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When the Family is Not Biological: Redefining “Family” in Law

Sujal Chhajed*, Aditi Raikwar, and Yashasvi Bhalse

National Law Institute University, Kerwa Dam Road, Bhopal-462044, India; aditiraikwar.bscllb@nliu.ac.in (A.K); yashasvibhalse.ug@nliu.ac.in (Y.B)

* Correspondence: sujalchhajed.bscllb@nliu.ac.in

Abstract: The institution of the family in India has traditionally been demarcated by the rigid contours of consanguinity and marriage. However, the contemporary socio-legal landscape is witnessing a significant paradigm shift, necessitated by the emergence of diverse domestic arrangements that defy conventional definitions. Current study explores the evolving jurisprudence of the 'family' within Indian law, highlighting the transition from a formalist approach—relying strictly on biological and marital ties to a functionalist perspective that recognizes "atypical" manifestations of the family unit. Drawing on the Supreme Court of India's landmark observations regarding domestic, unmarried, and queer partnerships, the research explores the constitutional dimensions of familial recognition under Article 21. It further analyses the statutory distinction between "household" and "family," as elucidated in *Indrapal Singh v State of U.P.*; to demonstrate how administrative law often lags behind constitutional aspirations. By engaging with comparative legal theories on "de facto" parenthood and the rights of psychological parents, this study argues that the functional performance of care and interdependence must form the basis for legal recognition, ensuring that the protective canopy of social welfare and constitutional liberty extends to all genuine familial bonds." As explained in *Indrapal Singh v. State of U.P.*, administrative law frequently does not keep up with constitutional goals. In engaging with comparative theories of law pertaining to "de facto" parenthood and the rights of psychological parents, this study argues for legal recognition based upon provided well care and mutual reliance of parties.

Keywords: Indian family law; article 21; *de facto parenthood*; atypical families; functionalism; Indian supreme court; constitutional protection; domestic partnerships

1. Introduction

In Indian Jurisprudence, there have been rigid definitions of the "family." Historically, members of a family were thought of as a single, fixed entity, consisting of a husband, wife and children, a definition deeply rooted in the "formalist" tradition that prioritizes objective traits such as blood ties and marriage certificates. There is a significant change within the socio-legal framework of India at this time. Due to changes such as live-in relationships; queer partnerships; single-parent households; and foster care systems; the previously static definition has to be re-evaluated. Because so many families exist outside of the biological or marital tie, using these criteria as the only means of understanding a "family" does not adequately protect the rights and welfare of people, especially children, who live in straightforwardly defined non-traditional arrangements but where the family provides a supporting functional performance of care to the child without being recognized as a family according to statutory law.

Recently, the apex court in India has recognized this paradigm shift, stating that the "predominant definition" of family does not account for the various ways in which families can change depending on the specific circumstances surrounding them. A major finding by the Court about where working women stand is that familial ties (or relationships) can take many different shapes, tell be it domestic, unmarried Partnerships, or same gendered Relationships (Alexander 2020).

The Court stated that the way in which a household can become a single parent can be as a result of a death, separation or divorce, and the roles of Guardians and caregivers may change through remarriage, adoption or fostering. These different types of family units are to be treated equally under law and therefore entitled to the same degree of social welfare protection.

It is important to differentiate between "family" and "household," as these two terms are often confused with each other in everyday language. The Allahabad High Court stated that "household" has an economic and logistical meaning of being a group of people that live together under the

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same roof and share a kitchen. "Family" has a flexible meaning¹; it can be broadly or narrowly construed depending on the intent of the legislation. A household is a group of people who shares food and lives in the same household, while a family may include blood relatives, domestic partner(s), or statutory heirs, regardless of immediate cohabitation from a household.

