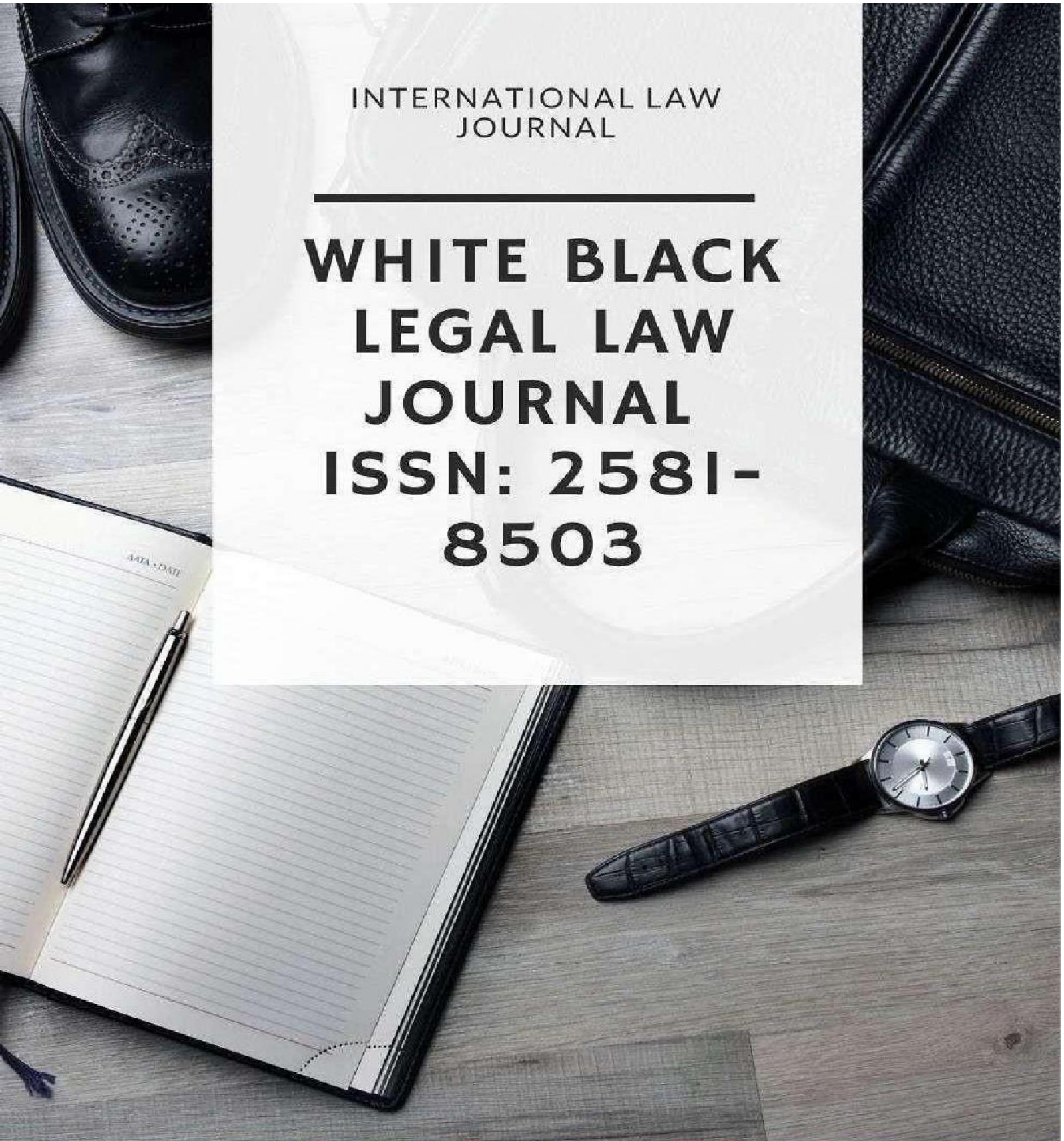




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RECONCEPTUALISING MOTHERHOOD BEYOND MARRIAGE: A CONSTITUTIONAL AND LEGAL ANALYSIS OF THE RIGHTS OF SINGLE MOTHERS IN INDIA

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Abstract

The understanding of family and parenthood in India is undergoing a gradual transformation as increasing numbers of women assume the responsibility of raising children outside the conventional framework of marriage. Yet, the legal recognition of motherhood continues to operate, in several areas, within assumptions historically associated with the marital family. This creates a complex legal position for single mothers, particularly in matters relating to guardianship, adoption, maintenance, inheritance, reproductive autonomy, identity documentation and access to public services. Although constitutional jurisprudence has significantly expanded the meaning of equality, dignity, privacy and personal autonomy, the practical recognition of these principles has not always kept pace with changing family structures.

This paper examines single motherhood not merely as a social category requiring protection, but as a constitutional question concerning the relationship between **marital status, parenthood and individual autonomy**. It critically analyses whether marriage should continue to influence the legal recognition of motherhood and parental rights. The study engages with Articles 14, 15 and 21 of the Constitution and examines the evolving judicial approach towards reproductive choice, guardianship, privacy, dignity and non-traditional families. It further considers the rights and interests of children, particularly their identity, welfare, maintenance and inheritance, recognising that the legal position of a single mother inevitably has implications for the child.

The paper also explores less visible forms of inequality arising from marriage-centric legislation, administrative practices and institutional mechanisms that presume a conventional two-parent family. Through doctrinal and comparative analysis, the study argues for a **marital-**

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status-neutral and rights-based framework of parenthood, grounded in substantive equality, constitutional morality, family diversity and the best interests of the child. It proposes that Indian law should move beyond treating single motherhood as an exception to the traditional family and instead recognise it as a legitimate manifestation of contemporary family life.

Keywords: Single Motherhood; Constitutional Rights; Marital Status; Family Diversity; Parental Autonomy.

CHAPTER I: INTRODUCTION AND RESEARCH FRAMEWORK

1.1 Introduction

Marriage has traditionally occupied a central position in the legal and social understanding of family in India. Consequently, motherhood has frequently been conceptualised within the framework of marriage, with legal rules relating to guardianship, parentage, maintenance, reproduction and custody historically reflecting assumptions concerning the marital family. Contemporary social realities, however, demonstrate that motherhood is not necessarily dependent upon marriage. Women may become or choose to remain mothers outside marriage because of widowhood, divorce, separation, adoption, assisted reproduction, abandonment, or independent reproductive choices.

The constitutional framework of India provides a significant basis for reconsidering such marriage-centred assumptions. Articles 14, 15 and 21 of the Constitution protect equality, non-discrimination, dignity, privacy and personal liberty. The Supreme Court has progressively interpreted Article 21 to encompass decisional autonomy and reproductive choice. In *Suchita Srivastava v. Chandigarh Administration*, the Court recognised reproductive choice as an aspect of personal liberty under Article 21.² More recently, in *X v. Principal Secretary, Health & Family Welfare Department, Government of NCT of Delhi*, the Court emphasised that reproductive autonomy cannot be conditioned upon marital status and recognised the reproductive rights of unmarried women.³

The legal position concerning single motherhood has also developed through judicial intervention. In *ABC v. State (NCT of Delhi)*, the Supreme Court held that an unwed mother

² *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1, 20–21.

³ *X v. Principal Secretary, Health & Family Welfare Department, Government of NCT of Delhi*, (2023) 9 SCC 1; see also *X v. Principal Secretary, Health & Family Welfare Department, Government of NCT of Delhi*, 2022 SCC OnLine SC 1321.

could apply for guardianship of her child without being compelled to disclose the identity or obtain the consent of the child's father in circumstances where such disclosure was unnecessary.⁴ The decision marked an important departure from a legal framework that could otherwise place unmarried mothers at a procedural disadvantage.

Nevertheless, statutory law continues to contain provisions reflecting older familial assumptions. For example, section 6 of the Hindu Minority and Guardianship Act, 1956 identifies the mother as the natural guardian of an illegitimate child, while the general statutory framework of guardianship operates alongside the Guardians and Wards Act, 1890.⁵ The coexistence of progressive constitutional jurisprudence with marriage-oriented or historically gendered statutory provisions creates an important field for legal inquiry.

This research therefore examines whether Indian law adequately recognises motherhood as an independent constitutional and legal status rather than as a status derivative of marriage. It seeks to analyse the rights of single mothers through the principles of equality, dignity, privacy, reproductive autonomy, family life and the best interests of the child.

