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# **LEGAL IMPLICATIONS OF ARTIFICIAL REPRODUCTIVE TECHNOLOGIES IN INDIA: EXPLORING THE LEGAL AND ETHICAL DIMENSIONS OF THE TECHNOLOGIES**

AUTHORED BY – GAURISHA RASTOGI

*The concept of producing a life at a certain age is absorbed by a significant amount of people on Earth but the specific fascination over having biological children is on a decline these days. Infertility has been considered a taboo for centuries and still has not been wholly accepted by people stuck in the same loophole of myths but on the greener side, the younger generation, instead of doubting themselves and wasting energy on futile efforts, are trusting the technology and making the most out of the upgraded and technically advanced world they are a part of. The transferring of the gamete or embryo in the female body through the services such as gamete (sperm or oocyte) donation, in-vitro-fertilization (fertilizing an egg in the lab), and gestational surrogacy (the child is not biologically related to a surrogate mother) is called making the use of “Artificial Reproductive Technologies.” The legality and ethical dimensions of this concept have been discussed in the research paper thoroughly.*

## **INTRODUCTION**

Artificial Reproductive Technology or Assisted Reproductive Technology is the new age fertility treatment for people who want to or who need to obtain healthy offspring by handling the pregnancy in the external environment rather than the female’s body. Reproduction, naturally, is a complex human process for both males and females. It can be summed up as “preparation of the lining of the uterus to receive an embryo and release of the egg from the ovary into the fallopian tube where the fertilization occurs after produced sperms in the male body travel from the vagina through the cervix and uterus into the fallopian tube.” Whosoever, after 12 months of unprotected intercourse, is not able to fulfill the above steps, is considered to be infertile.<sup>1</sup> WHO estimates the prevalence of infertility in

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<sup>1</sup> Agency for Healthcare Research and Quality, Effectiveness of Assisted Reproductive Technology, <<https://www.ahrq.gov/downloads/pub/evidence/pdf/infertility/infertility.pdf>> (July 24, 2023)

India to be between 3.9% and 16.8%<sup>2</sup> and globally WHO suggests that globally one in six people experience infertility in their lifetime which is 17.5% of the total population.<sup>3</sup>

Hence, ART was considered an option to step out of lifetime infertility and it brought the ray of hope needed for couples hoping for a child. The initial step towards ART was taken in the US in 1978, when a kid named “Louis Joy Brown” was born by In Vitro Fertilisation which was assisted by renowned doctor Robert Edward who was awarded the Nobel Prize in Physiology or Medicine in 2010<sup>4</sup> Further in the rapidly developing field of ART, intracytoplasmic sperm injection (ICSI) was introduced in the year 1992 which focused mainly upon male infertility and busted the myth that infertility issues are connected only with women. The ICSI technique was developed by Gianpiero D. Palermo at the Vrije Universiteit Brussel, in the Center for Reproductive Medicine in Brussels<sup>5</sup> which was initially a mistake, but proved to be one of the breakthroughs for the reproductive health of people. In India, the first official IVF baby born in 1986 was named “Harsha” which was claimed by Dr. T. C. Anand Kumar and Dr. Indira Hinduja<sup>6</sup>. She was accepted morally and ethically unlike the previous born baby named “Durga” in the year 1981. Since the acceptance of Harsha by the Indian Council of Medical Research (ICMR), the ART clinics are being recognized legally and are made aware of.

The legality of ART has been officially proposed by the United Kingdom by introducing the Human Fertilisation and Embryology Act of 1990 which was further amended in the year 2009 and is currently applicable.<sup>7</sup> The legality of ART has been in question in India since 2008 but was finally accepted by the Parliament after proposing numerous amendments to the bill in the year 2021.<sup>8</sup> The

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<sup>2</sup> Economic Times, <https://health.economictimes.indiatimes.com/news/industry/rising-infertility-detectable-treatable-and-preventable/95587656#:~:text=Using%20this%20definition%2C%20the%20WHO,couples%20have%20%E2%80%9Cfertility%20issues%E2%80%9D>, (Jly 24, 2023)

<sup>3</sup> World Health Organisation, <https://www.who.int/news/item/04-04-2023-1-in-6-people-globally-affected-by-infertility> (July 24, 2023)

