both had obtained transgender identity certificates and identity documents reflecting their respective gender identities. Zahhad gave birth to their son on 8 February 2023. The Kozhikode Corporation issued the child's birth certificate, identifying Zahhad as the mother and Ziya Paval as the father.

The couple was concerned that these gender-specific descriptions contradicted their recognised gender identities. They feared that the discrepancy could cause confusion, prejudice and difficulties for their child in education, employment and other aspects of life. They therefore asked the Corporation to issue a new birth certificate describing them simply as the child's parents, without identifying either as mother or father and without referring to their genders.

The Corporation refused, explaining that the prescribed birth certificate format under the Kerala Registration of Births and Deaths Rules, 1999, contained separate columns.

Zahhad and Ziya Paval argued that Gender identity must be respected. Both had legally recognised gender identities, and their child's birth certificate should not contradict those identities. The law must adapt to changing family structures. The prescribed format should not prevent transgender couples from being recognised as parents. Constitutional rights must be given effect. The authorities should interpret the existing legal framework consistently with equality, dignity and the rights of transgender persons. They sought a direction to modify the prescribed birth certificate forms so that both individuals could be recorded as parents without gender-specific descriptions.

The State authorities and Kozhikode Corporation argued that the Registration of Births and Deaths Act, 1969, and the Kerala Rules, 1999, prescribed the format for birth certificates, with separate fields for the names of mother and father.

Justice Ziyad Rahman A.A. allowed the petition and directed the Corporation to issue a modified birth certificate.

First, the law must respond to changing family structures that families do not always conform to the conventional structure of a mother, father and children. Different family arrangements are equally deserving of legal protection.

Second, the child's welfare and identity mattered. The Court accepted that this created genuine difficulties for the child because those descriptions conflicted with the parents' gender identities. The Court also said that the certificate could be modified without changing the underlying register.

Final Order:

The Court directed the Kozhikode Corporation to:

- Issue the child's birth certificate within two months of receiving a copy of the judgment.
- Remove the separate fields identifying the father and mother from the certificate.
- Include the names of Zahhad and Ziya Paval as the child's parents, without referring to their genders.

The case is extremely important as it brings in the recognition of transgender parenthood as well as the protection of the child's interests.

CONCLUSION

The challenges that the transgender community faces societally and legally to form a family, which can be conventionally formed by normal people without facing any challenge. Let’s all support and respect the community and help them build the family they once dreamed of.

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