1.2 State of the Research Problem

The principal research problem arises from the tension between the constitutional transformation of family and gender relations and the persistence of statutory and institutional structures developed around the traditional marital family.

Although judicial decisions have progressively strengthened the autonomy and dignity of women, single mothers may continue to encounter legal and administrative difficulties concerning guardianship, birth documentation, custody, adoption, inheritance, maintenance, reproductive decisions and recognition of parental status. The problem is therefore not merely whether single mothers possess rights, but whether those rights are recognised **without making marriage a precondition for the full enjoyment of motherhood.**

The central problem examined in this study is consequently whether Indian constitutional law has sufficiently transformed the legal conception of motherhood from a marriage-dependent institution into an autonomous status protected by fundamental rights.

1.2 Literature Review

Existing scholarship offers important but specialised insights into the legal position of single

⁴ *ABC v. State (NCT of Delhi)*, (2015) 10 SCC 1, 8–13.

⁵ Hindu Minority and Guardianship Act, No. 32 of 1956, § 6, India Code; Guardians and Wards Act, No. 8 of 1890, §§ 17, 19, India Code.

mothers in India, though it remains dispersed across guardianship, reproductive rights, constitutional law, and parenthood. This study integrates these strands through a broader constitutional lens on motherhood beyond marriage.

Saptarshi Mandal's Biology, Intention, Labour: Understanding Legal Recognition of Single Motherhood in India shows that single motherhood can take multiple legal forms and that motherhood is not defined solely by biology. It highlights biology, intention, and caregiving labour as key dimensions of legal parenthood, challenging marriage- and father-centric assumptions.⁶

Shalu Nigam's Guardianship Law in India examines the “best interests of the child” principle and its impact on single mothers’ rights. It shows a shift from traditional father-centric guardianship towards child welfare and caregiving-based recognition of parental responsibility.⁷

Aastha Agrawal and Abhishek Misra link reproductive rights with constitutional guarantees, emphasising Articles 14 and 21 in protecting autonomy, equality, and parenthood.⁸ Their work supports the view that motherhood cannot be conditioned on marital status.

Jwalika Balaji critiques the legal privileging of a heterosexual, biological, two-parent model of family, arguing that it marginalises alternative family forms.⁹ This raises broader questions about whether legal parenthood should depend on traditional assumptions of gender and marriage.

Judicial developments reinforce these themes. *ABC v. State (NCT of Delhi)* recognises the independent legal status of unwed mothers in guardianship matters,¹⁰ while reproductive autonomy jurisprudence locates such decisions within dignity, privacy, and liberty.¹¹

However, the literature remains fragmented: guardianship focuses on child welfare, reproductive rights on autonomy, and family law on parental identity. Limited attention is given to the integrated constitutional status of single mothers, especially practical issues like paternal disclosure requirements, naming rights, and administrative barriers.

Overall, scholarship establishes that single motherhood is legally diverse, caregiving and child

⁶ Saptarshi Mandal, *Biology, Intention, Labour: Understanding Legal Recognition of Single Motherhood in India*, 15(2) Socio-Legal Rev. 131, 131–50 (2019).

⁷ Shalu Nigam, *Guardianship Law in India: Examining the Principle of ‘Best Interests’ of Minors and the Rights of Single Mothers as Sole Guardians*, 31(3) Indian J. Gender Stud. 308, 308–27 (2024).

⁸ Aastha Agrawal & Abhishek Misra, *Reproductive Rights and Constitutional Law: Legal and Social Implications for Single Mother and the Welfare of Children*, 8(2) Int’l J.L. Mgmt. & Human. 3957, 3957–3974 (2025).

⁹ Jwalika Balaji, *Deconstructing Parenthood: A Critical Queer Analysis of Gender, Law, and Bionormativity in India*, 37(1) Nat’l L. Sch. India Rev., art. 4 (2026).

¹⁰ *ABC v. State (NCT of Delhi)*, (2015) 10 SCC 1.

¹¹ *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1; *X v. Principal Secretary, Health & Family Welfare Department, Government of NCT of Delhi*, (2023) 9 SCC 1.

welfare are increasingly central, and constitutional values support recognition beyond marriage. Yet, the everyday legal and administrative treatment of single mothers remains underexplored. This study addresses this gap by examining motherhood beyond marriage as a constitutional question and assessing whether Indian law adequately protects the rights, dignity, and autonomy of single mothers and their children.

1.4 Research Gap

The principal research gap identified by this study is the absence of a sufficiently integrated constitutional analysis of the legal position of single mothers in India.

First, existing discussions frequently examine individual rights—such as reproductive autonomy or guardianship—without analysing their relationship with the broader constitutional conception of motherhood.

Second, the progressive jurisprudence of the Supreme Court has not necessarily resulted in corresponding statutory harmonisation. The study therefore examines the gap between constitutional interpretation and legislative frameworks governing family relations.

Third, there is limited comparative constitutional analysis of how other jurisdictions recognise parenthood and family structures outside marriage. A comparative chapter in this research will therefore examine a selected foreign jurisdiction to identify possible lessons for Indian law.

Finally, the research seeks to shift the analytical focus from the question of whether a woman is married to the more constitutionally relevant questions of **autonomy, equality, dignity, parental responsibility and the welfare of the child**.

1.5 Research Questions

This study addresses the following research questions:

1. Whether a single mother can claim constitutional protection and recognition of motherhood independently of her marital status or the identity of the child's father?
2. Whether a single mother can be required to disclose the name of the biological father in official documents, school records, birth certificates, passports, or other governmental records where such disclosure is not legally necessary?
3. Whether the insistence upon disclosure of the father's name violates the single mother's and/or child's rights to privacy, dignity, equality and personal autonomy under Articles 14 and 21 of the Constitution?
4. Whether a child born to a single mother can legally use only the mother's name in official and educational documents?

5. Whether the absence, unknown identity, or non-disclosure of the father affects the child's legal rights relating to birth registration, education, inheritance, nationality, maintenance, guardianship or other civil entitlements?
6. Whether existing Indian guardianship laws adequately recognise a single mother as the sole or primary legal guardian of her child without requiring unnecessary participation or identification of the father?
7. To what extent have Indian courts recognised the reproductive autonomy and decisional privacy of women who choose motherhood outside marriage?
8. Whether existing statutory and administrative practices continue to privilege the traditional two-parent marital family over single-parent families?
9. What legal and constitutional safeguards are available to protect single mothers and their children from discrimination based upon the absence of a legally recognised father?
10. How does the Indian legal framework compare with selected foreign jurisdictions regarding parental documentation, disclosure of paternal identity, guardianship and recognition of single motherhood?

1.6 Hypotheses of the Study

The study proceeds on the following hypotheses:

H1: Indian constitutional jurisprudence increasingly recognises motherhood and reproductive decision-making as aspects of individual autonomy, dignity and personal liberty independent of marital status.

H2: Despite progressive judicial developments, certain statutory and administrative frameworks continue to reflect marriage-centred assumptions that may create unequal burdens for single mothers.

H3: A harmonised interpretation of family laws in accordance with Articles 14, 15 and 21 can strengthen the legal recognition of single mothers without compromising the welfare and best interests of children.

H4: Comparative examination of foreign legal systems can provide useful principles for developing a more inclusive Indian framework for motherhood beyond marriage.

1.7 Research Methodology

The research adopts a **doctrinal and analytical legal research methodology**. Primary legal materials, including the Constitution of India, legislation, judicial decisions and relevant

governmental materials, constitute the principal sources of legal analysis.

The study critically analyses constitutional provisions and statutory frameworks relating to guardianship, custody, adoption, maintenance, parentage and reproductive autonomy. Judicial decisions of the Supreme Court of India and relevant High Courts are examined to identify the development of constitutional principles relating to dignity, privacy, equality, autonomy and family life.

The research also adopts a **comparative legal approach** in a subsequent chapter. A selected foreign jurisdiction will be examined to identify alternative approaches to recognition of parenthood outside marriage and to assess their relevance to Indian constitutional and statutory law.

The methodology is **primarily qualitative and interpretative rather than empirical**. The research does not seek to measure the experiences of a statistically representative population; instead, it evaluates the adequacy and coherence of the existing legal framework.