<sup>4</sup> Graham, ME, Jelin, A, Hoon, AH, Floet, AMW, Levey, E, Graham, EM. Assisted reproductive technology: Short- and long-term outcomes. *Dev Med Child Neurol.* 2023; 65: 38– 49 <https://onlinelibrary.wiley.com/doi/10.1111/dmcn.15606>

<sup>5</sup> Wikipedia, [https://en.wikipedia.org/wiki/Assisted\\_reproductive\\_technology#Historical\\_facts](https://en.wikipedia.org/wiki/Assisted_reproductive_technology#Historical_facts) (July 24, 2023)

<sup>6</sup> Jamwal, V. D. S., & Yadav, A. K. (2023). The Assisted Reproductive Technology (Regulation) Act, 2021: A Step in the Right Direction. *Indian journal of community medicine : official publication of Indian Association of Preventive & Social Medicine*, 48(1), 4–6. [https://doi.org/10.4103/ijcm.ijcm\\_169\\_22](https://doi.org/10.4103/ijcm.ijcm_169_22)

<sup>7</sup> Participation E. Human Fertilisation and Embryology Act 1990. [Last accessed on July 24, 2023]. <https://www.legislation.gov.uk/ukpga/1990/37/contents>

<sup>8</sup> Nehaa Chaudhari, ‘Regulating Assisted Reproductive Technologies in India’ (OxHRH Blog, 12 November 2015) <<https://ohrh.law.ox.ac.uk/regulating-assisted-reproductive-technologies-in-india>> [July 24, 2023]

Assisted Reproductive Technology (Regulation) Act, 2021 ensures the right to protection of life and liberty specifically for infertile couples opting for ART. The act ensures financial security in favor of the oocyte donor by providing insurance coverage for twelve months<sup>9</sup> and the surrogate mother is also benefited from the secure provisions of the act. The use of ART is still considered “dirty” or “unreasonable” in various parts of the world but in the year 2000, only 5500 cycles of IVF-ICSI were performed in India, this number rose to 21,500 in the year 2006, the number projected for 2011 is 110,000.<sup>10</sup>

As suggested by some researchers, ART tends to harm the offspring’s growth over the years showing an increased risk of low birthweight, small-for-gestational age, and preterm birth<sup>11</sup>. However, the negative effects cannot be wholly blamed upon ART and might have something to do with the infertility and reproductive issues already present in the human body of parents or it can be a hybrid combination of both.

## VARIOUS METHODS IN ART

- **In Vitro Fertilisation:** In Vitro means “outside the body” and fertilization is the process of fusion of male sperm and female ovum to give rise to an offspring. The method of IVF revolves around removing the eggs from the woman’s body and placing it together with the sperm in an environmentally controlled laboratory to transform into an embryo. After the regular check that the embryo is growing properly, it is placed into the woman's womb by inserting a thin tube called a catheter through the cervix. The transfer might happen for more than one embryo which as a result leads to having twins, triplets, or quadruplets whereas on the other hand, some unused embryos are left which may be frozen or transplanted on another date.

As the statistics recommend, age plays an important role when opting for IVF. Younger people are

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<sup>9</sup> Jamwal, V. D. S., & Yadav, A. K. (2023). The Assisted Reproductive Technology (Regulation) Act, 2021: A Step in the Right Direction. *Indian journal of community medicine : official publication of Indian Association of Preventive & Social Medicine*, 48(1), 4–6. [https://doi.org/10.4103/ijcm.ijcm\\_169\\_22](https://doi.org/10.4103/ijcm.ijcm_169_22)

<sup>10</sup> Malhotra, N., Shah, D., Pai, R., Pai, H. D., & Bankar, M., Assisted reproductive technology in India: A 3 year retrospective data analysis. *Journal of human reproductive sciences*, 6(4), 235–240. <https://doi.org/10.4103/0974-1208.126286> (July 24, 2023)

