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A Contemporary View and Legality of In-Vitro Fertilisation

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ABSTRACT

In vitro fertilisation (IVF) in India has a long and illustrious history, perhaps as long as IVF itself. Its beginnings were disputed, as was its later development. IVF set the groundwork for assisted conception treatment in India, as well as the battleground for lawful ownership of the first "test-tube baby miracle." It chronicles the debate over medical claims and counterclaims that appear to have arisen as a result of India's rapid expansion of assisted conception. Partner support is crucial in reducing the burden of infertility-related stress, and partner coping skills, while understudied, play a crucial effect on the other partner's ability to cope with the infertility experience, which has an impact on treatment success. Research, especially in low- and middle-income countries, looks at the psychological and social elements of male infertility. In our low-resource situation, a better knowledge of men's perspectives, expectations, and obstacles of reproductive treatment is needed. The article underlines that this divisive subject was mostly played out in the media, and it demonstrates that scientific credibility and reward are generated and attributed both within and outside the scientific field.

Keywords: *Ivf, Infertility, assisted reproduction, Womens' health issues.*

I. INTRODUCTION

Since the first IVF baby was born in 1978, in vitro fertilisation (IVF) techniques have evolved considerably. IVF is currently effective in approximately half of instances involving women under the age of 35, compared to single digit success rates in the past. The developments in laboratory techniques and our ability to influence reproductive physiology that has permitted this improvement are described here.³

IVF now accounts for millions of births worldwide and 1–3% of all births in the United States and Europe each year. The rising demand for fertility therapy fuels research and the development of new technology to improve IVF success rates. Infertile couples undergo IVF

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³ Aditya Bharadwaj, *The Indian IVF saga: a contested history*, *Reproductive Biomedicine & Society Online*, Volume 2, 2016

therapy in the great majority of situations in order to conceive genetically related offspring. Couples are also having IVF in order to have their embryos genetically analyzed in order to reduce the transmission of single-gene mutations linked to morbidity. In addition, the use of donor sperm and oocytes is on the rise, and women who are unable to carry a pregnancy can now employ gestational carriers.⁴

II. WHAT IS IN VITRO FERTILIZATION?

In vitro fertilisation (IVF) is a complex set of techniques that aid with fertility, genetic abnormalities, and child conception. One of these approaches is in vitro fertilisation (IVF–fertilization outside the body under conditions nearly identical to those found inside the body) followed by embryo transfer (ET). eggs from the wife/donor (female) and sperms from the husband/donor (male) are collected and induced to create a zygote in the laboratory under simulated conditions. One such procedure is in vitro fertilisation followed by embryo transfer into the female genital tract, popularly known as the ‘Test Tube Baby’ Program.

III. WHEN IS IVF RECOMMENDED?

Infertility affects a huge number of couples around the world, including those in India, who are unable to conceive despite unprotected sexual co-habitation. There could be a variety of reasons for this, including physical, congenital, diseases, drugs, immunological, and even psychological factors.

In India, the female partner is frequently blamed for the couple's lack of children, while the problem is more often with the male partner. Specialized health care units (infertility clinics, for example) may be able to assist in the diagnosis and treatment of some of these illnesses, allowing these couples to become parents. If such corrections are not achievable, the couples may be helped to conceive children using a variety of specific treatments known as assisted reproductive technologies (ART).

- Women who have their fallopian tubes blocked or damaged.
- People who have undiagnosed fertility issues or who have tried and failed other treatments.
- Men who have a low sperm count or a large number of sperm that have an irregular shape or motility. If the issues are severe, a second procedure (intracytoplasmic sperm injection, or ICSI) may be required.

⁴ Eskew, Ashley M, and Emily S Jungheim. “A History of Developments to Improve in vitro Fertilization.” *Missouri medicine* vol. 114,3 (2017)

- Women who have had no success with prior treatments and are having trouble ovulating.
- Women over the age of 50 who are less likely to benefit from less invasive treatments.
- Those who use surrogacy.

IV. HOW LONG DOES IVF TAKE?

Before you can start IVF, you'll need multiple sessions with your doctor, as well as tests and investigations, so prepare ahead. It's not something to take lightly, so think it through, ask questions, and make sure you know what you're getting yourself into.

IVF is referred to as a 'cycle' of treatment because it involves several stages: lowering natural hormone production, hormone treatment to stimulate egg supply, egg collecting, egg-sperm mixing, and embryo transfer. The duration it takes is determined by the treatment you've been prescribed.

A typical IVF cycle lasts between four and six weeks for most people. Some women, however, will not undergo the first stage of treatment (hormone suppression) due to medical reasons, minimizing their treatment time to roughly three weeks.⁵

V. HOW SUCCESSFUL IS IVF?

The success of IVF, like all fertility procedures, is determined by the woman's age and the cause of infertility.

- There have been about 1.3 million in vitro fertilisation (IVF) cycles and over 260,000 donor insemination (DI) cycles since the Human Fertilisation and Embryology Authority (HFEA) began collecting data in 1991, resulting in around 390,000 babies being born.
- In 2019, around 53,000 people in the United Kingdom had 69,000 fresh and frozen IVF cycles and 5,700 DI cycles at HFEA-licensed fertility clinics (UK).
- In 2019, patients under the age of 35 had a 32 percent birth rate per embryo transferred, compared to less than 5% for patients aged 43 and up when utilising their own eggs.
- While the number of IVF rounds has been stable since 2017, frozen embryo transfers have increased by 86 percent from 2014 to 2019.