-This study examines the conflict of the formalist and functionalist approaches to define family in Indian legislation. The functionalist approach looks at the effectiveness of fulfilling its member's goals, such as safety, support, and adjustment. It will be evaluated by if Indian family law is currently progressing towards a functionalist viewpoint, i.e., the "psychological parent" or "de facto" family unit rather than based purely on biologically derived or married units of family. This shift will affect inheritance, custody, social welfare, and the constitutional right to dignity in life under Article 21.²

2. The Functional Family: De Facto Relationships and Atypical Manifestations

2.1 De Facto Parenthood and the Functionalist Turn

Family law is being increasingly challenged by formally defining family relationships, i.e. through written documents or formal arrangements where there is a marriage or adoption; and functionally defining family relationships (NeJaime 2024), i.e., use of the actual roles a parent plays in a child's life, such as attending to that child's nurturance needs, and all the various who those roles and responsibilities actually bind the child to the adults involved (Goldstein, Anna Freud and Albert J Solnit 1973).

In this new functional context, the focus is on evaluating actual family relationships through law, without relying exclusively on the actual "black letter" definition of family. The law will look at families that exist as facts (de facto) as well as the existing laws (de jure) when determining who should have legal standing as being an integral part of the family and deserving the same level of protection that traditional families are provided (Prakash 2022). The parental role that a child can experience through a "de facto parent" (essentially another adult who has a parental relationship with the child based on something other than biology) satisfies the child's psychological need for a parent (Buss 2002). This person does not have to be a legal parent (i.e., a "third party" or "legal stranger") but is instead a significant person in the child's life who has a parent-child bond or dependent relationship with the child.

Indian legal system is moving towards an understanding of the family that is not solely through the lens of biology. The Supreme Court of India stated that the "the predominant understanding of family as a singular, static entity comprising of biological two-parent families is not reflective of the reality of an increasingly wide variety of family formations." Rather, parental status is based on the nature and function of the (relationship between) parent and child and is the primary determinant of parental status as opposed to an individual or a biologically defined criterion (Baker 2024). As such, limiting the definition of "family" solely to the context of blood relations/consanguinity/marriage is frequently insufficient to safeguard the best interests of children, especially those being raised in non-conventional families, such as those consisting of single parents, LGBTQ couples, or children in foster care.

2.2 The Judicial Distinction: "Household" vs. "Family"

As Indian courts have been dealing with the complexities associated with contemporary family life, they have had to determine the distinction between the terms "household" and "family" and how these terms apply in law depending on their respective definitions based on legislative context and what was intended by the lawmaker at the time of passing said law.

The distinction between these two concepts was succinctly set forth by the Allahabad High Court in its Full Bench ruling in the *Indrapal Singh v State of U.P.*³ A "household" is generally defined by shared economic and logistical location, i.e., a group of people who live under one roof and eat from one kitchen. It describes a collection of people who reside together, as well as eat together.⁴ In comparison, "family" can mean many things; depending on the intent of the legislation, a "family" may mean very generally all "blood relatives" and "the members of the household (the domestic unit)," or it may refer only specifically to some of the heirs.⁵

The Court went on to explain that "household" and "family" do not have the same meaning. For example, in the case of ration cards and public distribution systems, "household" is the relevant term since the goal is to provide food security for those using the same kitchen. For administrative disqualification purposes (e.g., the provisioning of fair price shops to a relative of a village Pradhan), the definition of "family" is interpreted more strictly in terms of preventing a conflict of interest (e.g., disregarding kitchen-sharing arrangements with those defined as family members). Therefore, it illustrates the nuanced distinction between household (the physical existence, sharing meals or residence) vs. family (the status of being relatives and for legal purposes).⁶

2.3 Constitutional Dimensions: Article 21 and Atypical Families

The Constitution of India is the legal basis for the functional expansion of the family unit, namely through the right to life and personal liberty that is provided for under Article 21.⁷ The Supreme Court expressly recognized "atypical manifestations" of the family unit such as unmarried partnerships, queer relationships, and single-parent families (Prakash 2022). A family that is structured differently from the traditional family unit cannot be legally and socially disadvantaged based on what constitutes a "normal family".⁸ A family may become a single-parent family because of the death of a parent, or relationship breakdowns, and the roles of caregivers may change when there is remarriage or adoption. If these families are not given legal recognition or provided with

¹ *Pavan v Smith* 137 S Ct 2075 (2017).

² Constitution of India, art 21.