1.8 Sources of Data

The research relies primarily upon secondary and doctrinal legal sources, including:

- The Constitution of India;
- Central legislation and relevant rules;
- Judgments of the Supreme Court of India and High Courts;
- Law Commission reports and governmental reports;
- International human-rights instruments where relevant;
- Scholarly books and journal articles;
- Legal commentaries and academic literature; and
- Comparative foreign legislation and judicial decisions.

Primary legislation and judicial decisions are treated as the principal authorities, while secondary literature is used to develop the theoretical and critical framework of the research.

1.9 Scope of the Study

The study focuses specifically on the constitutional and legal rights of single mothers in India. It examines motherhood beyond marriage primarily through the dimensions of equality, non-discrimination, dignity, privacy, reproductive autonomy, guardianship, custody, adoption, maintenance and recognition of parental status.

The research does not attempt to provide an exhaustive examination of every issue concerning women or every category of single parent. Its principal concern is the legal position of mothers

who exercise parental responsibilities outside a conventional marital relationship.

The study primarily considers developments in Indian constitutional and family law and incorporates a focused comparative analysis of a selected foreign jurisdiction. The comparative component is intended not to transplant foreign law mechanically but to identify principles that may assist in evaluating possible reforms in India.

1.10 Scheme of Presentation

The research is organised in **seven** chapters:

Chapter I – Introduction and Research Framework

Research problem, literature review, research gap, research questions, hypotheses, methodology, sources of data, scope and scheme of presentation.

Chapter II – Conceptual and Theoretical Foundations of Motherhood Beyond Marriage

Meaning and changing concept of motherhood, single motherhood, family beyond marriage, feminist legal theory, constitutionalism and the changing notion of family.

Chapter III – Constitutional Framework Governing the Rights of Single Mothers in India

Articles 14, 15 and 21; equality, non-discrimination, dignity, privacy, autonomy, reproductive choice and the constitutional recognition of diverse family structures.

Chapter IV – Statutory and Judicial Recognition of Single Mothers in India

Guardianship, custody, adoption, maintenance, parentage, birth registration and reproductive rights; analysis of important Supreme Court and High Court decisions, particularly *ABC v. State (NCT of Delhi)* and *X v. Principal Secretary*.

Chapter V – Challenges and Legal Gaps in the Protection of Single Mothers

Marriage-centric statutory provisions, administrative barriers, guardianship issues, social/legal discrimination, conflicting statutory frameworks and the gap between constitutional rights and implementation.

Chapter VI – Comparative Legal Analysis: Motherhood Beyond Marriage in Other Jurisdictions

Comparison with a carefully selected country/jurisdiction, examining recognition of single parenthood, parental rights, reproductive autonomy, guardianship and equality. The chapter will identify principles that may be relevant to Indian law.

Chapter VII – Findings, Recommendations and Conclusion

Major findings, testing of hypotheses, constitutional and legislative recommendations, proposed reforms and conclusion.

CHAPTER II: CONCEPTUAL AND THEORETICAL FOUNDATIONS OF MOTHERHOOD BEYOND MARRIAGE

2.1 Reconceptualising Motherhood

The traditional legal conception of motherhood has generally been situated within the framework of marriage, biological parentage and the nuclear family. Such an understanding tends to associate motherhood with a marital relationship in which the mother and father constitute the primary parental unit. Contemporary constitutional jurisprudence, however, increasingly recognises that family structures may take diverse forms and that legal protection cannot be confined to the conventional marital family. In *Deepika Singh v. Central Administrative Tribunal*, the Supreme Court acknowledged that families may include single-parent households and observed that atypical family structures are entitled to protection under law.¹²

The recognition of diverse families is significant for single mothers because their parental status cannot logically depend upon the continued existence of a marital relationship. A woman may become the sole parent because of divorce, separation, widowhood, abandonment, adoption or reproductive choices. The legal inquiry should therefore move from the question of whether motherhood exists within marriage to whether the individual performs parental responsibilities and whether the constitutional rights of the mother and child are protected.

The Supreme Court's later jurisprudence reinforces this approach by recognising that the conventional understanding of a family consisting of a mother, father and children does not encompass all legitimate family forms.¹³ Consequently, legal rules should not disadvantage a family merely because it differs from the traditional model.

2.2 Single Motherhood as an Independent Legal Status

Single motherhood should be understood as a form of parenthood in which a woman assumes primary or exclusive responsibility for raising a child without being dependent upon a continuing marital relationship. The legal significance of this status lies in the fact that the mother may exercise parental responsibilities independently of the father's participation.

In *ABC v. State (NCT of Delhi)*, the Supreme Court recognised the particular position of an unwed mother in guardianship proceedings and held that requiring her to disclose the identity of the child's father, where legally unnecessary, could not be treated as an indispensable

¹² *Deepika Singh v. Central Administrative Tribunal*, (2023) 13 SCC 681, 692–93.

¹³ *Id*

condition for seeking guardianship.¹⁴ The decision is important because it moves away from the assumption that the legal recognition of a mother necessarily requires the identification or participation of the father.

The decision also has wider implications for administrative practices. Where the law does not establish a legitimate requirement for paternal identification, insistence upon the father's name in official documentation may raise questions concerning privacy, dignity and equality. The issue therefore extends beyond guardianship to birth records, educational documents, passports and other institutional records.

2.3 Constitutionalism and the Changing Concept of Family

The Constitution does not expressly define the family. This absence permits constitutional interpretation to respond to changing social realities while remaining grounded in fundamental rights. Article 14 guarantees equality before law and equal protection of laws, while Article 15 prohibits discrimination on specified grounds. Article 21 protects life and personal liberty.¹⁵ The Supreme Court's privacy jurisprudence has significantly expanded the constitutional meaning of individual autonomy. In *Justice K.S. Puttaswamy (Retd.) v. Union of India*, the Court recognised privacy as constitutionally protected and connected privacy with dignity, autonomy and the ability of individuals to make fundamental decisions concerning their lives.¹⁶ The Court also recognised family, marriage and procreation as matters closely connected with individual dignity.¹⁷

For single mothers, these principles are particularly relevant because decisions concerning motherhood, family formation and parental identity involve deeply personal choices. Constitutional protection should therefore prevent the State from imposing unnecessary conditions that effectively privilege marriage over other legitimate forms of family life.

2.4 Equality and Non-Discrimination

Article 14 requires the State to treat similarly situated persons equally and permits differentiation only when supported by a constitutionally valid basis. In the context of single motherhood, the relevant question is whether a distinction between married and unmarried mothers has a legitimate connection with the object of the law.

Article 15 strengthens this protection by prohibiting discrimination on grounds including sex.

¹⁴ *ABC v. State (NCT of Delhi)*, (2015) 10 SCC 1, 7–12.

¹⁵ INDIA CONST. arts. 14, 15, 21.

¹⁶ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1, 263–65.

¹⁷ *Id.* at 497–98 (Chandrachud, J., concurring).

The constitutional commitment to substantive equality requires examination of laws and administrative practices that may appear neutral but disproportionately burden women who assume parental responsibilities outside marriage.

In *Anuj Garg v. Hotel Association of India*, the Supreme Court rejected gender stereotypes as a legitimate basis for restricting women's constitutional freedoms and emphasised the need for laws to be examined against substantive equality.¹⁸ This principle is relevant where legal or administrative arrangements assume that motherhood necessarily operates within a husband-wife family.

2.5 Dignity, Privacy and Parental Autonomy

The constitutional concept of dignity extends beyond physical existence and includes the freedom to make intimate personal decisions. In *Puttaswamy*, the Court recognised decisional autonomy as an essential element of privacy.¹⁹ This principle becomes particularly significant where a single mother is required to disclose personal information concerning her reproductive history or the identity of the child's father.

Unnecessary disclosure requirements may affect both mother and child. For the mother, such disclosure may intrude upon decisional and informational privacy; for the child, compulsory paternal identification may create a legally imposed association with a person who may be absent, unknown or whose identity the mother is legally entitled to withhold.

The constitutional question is therefore not whether paternal information can ever be sought, but whether its disclosure is legally necessary, proportionate and connected to a legitimate governmental objective.