<sup>11</sup> Elhakeem A, Taylor AE, Inskip HM, et al. Association of Assisted Reproductive Technology With Offspring Growth and Adiposity From Infancy to Early Adulthood. *JAMA Netw Open*. 2022 <<https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2794642>>

more bent over using IVF as compared to older ones.<sup>12</sup>

- **Intra Fallopian Transfer:** Following the same procedure as IVF except the step of embryo transplant is done by laparoscopic surgery which directly transfers the gametes into the fallopian tube. It further poses 2 sub-methods namely, Zygote Intrafallopian Transfer (ZIFT) and Gamete Intrafallopian Transfer (GIFT). The normal use of laparoscopic surgery without any intervention by IVF methods is called ZIFT. Whereas, in GIFT, the collection and stimulation of eggs are done through IVF methods and the placing of the fertilized egg in the fallopian tube takes place by using laparoscopic surgery<sup>13</sup>. GIFT is the hybridization of IVF and Intrafallopian Transfer.
- **Intracytoplasmic sperm injection (ICSI):** ICSI is more commonly used when there is male infertility. Due to low sperm motility, embryologists use a microscope to select a single sperm that is injected into the egg to hopefully achieve fertilization. ICSI has been considered a safe process for the long and short-term health of the baby in 94% of the cases<sup>14</sup> and the female carrying the embryo in her womb is out of all the risks in 80% of the cases.<sup>15</sup>
- **Third-Party ART:** This is the method under which a third individual helps the couple to bear offspring. This can be through sperm donation, egg donation, or rearing the embryo (surrogates and gestational carriers). If a man does not have a healthy amount of sperm or has a genetic disease that he does not want his offspring to carry in the future, donated sperm of a third party can be used for egg fertilization.<sup>16</sup> Similarly, if a woman does not produce a healthy amount of eggs, an egg donor undergoes the process of superovulation and further, those eggs are fertilized with the sperm to create a healthy offspring for the couple.<sup>17</sup> However, if the woman has an issue carrying the embryo in the womb for 9 months, the couple opts for surrogacy or gestational carriers. Surrogacy is the process of fertilizing the surrogate's eggs with the sperm of the male partner in an external environment and

<sup>12</sup> Receptiveadx, <https://receptivadx.com/2022-statistics-about-ivf-success-and-failure/#:~:text=Here's%20a%20breakdown%20of%20their,increase%20to%2069%2D92%25.> (July 25, 2023)

<sup>13</sup> PeaceHealth, <https://www.peacehealth.org/medical-topics/id/hw202763> (July 26, 2023)

<sup>14</sup> Victorian Assisted Treatment Reproductive Authority, <https://www.varta.org.au/fertility-treatment/fertility-treatment-explained#Types-of-treatment> (July 26, 2023)

<sup>15</sup> Better Health Channel, <https://www.betterhealth.vic.gov.au/health/conditionsandtreatments/Assisted-reproductive-technology-IVF-and-ICSI> (July 26, 2023)

<sup>16</sup> Medical News Today, <https://www.medicalnewstoday.com/articles/assisted-reproductive-technology#types> (July 26, 2023)

<sup>17</sup> US Department of Health and Human Services, <https://www.nichd.nih.gov/health/topics/infertility/conditioninfo/treatments/art> (July 26, 2023)

placing the fertilized embryo in the body of the surrogate. Biologically, the child will be related to the surrogate instead of the female partner. More than 25,000 children are being born in India through surrogacy<sup>18</sup> for which numerous legal provisions have come into force to protect the rights of the surrogates and the parents. Commercial Surrogacy is currently banned in various countries including India to shield the women population from reproductive exploitation.

Gestational Carrier is implanted with a well-fertilized embryo through the IVF or Intrafallopian Transfer where the offspring is biologically related to the female partner. No biological relation is traced between the offspring and the gestational carrier. The use of this method has been on the rise as women either due to health or lifestyle reasons do not prefer carrying the embryo in their womb. Centers for Disease Control and Prevention stated that the number of gestational carrier cycles increased from 727 (1.0%) in 1999 to 3,432 (2.5%) in 2013.<sup>19</sup>

## LEGAL FRAMEWORK OF ART IN INDIA

India is a country with an exorbitant population and high diversity poses the importance of legally regulating modern technologies. Assisted Reproductive Technology is one such applied science used by more than 1 lakh people in India and is escalating at the rate of 36.07%.<sup>20</sup> The first ever Assisted Reproductive Technology Bill was introduced in 2013<sup>21</sup> in India which explicitly disallowed Commercial Surrogacy which involves paying consideration other than medical and emergency expenses. India was known as the surrogacy capital of the world until the year 2015 and had an annual market turnover of more than \$450 million<sup>22</sup>. This exploited the impoverished women community as couples from Western countries like Germany, Italy, and France (where all forms of surrogacy are banned) used to pitch on Indian women for surrogacy services. The consideration of India as the “baby rental company” or the “baby womb factory” was not benefitting the reputation of the country as the dignity and morality of the women were in question. Unregulated and inexpensive services