³ *Indrapal Singh v State of U.P.* (2014) 1 UPLBEC 379 (FB)

⁴ *ibid.*

⁵ *ibid.*

⁶ *ibid.*

⁷ Constitution of India, art 21

⁸ *ibid.*

social welfare support, they will be denied their right to live with dignity (NeJaime 2020). In extending the courts' definitions of family, the judiciary is supporting the functionalist approach that the law should reflect the real family relationships that exist without excluding those families which do not meet some legal or biological family definitions. Human rights recognize the right to a family being reliant on the state respecting these rights (Alexander 2020). Family rights are interpreted legally in correspondence with the cultural definition of family to build a recognizable family right.

3. Socio-Economic Implications: Inheritance, Welfare, and the 'Immediate' Family

3.1 The Dichotomy of Inheritance and Succession in Atypical Families

The courts have changed their attitudes toward the "non-traditional" families, i.e., social welfare rights, protection from violence etc. However, inheritance and succession law are largely codified and formally fixed concepts rather than evolving as for the atypical families with the evolving familial definition. One needs to distinguish between inheritance and succession when studying the impact of law can on non-traditional families as both terms often mean the same thing, yet they have different legal implications associated with them.

Inheritance refers generally to the transfer of items and assets to heirs that occurs posthumously and is governed by the laws of the land and other personal rules and codes, e.g., the Hindu Succession Act of 1956, and the Muslim Personal Law (Shariat) Application Act of 1937 (Anonymous 2024). These laws define who an heir is in very specific ways based on blood and marriage and there can be no exception for cohabitating partners or 'psychological parents' if there is not a will they do cannot fulfil the requirements of either Class 1 or Class 2 heirs. Succession, typically refers to the transfer of control, ownership, or leadership particularly in business of an individual prior to their death, which permits for greater flexibility than inheritance can provide via bylaws, contracts, or trust structures, allows the potential to create a new type of successor designation that can include people who may have gained some type of status or rights in their capacities as family members; however, these new categories do not have legal standing as in most cases only biological heirs can inherit under the traditional systems of laws and regulations.

Although the Supreme Court recognized the rights of all families to receive living rights under Article 21 of the Constitution through its functional approach, we also observe that, from a practical standpoint, traditional black letter laws of succession do not transfer property or make a person automatically entitled to succeed upon the death of the predecessor or upon an intestate's passing without a will. Therefore, it makes perfect sense that an individual might be defined as "family" for purposes of protection from domestic violence or maternity benefits; however, the same individual may not be defined as "family" or "heirs" for purposes of the intestacy laws, which distinguishes persons who are subject to intestacy from those who are not.

3.2 Administrative Allocation: The "Household" as an Economic Unit

The contrast between "family" as defined in one context and "household" as defined in another becomes increasingly nuanced in the field of administrative law and by way of state agencies and their funding stream distribution. The Supreme Court of India held in *Indrapal Singh v State of U.P.*⁹, "these terms derive their significance from the object and intended purpose to be achieved by a particular statute." This forms the basis for the establishment of a two-tier system of identifying domestic entities in terms of their economic activity versus their domestic status.¹⁰

With respect to food security and means of survival, such as the issuance of ration cards or identifying BPL beneficiaries, the relevant legal unit is a 'household.' The Allahabad High Court in its Full Bench ruling defined a household as 'a group of persons who normally feed themselves from the same kitchen' with reference to the economic and logistical relationship in terms of proximity rather than by blood relationship. Therefore, in this instance the law utilizes a functionalist viewpoint: if a group shares a kitchen and residence, they constitute a unit eligible for state support, regardless of their biological interrelation.¹¹

In the context of anti-nepotism and conflict of interest policies, e.g., the distribution of PDS (Public Distribution System) and Fair Price Shop licenses, the state will revert to a narrow; statutory definition of "family." Under this definition, members who are displaced (e.g., one brother) do not qualify to be agents where there is a disqualified relative (e.g., Pradhan, because of the mother's status) that also resides in the residence same as the agents.¹² While "household" is a question of law (residence and mess), "family" is still a question of status. This means that "non-traditional" families accessing food security through "household" criteria may qualify for benefits easier than through qualifying by "family" criteria in restrictive administrative contexts.