2.6 Reproductive Autonomy and Motherhood

Reproductive autonomy forms an important theoretical foundation for motherhood beyond marriage. In *Suchita Srivastava v. Chandigarh Administration*, the Supreme Court held that reproductive choice forms part of personal liberty under Article 21 and recognised the importance of privacy, dignity and bodily integrity in reproductive decision-making.²⁰

The principle was developed further in *X v. Principal Secretary, Health & Family Welfare Department*, Government of NCT of Delhi, where the Supreme Court held that reproductive autonomy cannot be restricted merely because a woman is unmarried. The Court emphasised

¹⁸ *Anuj Garg v. Hotel Ass'n of India*, (2008) 3 SCC 1, 17–20.

¹⁹ *Puttaswamy*, (2017) 10 SCC at 298–99.

²⁰ *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1, 20–21.

that reproductive choice is an aspect of personal liberty and that the law should not create an unjustified distinction between married and unmarried women in access to reproductive healthcare.²¹

This jurisprudence provides a constitutional basis for examining motherhood as an autonomous choice rather than an institution necessarily derived from marriage.

2.7 Best Interests of the Child and Motherhood

The reconceptualisation of motherhood must also remain consistent with the rights and welfare of the child. Recognition of the mother as an independent parent does not mean that every parental decision is immune from legal scrutiny. The best interests of the child remain an important consideration in guardianship and custody matters.

However, the welfare principle should not itself become a mechanism for presuming that a child necessarily requires a traditional two-parent family. The Supreme Court's recognition of atypical families indicates that the welfare of children must be assessed on the actual circumstances of the family rather than through stereotypes concerning family structure.²²

Accordingly, the legal status of a single mother should be assessed through parental responsibility, caregiving, the child's welfare and constitutional rights rather than marital status alone.

2.8 Motherhood, Identity and the Question of Paternal Disclosure

An important unresolved dimension concerns whether the law can require a single mother to disclose the identity of the child's father as a condition for accessing public or private services. The issue requires a distinction between information that is genuinely necessary for determining a legal right and information demanded merely because administrative forms have historically been designed around a mother-father model.

ABC is significant because the Supreme Court refused to treat paternal disclosure as an absolute prerequisite to an unwed mother's guardianship claim.²³ The principle can provide a foundation for examining whether similar requirements in educational, governmental and administrative documentation are constitutionally justified.

The issue also requires consideration of the child's independent interests. A child should not be denied education, identity documentation or other legal entitlements merely because the

²¹ *X v. Principal Secretary, Health & Family Welfare Department, Government of NCT of Delhi*, (2023) 9 SCC 1, 31–35.

²² *Deepika Singh*, (2023) 13 SCC at 692–93.

²³ *ABC*, (2015) 10 SCC at 7–12.

father's identity is unavailable or has not been disclosed where the law does not make such disclosure essential.

CHAPTER III: CONSTITUTIONAL FRAMEWORK GOVERNING THE RIGHTS OF SINGLE MOTHERS IN INDIA

3.1 Article 14: Equality Before Law and Equal Protection

Article 14 of the Constitution guarantees equality before law and equal protection of laws.²⁴ In the context of single motherhood, the provision requires scrutiny of legal rules and administrative practices that distinguish between mothers on the basis of marital status.

Although marital status is not expressly included among the grounds listed in Article 15(1), a classification based on marital status may still be constitutionally invalid where it is arbitrary, unreasonable or produces discrimination based upon gender stereotypes. In *Anuj Garg v. Hotel Association of India*, the Supreme Court emphasised that laws cannot be sustained merely because they are based upon paternalistic assumptions concerning women's roles.²⁵

The constitutional inquiry should therefore examine whether treating a married mother differently from a single mother has a rational and constitutionally legitimate basis. Where the object of a requirement can be achieved without insisting upon marriage or paternal identification, differential treatment becomes difficult to justify.

3.2 Article 15: Gender Equality and Substantive Non-Discrimination

Article 15(1) prohibits discrimination on grounds including sex, while Article 15(3) permits the State to make special provisions for women and children.²⁶ The constitutional objective is not merely formal equality but the removal of structural disadvantages arising from gender-based assumptions.

Single mothers may experience indirect disadvantages because legal and administrative systems frequently assume the presence of a husband or father. Such practices may reinforce the stereotype that motherhood is ordinarily dependent upon marriage.

In *Anuj Garg*, the Supreme Court rejected the idea that protective legislation can be based upon stereotypical assumptions regarding women's vulnerability.²⁷ The same principle is relevant to single mothers: legal protection should empower women rather than impose restrictions or

²⁴ INDIA CONST. art. 14.

²⁵ *Anuj Garg v. Hotel Ass'n of India*, (2008) 3 SCC 1, 17–20.

²⁶ INDIA CONST. art. 15(1), (3).

²⁷ *Anuj Garg*, (2008) 3 SCC at 17–20.

additional requirements because they do not conform to a conventional family structure.

3.3 Article 19 and Personal Autonomy

Article 19 protects several freedoms essential to individual autonomy.²⁸ Although family formation is not expressly enumerated as a separate freedom under Article 19, decisions concerning personal relationships and family life may intersect with constitutionally protected freedoms.

The constitutional understanding of liberty has developed beyond the narrow protection of enumerated freedoms. In *Justice K.S. Puttaswamy (Retd.) v. Union of India*, the Supreme Court recognised autonomy and the ability to make intimate personal choices as important aspects of constitutional liberty.²⁹

For single mothers, this principle is relevant to decisions concerning family formation, reproductive choices and the manner in which personal information is disclosed to public authorities.

3.4 Article 21: Life, Liberty and Dignity

Article 21 provides that no person shall be deprived of life or personal liberty except according to procedure established by law.³⁰ Judicial interpretation has expanded Article 21 to include dignity, privacy and decisional autonomy.

In *Maneka Gandhi v. Union of India*, the Supreme Court established that procedure affecting personal liberty must satisfy constitutional standards of fairness and reasonableness.³¹ The later development of privacy jurisprudence has further strengthened the protection of individual autonomy.

The constitutional protection of dignity is particularly significant for single mothers because legal recognition of motherhood should not depend upon social approval of the circumstances in which motherhood arose. A woman does not lose her dignity or constitutional status because she is unmarried.

3.5 Right to Privacy and Paternal Disclosure

The question whether a single mother must disclose the father's identity in official documents directly engages Article 21's protection of privacy.

²⁸ INDIA CONST. art. 19.

²⁹ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1, 263–65.

³⁰ INDIA CONST. art. 21.

³¹ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, 281–83.

In Puttaswamy, a nine-judge Bench recognised privacy as a constitutionally protected right and connected it with dignity, autonomy and personal decision-making.³² Informational privacy protects individuals against unnecessary collection and disclosure of personal information.

Where an authority asks a single mother to provide the father's identity, the constitutional question is therefore whether such information is genuinely necessary for the specific purpose. If the information has no substantial connection with the service or right being claimed, compulsory disclosure may raise questions of proportionality.

The Supreme Court's decision in *ABC v. State (NCT of Delhi)* is particularly relevant. The Court permitted an unwed mother to seek guardianship without being compelled to disclose the identity of the child's father.³³ The judgment demonstrates that paternal identity cannot automatically be treated as a prerequisite for recognition of the mother-child relationship.

3.6 Reproductive Autonomy Under Article 21

Reproductive autonomy is an important component of the constitutional position of single mothers. In *Suchita Srivastava v. Chandigarh Administration*, the Supreme Court recognised reproductive choice as an aspect of personal liberty under Article 21.³⁴

The Court's reasoning establishes that decisions concerning whether and when to have a child fall within the sphere of personal autonomy, subject to constitutionally permissible restrictions. The principle was significantly developed in *X v. Principal Secretary, Health & Family Welfare Department, Government of NCT of Delhi*. The Supreme Court rejected an interpretation under which unmarried women would receive lesser protection of reproductive rights than married women.³⁵ The judgment recognised that reproductive autonomy cannot be made dependent upon marital status.

This jurisprudence provides a constitutional foundation for treating motherhood beyond marriage as a legitimate form of family formation.

3.7 Right to Family Life and Diverse Family Structures

Although the Indian Constitution does not expressly contain a separate “right to family life,” constitutional protection of dignity, privacy and personal liberty has enabled the Supreme Court to recognise diverse forms of family relationships.

³² *Puttaswamy*, (2017) 10 SCC at 263–65, 298–99.

³³ *ABC v. State (NCT of Delhi)*, (2015) 10 SCC 1, 7–12.