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<sup>18</sup> Wikipedia, [https://en.wikipedia.org/wiki/Surrogacy\\_in\\_India](https://en.wikipedia.org/wiki/Surrogacy_in_India) (July 26, 2023)

<sup>19</sup> Centres for Disease Control and Prevention, [https://www.cdc.gov/art/key-findings/gestational-carriers.html#:~:text=Has%20the%20use%20of%20gestational,3%2C432%20\(2.5%25\)%20in%202013](https://www.cdc.gov/art/key-findings/gestational-carriers.html#:~:text=Has%20the%20use%20of%20gestational,3%2C432%20(2.5%25)%20in%202013) (July 26, 2023)

<sup>20</sup> Hsu, J. C., Su, Y. C., Tang, B. Y., & Lu, C. Y. (2018). Use of assisted reproductive technologies before and after the Artificial Reproduction Act in Taiwan. <https://doi.org/10.1371/journal.pone.0206208> (July 26, 2023)

<sup>21</sup> National Commission for Women, <http://ncw.nic.in/ncw-cells/legal-cell/new-bills-laws-proposed/new-bills-law-proposed> (July 26, 2023)

<sup>22</sup> Writings on Surrogacy, A brief overview of Indian Surrogacy Law (ART) Regulations Bill 2013, <https://writingsonsurrogacy.wordpress.com/2016/10/18/a-brief-overview-of-indian-surrogacy-law-art-regulations-bill-2013/> (July 26, 2023)

were creating havoc in society as the children born were abandoned easily due to any minor disease and many traps of organ trade and human trafficking were set while surrogate mothers were being prescribed many drugs before conceiving the child which were dangerous for their health and well-being. After noticing these statistics, it feels far-fetched that there was a time when commercial as well as altruistic surrogacy was illegal in India. In 2002, the legality of surrogacy was approved which cleared the pathway for both, commercial as well as altruistic surrogacy. It will be correct to state that commercial surrogacy was not an aspect that everybody focused upon before the year 2008 when the Baby Manji Yamada case<sup>23</sup> was brought up in the Supreme Court of India. The case revolved around the citizenship and future of the surrogate child whose parents were of Japanese Nationality but had been separated before the birth of the child. The Supreme Court of India in 2008 held surrogacy permissible in India after Manji's case which increased the international confidence in going in for surrogacy in India.<sup>24</sup> Acknowledging the upwards push in the Artificial Reproductive World, the parliament introduced the first Surrogacy Regulation Bill in 2016 followed by a similar bill in 2019. Various provisions were tabled in the parliament and after amendments over amendments, the best version in the eyes of the legislature was passed as an act in the year 2021. Surrogacy (Regulation) Act, 2021, and Assisted Reproductive Technology (Regulation) Act, 2021 were proposed to complement each other and act as mutually exclusive frameworks. Both of the acts have tried to regulate the Surrogacy Clinics and ART Clinics respectively to offer a secure and guarded future for the parents and the offspring. The registration of clinics with the National Reproductive Technology and Surrogacy Board within 60 days from incorporation<sup>25</sup> plays a significant role at the grassroots level and spreads due awareness about the correct process and guiding policy matters to the innocent. Both acts run parallel to the Preconception and Prenatal Diagnostic Techniques (PCPNDT) Act, 1994, and prohibit the sex determination of Pre-Implanted embryos.<sup>26</sup> Above all, clinics and banks are not allowed to advertise or offer gender-based ART. This offense is punishable with imprisonment ranging from 5 to 10 years and/or a fine ranging from Rs.10 to 25 lakhs. The age condition to take the leverage of ART clinics is 21 to 55 for men and 23 to 35 for women.<sup>27</sup> The lesser age limit for

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<sup>23</sup> Baby Manji Yamada. Union of India, (2008) 13 S.C.C. 518.