3.3 "Immediate Family" in the Workforce and Comparative Perspectives

Family also includes the scope of all related parties in the contractual and employment sector by detailing the "immediate family" concept to determine eligibility to participate in bereavement leave, medical benefits and family medical leave as needed.¹³ In the past, the workforce definitions of whom constituted an "immediate family" were limited to the nuclear family (parents, wife, children). As workforce dynamics shift towards more functional demands, however, the workforce definition of immediate family will continue to change (Anonymous 2025).

In Australia, the definition of immediate family falls under the Fair Work Act 2009 and has now expanded to include de facto partner relationships. Because of this, the obligation to provide care is now evolving to include obligations arising from a de facto relationship. In a similar manner, in travel insurance and health care coverages, "immediate family" will often now also include step-relation (Prakash 2022), foster child and cohabiting partner relationships - reflecting the true nature of our current risk and responsibility situations.

⁹ *Indrapal Singh v State of U.P.* (2014) 1 UPLBEC 379 (FB).

¹⁰ *ibid.*

¹¹ *ibid.*

¹² *Estroff v Chatterjee* 660 SE2d 73 (NC Ct App 2008).

¹³ https://en.wikipedia.org/wiki/Immediate_family

The Supreme Court of India recently made a comment on maternity leave that reflects the same global trend of treating families as typical families regardless of their structure. The Court recognized that the black letter of law cannot discriminate against a family whose caregiving roles are assumed by the family members rather than assigned based on biology. Therefore, this movement towards an employment law functional family test is based on functional dependency and caregiving bonds between two people rather than just producing a marriage certificate (Birch and Fabian 2020). The assetization of familial relationships in which legal value placed upon a bond is determined by its economic, social; and functional contribution will be treated in a similar manner.

4. Comparative Jurisprudence and the Operational Challenges of Functionalism

4.1 The Global Trajectory: From Status to Contract and Function

The judicial transformation seen in the Supreme Court of India's comments on non-standard families represents a general change globally, moving from definitions of family rooted in status (marriage and blood) to definitions of family based on function (support and care). Thus, understanding where the future state of Indian family law may go, it will be useful to examine how other countries have approached legal recognition of de facto partnerships.¹⁴

In England, the courts historically have had to use the ordinary person test when determining family status under an English law. In *Fitzpatrick v Sterling Housing Association*, it was decided by the House of Lords that, in applying the ordinary person test, a same sex partner could be considered a member of the deceased's family and entitled to have a statutory tenancy as a member of the family unit (Alexander 2020). The Lords underlined the family life traits to have a level of mutual dependency, sharing your lives, caring for and loving one another, or committing and supporting one another through mutually agreed responsibilities. The functionalist approach was further reinforced by the *Ghaidan v Godin-Mendoza* court decision¹⁵, in which the court defined the statutory language to ensure that same-sex partners were included in determining whether the terms were to be satisfied, thereby putting the emphasis on what was the function of the relationship and not its formal legal position.

Similarly, Australian law provides a codified means of recognizing non-formal relationships through the Family Law Act 1975 (Anonymous 2025), which provides an assessment of the characteristics that constitute a de facto relationship. These characteristics include the period of time for which the parties have lived together (a minimum of two years being typical), the nature of the household, whether there has been sexual activity, and the level of financial dependency.

The concept of *de facto* relationships in Australia allows an individual to be in a de facto relationship with one individual even if they are legally married to another individual. The concept recognizes that modern intimacy is a complex reality and there is a growing acceptance of "functional" or "biological" parental models by many courts in the U.S. (NeJaime 2024), which recognize that there may be more than one adult with "psychological parent" obligations to a child; an adult who provides for a child's daily physical and emotional needs and for whom a child has a meaningful emotional connection, independent of whether the adult is their biological parent or an adoptive parent.