³⁴ *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1, 20–21.

³⁵ *X v. Principal Secretary, Health & Family Welfare Department, Government of NCT of Delhi*, (2023) 9 SCC 1, 31–35.

In *Deepika Singh v. Central Administrative Tribunal*, the Supreme Court acknowledged that families may take forms beyond the conventional mother-father-child arrangement.³⁶ The Court recognised single-parent families and other atypical family structures as legitimate forms of family life deserving legal protection.

The judgment is significant for the present research because it weakens the assumption that the nuclear marital family represents the only constitutionally recognised family structure.

3.8 Article 39(f) and the Welfare of Children

The constitutional position of single mothers must also be examined from the perspective of the child. Article 39(f) directs the State to ensure that children are given opportunities and facilities to develop in a healthy manner and that childhood and youth are protected against exploitation and abandonment.³⁷

Although the Directive Principles are not independently enforceable in the same manner as fundamental rights, they provide important constitutional guidance for interpreting legislation concerning children.

The welfare principle is also expressly reflected in the Hindu Minority and Guardianship Act, 1956. Section 13 provides that the welfare of the minor shall be the paramount consideration in the appointment or declaration of a guardian.³⁸

Accordingly, the child's welfare should not be determined by assuming that a conventional two-parent family is necessarily superior. The actual circumstances, caregiving environment and developmental needs of the child must remain central.

3.9 Constitutional Protection Against Arbitrary Administrative Requirements

Constitutional rights must be meaningful in their practical implementation. Administrative forms and procedures cannot undermine rights recognised by legislation and judicial decisions. Where official documentation requires both a mother's and father's details without a legitimate legal reason, such a requirement may create an unnecessary burden upon single mothers. The constitutional validity of such requirements should be assessed through Articles 14 and 21.

The Supreme Court's jurisprudence on arbitrariness reinforces the principle that State action must not be unreasonable or manifestly arbitrary.³⁹ Administrative convenience alone should not become a justification for imposing an unnecessary burden upon constitutionally protected

³⁶ *Deepika Singh v. Central Administrative Tribunal*, (2023) 13 SCC 681, 692–93.

³⁷ INDIA CONST. art. 39(f).

³⁸ Hindu Minority and Guardianship Act, No. 32 of 1956, § 13.

³⁹ *Shayara Bano v. Union of India*, (2017) 9 SCC 1, 100–01.

personal autonomy.

3.10 Best Interests of the Child and Equality of Family Forms

The best-interests principle must operate without discrimination against children belonging to non-traditional families. A child born to or raised by a single mother should not receive reduced legal protection because the parents are not married.

In *Deepika Singh*, the Supreme Court recognised that the assumption of a conventional family structure may overlook the lived realities of families.⁴⁰ The Court's approach supports a child-centred rather than family-form-centred understanding of welfare.

Therefore, the absence of a father from a child's household should not, by itself, be treated as evidence of an inadequate family environment.

3.11 Constitutional Status of the Mother as an Independent Parent

Taken together, Articles 14, 15 and 21 establish a constitutional framework within which motherhood cannot be made subordinate to marital status without adequate justification.

The decisions in *Githa Hariharan v. Reserve Bank of India* and *ABC* are particularly important in this respect. In *Githa Hariharan*, the Supreme Court interpreted the guardianship framework to prevent an automatic preference for the father from defeating the mother's parental role.⁴¹ In *ABC*, the Court recognised the independent position of an unwed mother and rejected unnecessary insistence upon paternal disclosure.⁴²

These decisions demonstrate a gradual constitutional shift from a father-centred model of parenthood towards a mother- and child-centred model based upon actual parental responsibility, dignity and welfare.

3.12 Constitutional Questions Concerning Father's Name in Documents

The requirement of a father's name in official documents raises several constitutional questions:

First, whether compulsory disclosure has a legitimate governmental purpose.

Second, whether the purpose can be achieved without requiring paternal information.

Third, whether compulsory disclosure disproportionately burdens unmarried mothers.

Fourth, whether denying or delaying documentation because of the absence of paternal information violates the child's dignity and equality.

⁴⁰ *Deepika Singh*, (2023) 13 SCC at 692–93.

⁴¹ *Githa Hariharan v. Reserve Bank of India*, (1999) 2 SCC 228, 235–37.

⁴² *ABC*, (2015) 10 SCC at 7–12.

Fifth, whether the requirement is consistent with the privacy and decisional-autonomy principles developed under Article 21.

The constitutional framework therefore supports a case-by-case examination rather than an assumption that every official document must necessarily contain the father's name.

3.13 Constitutional Transformation of Family Law

Indian constitutional jurisprudence demonstrates a gradual transformation of family law from status-based regulation towards rights-based adjudication. Traditional distinctions based upon legitimacy, marriage and paternal authority are increasingly examined through equality, dignity, privacy and child welfare.

The transformation does not require the abolition of marriage as a legal institution. Rather, it requires that marriage should not become a condition for recognition of rights that constitutionally belong to individuals irrespective of marital status.

The constitutional position emerging from the jurisprudence is therefore that motherhood is a relationship of legal and constitutional significance independent of marriage, while the rights of the child must remain protected irrespective of the circumstances of the child's birth.

CHAPTER IV: STATUTORY AND JUDICIAL RECOGNITION OF SINGLE MOTHERS IN INDIA

4.1 Statutory Recognition of Maternal Guardianship

The Hindu Minority and Guardianship Act, 1956 ("HMGA") constitutes an important statutory framework governing natural guardianship among Hindus. Section 6 identifies the natural guardians of a Hindu minor. In relation to a boy or unmarried girl, the provision refers to the father and, after him, the mother, while in the case of a child born outside marriage, it places the mother before the father.⁴³

The statutory language reflects the historical assumption that paternal authority ordinarily occupies the primary position within the family. At the same time, the preferential position accorded to the mother in relation to a child born outside marriage demonstrates that the legislature has recognised circumstances in which maternal responsibility may exist independently of marriage.

Section 13 of the HMGA provides an important corrective to a purely status-based approach

⁴³ Hindu Minority and Guardianship Act, No. 32 of 1956, § 6, India Code, <https://www.indiacode.nic.in/handle/123456789/12842>

by making the welfare of the minor the paramount consideration in guardianship matters.⁴⁴ The provision consequently requires parental authority to be understood in connection with the actual interests of the child rather than merely through formal familial status.

4.2 Judicial Reinterpretation of the Father-Centric Model

The Supreme Court's decision in *Githa Hariharan v. Reserve Bank of India* represents a significant development in the legal recognition of mothers as natural guardians.⁴⁵ The dispute concerned the interpretation of the expression “after” in section 6(a) of the HMGA.

The Court rejected an interpretation under which the mother would become a natural guardian only after the death of the father. It interpreted “after” in a manner that permitted the mother's guardianship to operate where the father was absent or not effectively exercising his parental role.⁴⁶ This interpretation prevented the statutory provision from producing an automatic hierarchy between father and mother.

The decision is particularly significant for single mothers because it demonstrates that the mother's legal authority cannot be reduced merely because the statutory text historically used a father-first formulation. The Supreme Court's interpretation brought the provision into greater conformity with constitutional equality.⁴⁷

4.3 The Unwed Mother as Sole Guardian: *ABC v. State*

The Supreme Court took a further step in recognising independent maternal authority in *ABC v. State (NCT of Delhi)*.⁴⁸ The case concerned an unwed Christian mother who sought guardianship of her minor child without disclosing the identity of the child's father.

The Court recognised that compelling an unwed mother to disclose the father's identity could unnecessarily expose her private circumstances and could create difficulties that were not essential to determining the child's welfare. The Court therefore permitted the mother to seek guardianship without being compelled to disclose the father's identity in the circumstances before it.⁴⁹

The decision has particular importance for the present research because it separates legal motherhood from compulsory paternal identification. The mother's legal relationship with her

⁴⁴ Id. § 13.

⁴⁵ *Githa Hariharan v. Reserve Bank of India*, (1999) 2 SCC 228.

⁴⁶ Id. at 235–37. The Supreme Court's subsequent judgments confirm that *Githa Hariharan* interpreted “after him” in section 6(a) to mean “in the absence of,” rather than only after the father's death.

⁴⁷ *Githa Hariharan*, (1999) 2 SCC at 235–37.

⁴⁸ *ABC v. State (NCT of Delhi)*, (2015) 10 SCC 1.