<sup>24</sup> Dev, Surrogacy In India, Legal Services India E-Journal, <https://www.legalserviceindia.com/legal/article-782-surrogacy-in-india.html#:~:text=India%20legalised%20commercial%20surrogacy%20in,the%20blessing%20of%20a%20child> (July 26, 2023)

<sup>25</sup> Bar and Bench, <https://www.barandbench.com/columns/assisted-reproductive-technology-act-a-timely-legislation-for-a-timeless-problem> (July 26, 2023)

<sup>26</sup> Bhaktwani A. (2012). The PC-PNDT act in a nutshell. The Indian journal of radiology & imaging, 22(2), 133–134. <https://doi.org/10.4103/0971-3026.101114> (July 26, 2023)

<sup>27</sup> Anjali Sinha, Surrogacy Act, IP Leaders, [https://blog.ipleaders.in/surrogacy-act/#Surrogacy\\_Regulation\\_Act\\_2020](https://blog.ipleaders.in/surrogacy-act/#Surrogacy_Regulation_Act_2020)

women is the brighter side of the act as the excessive pressure posed upon women in matters related to childbirth in India is the reason for depleting mental and physical health. According to the law, the donor must be married with at least one child of her own, aged at least three years. A woman can donate up to seven eggs only once in her lifetime. The bank cannot supply sperm from one donor to more than one couple.<sup>28</sup> The Surrogacy Act specifies the eligibility criteria more concretely considering the loopholes and commercial surrogacy aspect. A widowed or divorced woman between the ages of 35 and 45 or the couple pitching for surrogacy should be married for at least five years and must have a certificate of eligibility.<sup>29</sup> The woman acting as a surrogate should necessarily be a close relative of the couple, must be married with a child of her own, and should be between 25-35 years of age. No previous surrogacies should be performed by her<sup>30</sup>. Commercial Surrogacy is punishable with imprisonment for 10 years and a fine of up to Rs 10 lakh<sup>31</sup>. There have been cases where abortion has to be done for the well-being of the surrogate mother which requires the written consent of the surrogate mother and the approval of the competent authority. This approval must comply with the Abortion Act of 1971<sup>32</sup>. Additionally, a surrogate mother can decline surrogacy before the embryo has been implanted in the uterus.

## REPRODUCTIVE RIGHTS AND GENDER EQUALITY

Posing back to the 17th and 18th centuries, preformationism theory was being embraced. “Preformationism” in the raw form means that humans develop from already existing miniature versions of themselves and the offspring that are born in the different future timelines are not because of fertilization but rather because they have existed since the beginning of the creation inside a human body.<sup>33</sup> The preformationist notion posits that a female's role in giving birth is limited to providing nourishment and a safe place for the embryo to form. This is the grassroots level of gender inequality

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(July 26, 2023)

<sup>28</sup> Prsindia.org, <https://prsindia.org/billtrack/prs-products/issues-for-consideration#:~:text=Registration%20of%20ART%20clinics%20and,and%20banks%20in%20the%20country.> (July 26, 2023)

<sup>29</sup> IndiaCode.nic, [https://www.indiacode.nic.in/handle/123456789/17046?view\\_type=browse&sam\\_handle=123456789/1362](https://www.indiacode.nic.in/handle/123456789/17046?view_type=browse&sam_handle=123456789/1362) (July 26, 2023)

<sup>30</sup> Anjali Sinha, Surrogacy Act, IP Leaders, [https://blog.ipleaders.in/surrogacy-act/#Surrogacy\\_Regulation\\_Act\\_2020](https://blog.ipleaders.in/surrogacy-act/#Surrogacy_Regulation_Act_2020) (July 26, 2023)

<sup>31</sup> Anjali Sinha, Surrogacy Act, IP Leaders, [https://blog.ipleaders.in/surrogacy-act/#Surrogacy\\_Regulation\\_Act\\_2020](https://blog.ipleaders.in/surrogacy-act/#Surrogacy_Regulation_Act_2020) (July 26, 2023)

<sup>32</sup> Wikipedia, [https://en.wikipedia.org/wiki/Surrogacy\\_in\\_India](https://en.wikipedia.org/wiki/Surrogacy_in_India) (July 26, 2023)

<sup>33</sup> Wikipedia, <https://en.wikipedia.org/wiki/Preformationism> (July 26, 2023)

in the reproductive scenario which has deprived women of the due equal rights. However, the theory was proved wrong as soon as the sperm and embryo development process was discovered but the mindset that women are passive participators concerning men in the action to give rise to an offspring persists. The hypocrisy lies in the act of blaming women for not being able to give birth to a desired gendered offspring as if they were ever considered the active parent while giving birth. The unjustified superiority of men and crediting them with all the authority for being an active birth givers while snatching the responsibility of the baby after the birth is the exact issue of gender inequality. Traditionally, the female is viewed as the passive or "receptive" agent, providing the environment for the development of the embryo, while the male is seen as the active or "generative" agent, delivering the sperm. Modern reproductive theory has challenged this distinction and even provided corroborated evidence for the fact but the actual results have not resulted in greater appreciation of women.