4.2 Evidentiary Standards and the "Slippery Slope" of Functionalism

Regardless of whether you are using a de facto relationship or a biological or functional parental model, the functional model may promote inclusivity and protect vulnerable dependents, but it raises significant challenges regarding the provision of legal certainty and the efficient operation of administrative processes. As Professor Katharine Baker contends, by using "formality" (like a marriage certificate or an adoption decree), the state can determine the rights and obligations of individuals without conducting intrusive adjudicatory hearings; this is an expeditious and willful process (Baker 2024). Accordingly, the Full Bench of the Allahabad High Court stated that a functional definition of "family" was inappropriate for determining applications for fair price shop licenses.¹⁶ The Court found that broadening the definition of family beyond the relatives included in the statute -- i.e., self, spouse, parents, sons and unmarried daughters -- would allow for potential nepotism, which is contrary to the statutory intent. The definition of "household" is a question of fact based on residence and messing and is not a question of fact based on just who lives in a single home.¹⁷

The judicial uncertainty in this case raises the "slippery slope" argument: if the legislative body does not have formal criteria to apply, how can they prevent the exponential increase (which would probably be too great) of nonsensical claims to welfare relief (Baker 2024), as well as to create administrative chaos. For example, with regard to inheritance, there are intestacy statutes based on formal definitions (blood relationship or marriage) and have to do so because to determine the functional intention of a deceased person is not only very difficult but also creates an extreme opportunity for corruption and fraud. Also, with regard to social welfare (e.g., food stamps which are similar to India, where they have their ration card), the courts have had to determine whether or not "purchasing and preparing meals together" constitutes a family unit, many times leading to intrusive and unnecessary investigations into someone's private family situation.¹⁸

5. The Role of Consent and the "Psychological Parent"

The basis for the relationship between the legal parent and a third party is based on consent or fostering of that relationship; thus, the legal parent must generally consent to and have fostered a parent-like relationship between the third party and the child in order for the de facto parent to be considered a de facto parent under American law (NeJaime 2024). Therefore, preferential treatment should be given the legal parent to preserve the legal parent's fundamental right to determine how to raise their child, and to prevent

¹⁴ *Fitzpatrick v Sterling Housing Association* 1 FCR 21.

¹⁵ *Ghaidan v Godin-Mendoza* UKHL 30.

¹⁶ *Indrapal Singh v State of U.P.* (2014) 1 UPLBEC 379 (FB).

¹⁷ *ibid.*

¹⁸ *Lyng v Castillo* 477 US 635 (1986); Baker (n 1) 1271-1272.

functional recognition from infringing upon that right. The consent-based model is reflected in the current perception of the family as "an autonomous community of solidarity." When a legal parent invites a third party (i.e., step-parent, or same-sex partner) to participate in the parental relationship with the child, this action creates a new relationship between the third party and the child but does not create a separate relationship between the third party and the legal parent for purposes of establishing a de facto parental relationship (Baker 2024).

India is in the middle of the debate over same-sex partnership recognition. Using Samwell's family law analysis, the traditional dependence on biology doesn't lead to a creation of the law that protects the "psychological well-being" of children raised in diverse types of family units. The law also recognizes that the "psychological parent," which is based upon actual caregiving function, enables it to protect the child's best interests (NeJaime 2024). Therefore, the law can prioritize the child's needs over rigid biological formalism.

Nevertheless, many are critical of using solely consent for determining the functional parent. There are many functional parenting doctrines developing; however, many believe the focus should be only on the child's attachment and the adult's caregiving function, without concern for what the legal parent intended when beginning the parenting process. Under the present constitutional framework for India, it would appear likely that the future of balancing the biological familial Article 21 rights and the functional reality of 'atypical' families will necessitate a more nuanced application of the consent/conduct test (NeJaime 2020).

6. Suggestions for Legal Reform

The goal of the legislature should not be to define families uniformly but to develop a specific definition of family as applicable to each intended purpose of the law. According to Katharine Baker, a legal scholar, families should be identified in different ways based on the laws' intended purposes, for example, to protect the freedom of an individual, require resource transfers, or allocate property amongst family members (Baker 2024). Laws governing privacy and protection from state intrusion (such as laws regarding land use) should primarily use a functional definition to identify families, i.e., a family's functions comprise of occupant's common living arrangement (i.e., home) and the members share the responsibility for providing care for the members of the family; therefore, the state has no authority to prevent families from existing or functioning as such solely because the family does not have a formal marriage certificate. The law must extend beyond blood ties to hold accountable the "functional" parent that developed a dependency relationship with the child in establishing both child and spousal support obligations of non-biological or non-genetic supporting parents with regards to sharing their resources. The same holds true for those who have acted as a "parent" in loco for long periods of time. The result will be a larger community of people responsible for providing financial security to their children even after the breakdown of the non-biological spousal relationship. For statutory authority for the presumption of "de facto" parenthood and for the "holding out" presumption to accomplish these goals, India needs to adopt an approach similar to that taken by the 2017 Uniform Parent Act (UPA)¹⁹ and some of the more recent statutory changes in Washington and Maine to establish the "de facto" parent. At this time in India, judges use ad hoc equitable principles to protect a non-genetically related caregiver.