⁴⁹ Id. at 7–12.

child does not automatically become incomplete merely because the father is unknown, absent or not disclosed.

4.4 Recognition of the Child's Identity and Mother's Surname

The issue of a child's surname also demonstrates the changing judicial approach towards maternal identity. In *R.K. Mohan v. State of Tamil Nadu*, the Supreme Court recognised the significance of the mother's role in determining the child's surname in circumstances where she was the child's natural guardian.⁵⁰

More broadly, the Supreme Court has recognised that a child's surname is not merely a question of lineage but may also reflect the child's social identity and relationship with the caregiving family.⁵¹

This development is relevant to single mothers because a legal framework that automatically privileges the father's surname may fail to recognise the actual caregiving and familial circumstances of the child.

4.5 Guardianship and the Best Interests of the Child

The statutory and judicial framework increasingly places the welfare of the child above formal parental hierarchy. Section 13 of the HMGA expressly establishes the welfare of the minor as the paramount consideration.⁵²

Similarly, the Guardians and Wards Act, 1890 provides the general framework for judicial appointment and declaration of guardians. Section 17 requires the court to consider circumstances relevant to the welfare of the minor.⁵³

The combined effect is that custody and guardianship should not be determined merely by asking whether a parent is married or unmarried. The relevant inquiry should concern the child's welfare, security, development and actual caregiving environment.

This approach is particularly important in cases involving single mothers because the absence of a spouse should not automatically be equated with an absence of adequate parental care.

4.6 Adoption and Single Women

The legal recognition of motherhood outside marriage is also evident in adoption law. Section 57(3) of the Juvenile Justice (Care and Protection of Children) Act, 2015 permits a single or

⁵⁰ *R.K. Mohan v. State of Tamil Nadu*, (2017) 4 SCC 569.

⁵¹ *Id.* at 575–76.

⁵² Hindu Minority and Guardianship Act, No. 32 of 1956, § 13.

⁵³ Guardians and Wards Act, No. 8 of 1890, § 17.

divorced person to adopt, subject to the statutory requirements.⁵⁴

The provision demonstrates a significant shift from the assumption that parenthood must necessarily arise within marriage. A single woman may therefore acquire the legal status of a parent through adoption without first entering into a marital relationship.

The significance of this provision extends beyond adoption itself. It reflects a broader legislative recognition that the capacity to parent should not be assessed exclusively through marital status.

4.7 Reproductive Autonomy and Single Motherhood

Judicial recognition of reproductive autonomy has further strengthened the legal position of women who choose motherhood outside marriage. In *Suchita Srivastava v. Chandigarh Administration*, the Supreme Court recognised reproductive choice as an aspect of personal liberty under Article 21.⁵⁵

The principle was subsequently reinforced in *X v. Principal Secretary, Health & Family Welfare Department, Government of NCT of Delhi*, where the Court rejected the exclusion of unmarried women from the constitutional protection of reproductive choice merely because of their marital status.⁵⁶

This jurisprudence is significant because it establishes that the constitutional and legal legitimacy of reproductive decisions cannot be made dependent upon marriage.

4.8 Recognition of Diverse Family Structures

Indian courts have increasingly recognised that families may exist in forms different from the conventional marital household. In *Deepika Singh v. Central Administrative Tribunal*, the Supreme Court acknowledged that atypical family structures, including single-parent families, are genuine forms of family life.⁵⁷

The judgment is important for single mothers because it challenges the assumption that only a mother-father-child household represents a legitimate family. The Court's approach supports the proposition that legal protection should respond to the actual structure and needs of the family rather than impose a predetermined model.

⁵⁴ Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, § 57(3).

⁵⁵ *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1, 20–21.

⁵⁶ *X v. Principal Secretary, Health & Family Welfare Department, Government of NCT of Delhi*, (2023) 9 SCC 1, 31–35.

⁵⁷ *Deepika Singh v. Central Administrative Tribunal*, (2023) 13 SCC 681, 692–93.

4.9 Paternal Disclosure in Official Documents

A particularly important unresolved issue concerns the father's name in official documents. Judicial recognition of the independent status of single mothers does not necessarily mean that every administrative authority has adopted a uniform approach to paternal information.

The reasoning in *ABC* establishes that disclosure of the father's identity cannot automatically be imposed upon an unwed mother when it is unnecessary for determining guardianship.⁵⁸ However, the issue may arise differently in birth registration, school records, passports, healthcare documents and government forms.

The central principle should therefore be whether the father's details are legally necessary for the particular purpose. Administrative convenience alone should not transform paternal identification into an absolute condition for recognition of the mother-child relationship.

4.10 Maintenance and Parental Responsibility

The legal recognition of single mothers also intersects with the child's entitlement to maintenance. Where a legally identifiable father has a corresponding parental responsibility, the mother's status as a single parent does not extinguish the child's entitlement to financial support.

At the same time, where paternal identity is unknown or legally unestablished, access to essential documentation and public services should not automatically be denied to the child. The State must distinguish between determining financial responsibility and recognising the child's basic legal identity.

This distinction is important because otherwise the practical burden of paternal absence may fall disproportionately upon the mother and child.

4.11 Judicial Movement from Status to Responsibility

The trajectory of Indian jurisprudence indicates a gradual movement away from a purely status-based understanding of parenthood. *Githa Hariharan* reduced the effect of paternal preference in guardianship law; *ABC* recognised the independent position of an unwed mother; *Suchita Srivastava* and *X* strengthened reproductive autonomy; and *Deepika Singh* recognised diverse family structures.⁵⁹

These decisions collectively indicate that parental rights are increasingly understood through

⁵⁸ *ABC*, (2015) 10 SCC at 7–12.

⁵⁹ *Githa Hariharan*, (1999) 2 SCC 228; *ABC*, (2015) 10 SCC 1; *Suchita Srivastava*, (2009) 9 SCC 1; *X*, (2023) 9 SCC 1; *Deepika Singh*, (2023) 13 SCC 681.

actual responsibility, autonomy, dignity and child welfare, rather than exclusively through marriage or conventional family status.

Nevertheless, the statutory framework has not been comprehensively reorganised around these principles. The resulting gap between progressive judicial interpretation and fragmented legislation remains an important issue for reform.

4.12 Continuing Statutory and Administrative Gaps

Despite considerable judicial development, Indian law does not contain a single comprehensive statute governing the rights and responsibilities of single mothers. Relevant rules are distributed among guardianship, adoption, maintenance, reproductive healthcare and birth-registration frameworks.

Consequently, recognition in one legal context may not automatically resolve difficulties in another. A mother may be recognised as the child's guardian while still encountering documentation procedures structured around the assumption that both parents must be identified.

The principal challenge is therefore not simply whether Indian law recognises single motherhood. It increasingly does. The more difficult question is whether that recognition is consistently translated into enforceable rights and administrative procedures.

4.13 Need for Harmonised Legal Recognition

The statutory and judicial developments indicate that Indian law is moving towards recognition of motherhood independent of marriage, but the process remains incomplete. A coherent framework should recognise the mother as an independent legal parent, prioritise the welfare of the child and prevent unnecessary paternal disclosure.

Such reform would not diminish the legal interests of fathers. Rather, it would ensure that the father's rights and responsibilities are determined through legally relevant criteria instead of making the mother's legal status dependent upon his identification or participation.

The emerging Indian position can therefore be understood as a transition from marriage-centred parenthood towards responsibility-centred and child-centred parenthood.

CHAPTER V: CHALLENGES AND LEGAL GAPS IN THE PROTECTION OF SINGLE MOTHERS

5.1 Fragmented Legal Recognition

Indian law does not presently provide a single, comprehensive legislative framework dealing with the rights and responsibilities of single mothers. Their legal position is instead derived from different areas of law, including guardianship, adoption, maintenance, reproductive healthcare, birth registration and constitutional jurisprudence. This fragmented structure can produce uncertainty because recognition available in one legal context may not automatically operate in another.

The absence of a unified framework becomes particularly significant when a single mother interacts with administrative institutions. A right recognised by a court may still be difficult to exercise where institutional procedures have been designed around the assumption of a married couple.

5.2 Persistence of Marriage-Centred Legal Assumptions

Although marriage is not a constitutional prerequisite for motherhood, several legal and administrative practices continue to treat marriage as the conventional foundation of parenthood. This can create an indirect disadvantage for women who raise children independently.