Back in the time when commercial surrogacy was legal in India, the right to life and personal liberty stated in Article 21 of the Indian Constitution as a fundamental right was somewhere getting blurred on the grassroots level. The right also includes women's ability to make decisions about their reproductive health and options but the underprivileged women community had to indulge in pressurized surrogacy to earn money for her family. The pressure mostly revolved around the fact that men of her family wanted to make the most out of her body as she had been honoured with a body to sustain another life. The decision to become a surrogate used to be coercive and the money offered was not usually enough to alleviate her out of the constant cycle of poverty.

In the case of Navtej Singh Johar & Ors. v. Union of India, homosexual consensual relations were identified as legal followed by the Tulsa & Ors v. Durghatiya & Ors case in which newer age live-in relationships were also legally recognized. Judgments like these are highlighting the clear pathway towards the new age mindset which has to be accepted legally for safer growth and lifestyle of the youth but the barrier for same-sex couples and single women and men on opting for ART and surrogacy brings us back to the central reality of the country.

## CHALLENGES OF THE LEGAL FRAMEWORK

The legality of the provisions instituted in the framework lacks some crucial qualities which can be seen in almost all of the laws regulating in the country. Managing and including every citizen of varied diversity is a humongous task but the necessity of inclusivity in matters like equality, the right to personal liberty, and even reproductive autonomy cannot be compromised. The legal framework of assisted reproductive technology act states that the registered ART clinics should be visited for the process but it is silent about the qualifications, eligibility criteria, and minimum education of the professionals and gynaecologists employed there. This leaves the scope for mishandling of climacteric reproductive matters which call for heed of the minutest matters and challenges. The subject of chemicals used in the labs and the outer environment in which fertilization takes place is also untouched under the act which narrows the ambit of definite safe health of the offspring, sperm, or eggs. Health being a state subject, no uniform code and guidelines have been framed and implemented to provide the same ground-level facilities to every inhabitant. Moreover, states such as Bihar and Rajasthan spend less than 5% of their budgetary allocations on healthcare<sup>34</sup> which directly results in poor reproductive health of women and ill health of infants which renders all the well-made provisions futile for the people falling in the lower category of the pyramid.

Discussion about the legal framework stays incomplete until the fundamental rights are contrarily interrupted which brings us to the perspective of inclusivity of each gender into the law. According to Article 14, the State shall not deny to any person equality before the law or equal protection of the laws within the territory of India. However, the ART laws and Surrogacy laws explicitly exclude the LGBTQ+ community and single individuals because of the previously declared concept of “child welfare” in the case “Mausami Moitra Ganguli vs Jayanti Ganguli”<sup>35</sup> in which the love and affection of the mother were acknowledged. The question that leaves us with is does the affection and social cause of mother’s privilege in children’s welfare provide the lawmakers with the autonomy to back ball certain genders and neglect the fundamental rights?

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<sup>34</sup> Hindustan Times, <https://www.hindustantimes.com/india-news/why-581-million-indians-endure-india-s-worst-healthcare/story-wWV7yvVWTKYtGcsGS0gYQO.html> (July 27, 2023)

<sup>35</sup> MAUSAMI MOITRA GANGULI v. JAYANTI GANGULI, SC 2007, 17109

## REAL-LIFE CASE STUDIES

In India, certain judgments have been passed by the Hon'ble Supreme Court and High Courts which are considered as the breakthroughs of assisted reproductive technology implementation and execution.

A very popular case where the age limit of the petitioners turned their life upside down is *Saswati Mohury & Anr vs The Union Of India & Ors.*<sup>36</sup> The essentials of the case are such that the petitioners are married and opt for having a kid through ART. During the whole process, they pitch various methods but even after 10 years down the line, they were not able to have a baby. After the said time, the age of the man exceeds the eligibility criteria mentioned in Section 21(g)<sup>37</sup> by one year which means he turned 56. Counsel submits that the petitioners have suffered emotional trauma and depression due to consecutive failures in conceiving a child. Counsel submits that Section 21(g) offends Article 14<sup>38</sup> of the Constitution since a commissioning couple has been prohibited from seeking ART because of an artificial age bar between a man and woman without the support of any medical or expert evidence in the matter. In conclusion, the court ruled that the male counterpart of the commissioning couple and having crossed the prescribed age by just a year has established a case for interim relief.” That raises the question of whether fundamental rights do not hold the power to make a law futile on the grassroots level as stated in Article 13<sup>39</sup>. The provisions stand ultra vires to the constitution and this fact should not be concealed behind the interim relief granted. Moreover, the interim relief granted was majorly moved by the mental trauma and hurdles the petitioners faced throughout 10 years and nominally influenced by the Constitution of India.