The Guardianship & Wards Act 1890 (the Act)²⁰, and the Hijari Minority & Guardianship Act of 1956²¹, should be modified to include ways of recognizing an individual as a legal parent of a child if that individual has lived with that child for a period of time, has cared for that child without any expectation of payment or other compensation, and has a close, dependent relationship with the child that the child's other legal parent(s) has created or supported. The presumption of "holding out" (the way to presume paternity) should be modified to be gender-neutral and biology-neutral. Therefore, anyone who receives a child into their home and openly "holds out" the child as their legal child will have the law presume, they are the legal parent of the child, and therefore that child will remain a legal child, regardless of their biological relationship to the person claiming to be their legal parent.

Functionalism plays an important role in welfare, but when it comes to inheritance (intestacy), functionalism can lead to high administration costs and litigation. To achieve both inclusivity and administrative efficiency, the government needs to provide an "easy registration" option for all families who do not fall under the Hindu Succession Act²² or Indian Succession Act²³. Registering civil unions/partnerships by establishing a registry for civil unions provides holes for same-sex couples and long-term cohabiting partners to create a formal record of their union, allowing them to be considered heirs without having to perform an elaborate functional evaluation of their relationship at the time of their death. Presently, voluntary acknowledgement of parentage (VAPs) are available exclusively to unwed biological fathers, but they could also be extended to non-bio parents (e.g., those in queer families and step-parents) with the consent of existing legal parents. This will allow VBPs to create a formal legal link between the child and the non-biological parent, thus providing the certainty necessary in succession matters—that is, without the expense of adoption proceedings.

Finally, legal reforms need to recognize the "assetization" of family relationships. Changes to social welfare program definitions, nominee provisions relating to insurance, pension laws, etc. need to be amended so that "immediate family" is defined by the "household" (i.e., living in the same household and sharing the same kitchen) versus some other tier of consanguinity. As a result, the functional group unit (the family group that actually lives together) that receives government support will be eligible for that support from the government.

7. Conclusions

¹⁹ Uniform Parentage Act 2017 (US).

²⁰ The Guardianship and Wards Act, 1890 (8 of 1890).

²¹ The Hindu Minority and Guardianship Act, 1956 (32 of 1956).

²² The Hindu Succession Act, 1956 (30 of 1956).

²³ The Indian Succession Act, 1925 (39 of 1925).

The family law of India is shifting from the rigid, status-oriented formalism towards a more nuanced, functional understanding of the concept of the family unit. The Supreme Court's landmark statements on 'atypical' families demonstrate that relying solely on the 'black letter of the law' will not provide legitimate advantages to domestic arrangements which are not composed of biological and ceremonial marriages. The broad interpretation of Article 21 shows that family (a group of individuals) is more than marriage certificate through caregiving, providing money for each other, and emotional connections that happen in a household. Courts use the same terminology that they would use to describe an ordinary person and a group of people living together as a "household" to give social welfare benefits to people from non-traditional family units, but in regards to inheritance and succession laws, blood (biological) relationship continues to be the only legal way that you can inherit property or file a claim for something. The difference between "family", based on your status in a family, and "household", which describes how family members are connected through sharing resources, was clearly discussed in *Indrapal Singh v State of U.P.*, however the state has not been willing to completely remove biological privilege from people's right to own property or receive assistance from the government. Those who resist a purely functionalist approach frequently do so out of fear of lack of legal certainty and fear of fraud—the “slippery slope” of defining family in terms of subjective behavior rather than objective criteria. However, as history teaches us, to cling to biological essentialism is to ignore that parenthood and family are ultimately social practices. Therefore, the current legal system is on a continuum: a system where the “de facto” parent and “psychological” family are recognized in the Constitution but remain largely hidden from the statutory codes that govern property and lineage.

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