The Supreme Court's recognition of diverse family structures in *Deepika Singh v. Central Administrative Tribunal* demonstrates that the conventional nuclear family cannot be regarded as the only legitimate family form.⁶⁰ Nevertheless, recognition at the judicial level has not necessarily resulted in uniform changes across all administrative systems.

The continuing challenge is therefore to ensure that the legal system recognises family diversity as a normal feature of social life rather than an exception requiring special explanation.

5.3 Difficulty Concerning Disclosure of the Father's Name

One of the most important practical concerns is the demand for the father's name in official documents. The issue may arise in birth certificates, school records, passports, healthcare records and applications for government services.

In *ABC v. State (NCT of Delhi)*, the Supreme Court recognised that an unwed mother could seek guardianship without being compelled to disclose the father's identity in the circumstances

⁶⁰*Deepika Singh v. Central Administrative Tribunal*, (2023) 13 SCC 681, 692–93.

of the case.⁶¹ However, the judgment does not create a single, uniform administrative procedure applicable to every document and institution.

This leaves an important legal gap. Authorities should distinguish between information that is legally necessary and information collected merely because existing forms have traditionally assumed the presence of two parents.

A requirement that serves no identifiable legal purpose may disproportionately burden a single mother and may also expose sensitive information concerning the child and family.

5.4 Privacy and Informational Autonomy

The father's identity may involve highly personal information concerning the circumstances of a child's birth and the mother's private life. Article 21 therefore becomes relevant where authorities demand such information.

In *Justice K.S. Puttaswamy (Retd.) v. Union of India*, the Supreme Court recognised privacy as a constitutionally protected interest encompassing personal autonomy and informational privacy.⁶² Consequently, collection of personal information by public authorities should have a legitimate purpose and should not extend beyond what is reasonably necessary.

The challenge for Indian law is to develop administrative standards under which privacy is protected without preventing legitimate determination of parentage where a genuine legal interest exists.

5.5 Inadequate Administrative Accommodation

A significant gap exists between judicial recognition and administrative implementation. Many institutional procedures are structured around separate fields for “father” and “mother,” leaving limited alternatives for a sole mother.

Such practices can create repeated documentary difficulties. A mother may be required to explain her family circumstances each time she seeks admission, healthcare, identity documentation or another public service.

A more inclusive administrative model should permit a single mother to identify herself as the child's sole parent or guardian wherever legally appropriate. The absence of paternal information should not automatically result in rejection, delay or suspicion.

⁶¹ *ABC v. State (NCT of Delhi)*, (2015) 10 SCC 1, 7–12.

⁶² *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1, 263–65, 298–99.

5.6 Child-Centred Protection

The legal difficulties faced by single mothers can directly affect their children. A child should not experience a disadvantage merely because the family does not conform to a conventional marital structure.

Article 39(f) of the Constitution directs the State towards protecting childhood and ensuring opportunities for healthy development.⁶³ The statutory principle that the welfare of the minor is paramount further supports a child-centred approach.⁶⁴

Accordingly, administrative procedures should focus on the child's legal identity, welfare and access to services rather than on determining whether the child's family conforms to a particular social model.

5.7 Guardianship and the Need for Gender-Neutral Parental Responsibility

The language of section 6 of the Hindu Minority and Guardianship Act continues to reflect a historical preference for the father in certain circumstances. Although *Githa Hariharan v. Reserve Bank of India* substantially modified the operation of this preference,⁶⁵ The statutory text has not been comprehensively reframed around equal parental responsibility.

A modern framework should determine parental authority through the child's welfare and the actual circumstances of parenting rather than through presumptive gender roles. This would also reduce the need for courts to repeatedly reinterpret older statutory provisions to bring them into conformity with contemporary constitutional values.

5.8 Absence of Uniform Rules for Official Documents

There remains a need for clear and uniform rules concerning the information required from single mothers for official documentation.

The law should clarify:

- whether the father's name is mandatory for a particular document;
- whether the mother can be recorded as the sole parent or guardian;
- whether the child's birth can be registered without paternal details;
- whether the mother's surname can be used where legally appropriate; and
- what procedure should apply where paternal identity is unknown, unavailable or intentionally not disclosed.

⁶³ INDIA CONST. art. 39(f).

⁶⁴ Hindu Minority and Guardianship Act, No. 32 of 1956, § 13.

⁶⁵ *Githa Hariharan v. Reserve Bank of India*, (1999) 2 SCC 228, 235–37.

Such clarification would reduce inconsistent institutional practices and unnecessary litigation.

5.9 Balancing Paternal Rights and Maternal Autonomy

Recognising the rights of single mothers does not necessarily require excluding fathers from the legal framework. Where paternity is established and the father has legally recognised responsibilities, his interests may require protection.

The challenge is to avoid making the mother's legal recognition dependent upon the father's participation. A balanced approach should separately determine the rights and responsibilities of each parent while preserving the child's welfare as the central consideration.

5.10 Need for Legislative and Administrative Reform

The principal reform required is not the creation of a special or preferential legal status for single mothers. Instead, the objective should be to eliminate unnecessary disadvantages arising from marital status.

A comprehensive reform framework should:

1. expressly recognise parental responsibility irrespective of marital status;
2. establish uniform rules concerning paternal disclosure;
3. provide alternative documentation procedures for sole parents;
4. ensure that children of single mothers receive equal access to education, healthcare and public services;
5. harmonise administrative procedures with constitutional privacy and dignity standards; and
6. replace presumptive paternal priority with a welfare- and responsibility-based approach.

The central legal gap is therefore the **disconnect between constitutional recognition, judicial development and everyday administrative practice**. Addressing this disconnect would allow Indian law to recognise single motherhood not as an exceptional circumstance but as one of the legitimate forms of contemporary family life.

CHAPTER VI: COMPARATIVE LEGAL ANALYSIS: MOTHERHOOD BEYOND MARRIAGE IN OTHER JURISDICTIONS

6.1 United Kingdom

The United Kingdom provides a useful comparative model because its legal framework recognises the birth mother as an independent legal parent irrespective of marriage. Under the **Children Act 1989**, the birth mother has parental responsibility for her child.⁶⁶ An unmarried father may acquire parental responsibility through specified legal mechanisms, including joint birth registration with the mother.⁶⁷

The distinction between the mother's automatic parental responsibility and the father's separately acquired status is significant. It demonstrates that legal motherhood does not depend upon the existence of a marital relationship.

The UK framework is particularly relevant to the question of paternal disclosure. Official birth-registration guidance expressly permits an unmarried mother to register the birth without the father's details. The father's information may subsequently be added through the prescribed re-registration process.⁶⁸

This provides an important comparative lesson for India: registration of a child's birth can be separated from compulsory disclosure of paternal identity. Such an approach protects the mother's autonomy while leaving a lawful mechanism for recognition of the father where appropriate.

6.2 South Africa

South Africa provides one of the clearest statutory models for motherhood beyond marriage. **Section 19(1) of the Children's Act 38 of 2005** expressly provides that the biological mother of a child, whether married or unmarried, has full parental responsibilities and rights in respect of the child.⁶⁹

The provision is significant because it removes marital status as a condition for the mother's parental authority. Section 18 further defines parental responsibilities and rights to include care, contact, guardianship and maintenance.⁷⁰

The position of an unmarried biological father is separately addressed under section 21.⁷¹ Thus,

⁶⁶ Children Act 1989, c. 41, § 2(2) (UK).

⁶⁷ Id. § 4.

⁶⁸ GOV.UK, *Register a Birth: Who Can Register a Birth*, [GOV.UK](https://www.gov.uk/register-a-birth); General Register Office, *Birth Registration, GOV.UK Guidance*

⁶⁹ Children's Act 38 of 2005 § 19(1) (S. Afr.).

⁷⁰ Id. § 18.

⁷¹ Id. § 21.

the mother's parental status is not dependent upon whether the father has acquired corresponding parental rights.

For India, the South African model offers a particularly relevant legislative lesson: Parliament can expressly recognise the legal status of an unmarried mother instead of leaving the matter primarily to judicial interpretation.