Another case that typically revolves around the ex-ante and ex-post facto law is *Rakhi Bose & Anr. v. Union of India & Ors.*<sup>40</sup> The facts included that “the petitioners were a married couple who wanted to conceive but could not due to infertility issues and chose the ART methods. They tried numerous clinics and banks and after ample efforts, started with the due procedure of submitting the eggs and sperm at an ART clinic. However, the treatment took a halt when the Chief Consultant notified them that the required wall of thickness to provide nourishment to the embryo cannot be attained in the

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<sup>36</sup> *Saswati Mohury & Anr vs The Union Of India & Ors* (2023) 3 SCC 905

<sup>37</sup> Indiacode.nic <https://www.indiacode.nic.in/bitstream/123456789/17031/1/A2021-42%20.pdf> (July 28, 2023)

<sup>38</sup> Article 14 of The Constitution of India, 1949

<sup>39</sup> Article 13 of The Constitution of India, 1949

<sup>40</sup> *Rakhi Bose & Anr. v. Union of India & Ors.*(2022) SCC 3250

woman's uterus. Feeling laid back after the response, the couple after certain years in 2022 again caught that ray of hope and re-commenced their process at a new ART Clinic. The couple wanted the previous clinic to transfer the frozen embryos to the new clinic but until then, the ART (Regulation) Act, 2021 was enforced which under Section 29 prohibits the above act of transfer of gametes, eggs, embryos, or zygotes without the National Board's approval. Now by that time, presumably, no Board was constituted which left them hanging in the air. The couple issued the writ of Mandamus and the court issued an official notice of the aforesaid transfer."

Herein, the couple got their due justice but many others in the country who are not aware or well versed to file a writ to get their matters sorted would still be stuck midair. This directly does not raise doubt only upon the Assisted Reproductive Technology (Regulation) Act, 2021 but broadens its scope to the legislation system of the country. The provisions are approved and presented to the citizens before even having the correct facilities to implement for them.

## **CONCLUSION**

By thoroughly exploring the legal dynamics of Artificial Reproductive Technologies in India, this research paper aims to contribute to a deeper understanding of the complex issues surrounding these technologies and to facilitate informed policymaking and ethical practices within the field of reproductive medicine. The Act deals with proper oversight, regulation, licensing, and ensuring good ethical practices in the rapidly growing field of assisted reproduction. However, the issue of adoption regulation associated with ART treatment failure should be included for more comprehensive coverage of the law. This law will certainly protect the rights of infertile couples and help them in their better management in a controlled environment within the legal and ethical framework of the country.

Keeping in view the dynamic social changes, the Act should remain relevant. The Act has the potential to strengthen the identity and acceptance of homosexuals by explicitly including them and allowing them access to ART procedures, giving them the same opportunity to have a family as heterosexuals. The act is also placed at the heart of reproductive autonomy as the interests of many individuals are intertwined and a balance needs to be struck. The thresholds and eligibility set by the Act are primarily a setback because they are in essence a restriction on individuals' personal autonomy and reproductive rights. After landmark judgments upholding and favoring these rights, the Act has

taken a step back and the Centre is yet to respond to this deviation.

At the same time, it will be extra crucial for policymakers to carefully observe and take into account the above hints and make different capacity modifications to the Assisted Reproductive Generation (law) Act, 2021 as a way to ensure that it efficiently regulates assisted reproductive technology and protects the rights of folks who use them.

Currently, the only plausible way forward is for the judiciary to ensure that the law is consistent with previous court rulings such as the privacy ruling, upholding rights related to personal autonomy, and acceptance of non-traditional relationships. Going forward, the Act is a step in the right direction, however, it is also imperative to make changes and interpret the provisions keeping in view the changing circumstances and environment.