6.3 Australia

Australia provides a different model centred on parental responsibility and the best interests of the child. Under section 61C of the **Family Law Act 1975**, each parent ordinarily has parental responsibility for a child, subject to applicable court orders. The provision does not make parental responsibility dependent upon the continuation of a particular relationship between the parents.⁷²

The Australian framework also places the child's best interests at the centre of parenting decisions. Section 60CA provides that the child's best interests are the paramount consideration when a court makes a parenting order.⁷³ The legislation requires consideration of matters including the child's safety, developmental and emotional needs, the capacity of caregivers and the child's views where relevant.⁷⁴

The comparative importance of Australia lies in its movement towards a responsibility-based conception of parenthood. Instead of treating marriage as the principal determinant of parental status, the law focuses upon the responsibilities owed to the child.

6.4 United States

The United States provides a useful but structurally different comparison because family law is largely regulated at the state level. Consequently, there is no single national statutory framework governing every aspect of single motherhood, birth registration and parental responsibility.

Nevertheless, American constitutional jurisprudence has recognised parental relationships as constitutionally significant. In *Stanley v. Illinois*, the Supreme Court considered the rights of an unmarried father and recognised the importance of the parent-child relationship under the Fourteenth Amendment.⁷⁵ In *Troxel v. Granville*, the Court further recognised the

⁷² Family Law Act 1975 (Cth) s 61C (Austl.).

⁷³ Id. § 60CA.

⁷⁴ Id. § 60CC

⁷⁵ *Stanley v. Illinois*, 405 U.S. 645, 651–58 (1972).

constitutional significance of parental decision-making concerning the care and upbringing of children.⁷⁶

The American experience demonstrates the importance of distinguishing between biological parentage and legal parental authority. It also illustrates the difficulties that may arise when family-law regulation is decentralised among different jurisdictions.

For India, the principal comparative value of the United States lies in its constitutional recognition of parental autonomy rather than in adopting its state-by-state regulatory structure.

6.5 Comparative Position Regarding the Father's Name

The requirement of paternal identification provides the strongest point of comparison among these jurisdictions.

The UK expressly allows an unmarried mother to register a birth without the father's details.⁷⁷

The information may subsequently be added through a recognised legal procedure.

South Africa approaches the issue from another direction by expressly granting the biological mother full parental responsibilities and rights irrespective of marital status.⁷⁸

Australia places greater emphasis on parental responsibility and the child's best interests rather than on marital status.⁷⁹

India has reached a related position judicially through *ABC v. State (NCT of Delhi)*, where the Supreme Court recognised that an unwed mother could seek guardianship without being compelled to disclose the identity of the father in the circumstances of that case.⁸⁰

The comparative evidence therefore indicates that paternal identification need not necessarily be treated as a universal precondition for recognising motherhood or registering a child.

6.6 Comparative Position Regarding the Child's Identity

The legal identity of a child should be distinguished from the question of paternal participation. A child may possess a complete legal identity even where the father's details are absent from a particular document.

The UK model illustrates this distinction most clearly because an unmarried mother may complete birth registration without the father's details while retaining a mechanism through

⁷⁶ *Troxel v. Granville*, 530 U.S. 57, 65–68 (2000).

⁷⁷ [GOV.UK](#), *Register a Birth: Who Can Register a Birth*.

⁷⁸ Children's Act 38 of 2005 § 19(1) (S. Afr.).

⁷⁹ Family Law Act 1975 (Cth) §§ 60CA, 60CC, 61C (Austl.).

⁸⁰ *ABC v. State (NCT of Delhi)*, (2015) 10 SCC 1, 7–12.

which those details can later be incorporated.⁸¹

For India, this distinction is particularly relevant to birth certificates, educational records, passports and other official documents. The absence of a father's name should not, by itself, invalidate the child's documentation or diminish the mother's legal status.

At the same time, the child's legitimate interest in information concerning biological parentage may arise in particular circumstances. Consequently, the law should distinguish between a child's legitimate interest in parentage information and an unnecessary administrative requirement that the father must always be identified.

6.7 Comparative Assessment of India

The comparison reveals that India has developed substantial judicial recognition of motherhood beyond marriage, but its legal framework remains comparatively fragmented.

The UK offers a clear mechanism for birth registration without compulsory paternal disclosure. South Africa provides explicit statutory recognition of the unmarried mother's parental responsibilities and rights. Australia demonstrates a child-centred model based upon parental responsibility and welfare, while the United States illustrates constitutional protection of parental relationships within a decentralised family-law system.

India's decisions in *Githa Hariharan* and *ABC* have significantly weakened the traditional assumption that paternal authority or paternal identification must precede maternal legal recognition.⁸² Nevertheless, these developments have not yet produced one uniform statutory and administrative framework.

6.8 Comparative Lessons for India

The comparative analysis supports four principal reforms.

First, Indian legislation should expressly recognise the parental status of a mother irrespective of marital status.

Second, paternal disclosure should not be mandatory where the information is unnecessary for the specific legal or administrative purpose.

Third, official documentation should provide appropriate alternatives for children raised by a sole mother.

Fourth, guardianship and parental responsibility should be determined primarily through the child's welfare and the actual responsibilities undertaken by parents.

⁸¹ *GOV.UK, Birth Registration.*

⁸² *Githa Hariharan v. Reserve Bank of India*, (1999) 2 SCC 228, 235–37; *ABC*, (2015) 10 SCC 1, 7–12.

The comparative experience does not suggest that India should replicate any foreign system in its entirety. Rather, it demonstrates that motherhood can be legally recognised independently of marriage while paternal rights and the child's legitimate interests are preserved through separate legal mechanisms.

The principal lesson for Indian law is therefore a shift from marriage-centred parenthood towards an autonomy-, responsibility- and child-centred conception of motherhood.

CHAPTER VII: FINDINGS, RECOMMENDATIONS AND CONCLUSION

7.1 Findings of the Study

The study establishes that Indian law has progressively recognised motherhood beyond marriage, but this recognition remains fragmented.

First, Articles 14, 15 and 21 provide a constitutional foundation for equality, dignity, privacy and personal autonomy of single mothers. These principles challenge legal and administrative practices based on assumptions that motherhood must necessarily exist within marriage.

Second, judicial decisions have substantially strengthened the position of single mothers. In *Githa Hariharan v. Reserve Bank of India*, the Supreme Court rejected an interpretation that would make the mother's guardianship subordinate to the father's mere existence.⁸³ In *ABC v. State (NCT of Delhi)*, the Court recognised the right of an unwed mother to seek guardianship without being compelled, in the circumstances of the case, to disclose the father's identity.⁸⁴

Third, the principal difficulty lies in the gap between judicial recognition and administrative practice. Requirements concerning the father's name in documents may continue even where paternal information is not legally necessary.

Finally, comparative analysis demonstrates that motherhood and parental responsibility can be legally recognised independently of marriage, while the child's welfare and legitimate paternal interests can still be protected.

7.2 Recommendations

The study recommends:

1. **Comprehensive legal reform:** India should develop a coherent framework recognising parental rights irrespective of marital status.
2. **No unnecessary paternal disclosure:** The father's name should not be mandatory in every official document where it has no legitimate legal purpose.

⁸³ *Githa Hariharan v. Reserve Bank of India*, (1999) 2 SCC 228, 235–37.

⁸⁴ *ABC v. State (NCT of Delhi)*, (2015) 10 SCC 1, 7–12.

3. **Administrative reform:** Birth, education, healthcare and identity-document procedures should accommodate single-parent families.
4. **Child-centred approach:** The child's welfare should remain the primary consideration in guardianship and parental-responsibility matters.
5. **Gender-neutral guardianship:** Parental authority should be determined by responsibility and the child's welfare rather than presumptive paternal priority.
6. **Recognition of diverse families:** Single-parent families should be expressly recognised as legitimate family structures within law and public administration.

7.3 Conclusion

Motherhood should not be treated as legally dependent upon marriage. Indian constitutional jurisprudence has already moved towards recognising **equality, dignity, privacy, reproductive autonomy and independent maternal guardianship**. Githa Hariharan and ABC represent important steps in this transformation.⁸⁵

However, judicial recognition alone is insufficient. The continuing requirement of paternal information in certain administrative settings demonstrates the need for legislative and procedural reform.

The appropriate approach is therefore to move from a marriage-centred model towards a rights, responsibility- and child-centred model of parenthood. **A single mother should be recognised as a parent in her own right, while the child's welfare and any legitimate rights of the father remain protected through separate legal mechanisms.**

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