⁵ Human Fertilisation & Embryology Authority, <https://www.hfea.gov.uk/treatments/explore-all-treatments/in-vitro-fertilisation-ivf/>, (last visited Oct. 28, 2021).

- While patient eggs and partner sperm are used in the majority of IVF procedures (86 percent of IVF cycles in 2019), the usage of donor eggs and sperm has increased.
- Using donor eggs significantly enhances the possibility of live birth to above 30% in all age categories. Despite this, in 2019, just 17% of patients aged 40 and up used donor eggs.
- Patients aged 40 and up now account for nearly a quarter of all IVF cycles performed, up from 10% (689 cycles) in 1991 to 21% (14,761 cycles) in 2019.

VI. ETHICAL AND LEGAL CONCERNS ASSOCIATED WITH INVITRO FERTILISATION

In Vitro Fertilization (IVF) has proven to be a blessing for many who have never had children. Millions of people have smiled as a result of this artificial method of granting parenting. People use this method when they are unable to conceive naturally. The primary advantages of having an IVF procedure are, of course, successful pregnancy and a healthy kid born! However, various legal and ethical issues frequently obstruct its successful implementation.

Today's ethical concerns about reproductive technology are focused less on the technology's safety and more on how it is applied and where it might lead. The future of IVF will be determined by whether or not research is approved, as well as the types of studies that are permitted.

(A) Ethical Issues

The 'Legal and Ethical Aspects' of IVF, as well as the Indian Council of Medical Research (ICMR) rules on the subject, are fairly meticulous because they describe specific topics with opposing viewpoints.

“Infertility, however not life threatening, produces profound mental suffering and trauma that can only be best understood by infertile couples themselves,” according to the guidelines. The societal stigma associated with infertility should not be accepted as the norm.

Over the many centuries since God's injunction, children have been born by natural means. However, among the estimated 40 million couples of childbearing age who live in the United States, 8.5% are involuntarily infertile. Obviously, many more infertile couples around the world can be added to this more than 3 million in the United States. For these couples, in vitro fertilization (IVF) offers new promise.

This promise is not without its critics. Social pressure, especially on women, is at the heart of much of the drive for biological parenthood. Nevertheless, the fact that many infertile couples are willing to spend thousands of dollars and risk the physical and mental demands of IVF

rather than adopt a child suggests a strong emotional need for biological offspring that is not influenced by social pressures.

The ethics should go beyond technicalities and create practical safeguards to reduce the power imbalance between new technology producers and users. It is vital to anticipate future trends and provide an ethical framework for biomedical research, particularly in the new frontier of human reproduction, which has the potential to alter humanity's very face.

***With IVF, there are four distinct ethical issues:*⁶**

1. The physician's relationship with the infertile couple and the pre-embryo,
2. The physician's relationship with the infertile couple and the affected offspring,
3. The infertile couple's relationship with the expected offspring, and
4. The physician's and infertile couple's relationship with the general community.

ISSUE : The Possible Wrong Done to The Pre-Embryo

The number of pre-embryos transferred to a woman's uterus is regulated by the likelihood of fertilisation, which changes with her age. To boost the chances of pregnancy, a significant number of pre-embryos are required. Those that aren't in use are frequently frozen.

Embryos that are not transplanted to a woman's uterus are either destroyed or used for research. Selective pregnancy reduction can damage embryos in the uterus. In these cases, further embryonic development has been interrupted by a physician's action, with the couple's likely permission. Is it possible that the embryo that was destroyed was wronged?

The answer to this question is dependent on the embryo's apparent ontologic condition. If the embryo is regarded as a human being with all of the rights that come with personhood, stopping its development is deemed a crime because it amounts to murder. If, on the other hand, the embryo is viewed as a speck of protoplasm, neither freezing nor destroying it is unethical.

ISSUE: The Possible Wrong Done to The Infertile Couple or The Expected Offspring by The Physician In Using IVF

The number of embryos transplanted to the uterus determines the success of IVF. Because the chances of an embryo surviving in traditional IVF are small, the more transfers performed, the better the chances of conception. However, this increases the risk of multiple pregnancies, with women under the age of 35 having the highest risk and those over the age of 40 having the lowest risk.

⁶ Amnon Goldworth; The Ethics of In Vitro Fertilization. *Pediatr Rev* August 1999; 20 (8): e28–e31. <https://doi.org/10.1542/pir.20.8.e28>

The mother's physical and emotional health is jeopardised by multiple pregnancies. She may experience high blood pressure, uterine haemorrhage, or problems from a caesarean section delivery. These physical issues may be accompanied by possible emotional challenges for both the pregnant lady and her male companion. Furthermore, the couple will be responsible for the medical expenditures of IVF as well as the price of medical care for their children if they develop health concerns.

Because iatrogenesis is frequently linked to medical interventions, the proper question to ask is not whether the intervention causes harm, but if the harm is exceeded by recognised benefits. Infertile couples' willingness to undergo IVF is sufficient evidence that the perceived advantages outweigh the financial costs and physical and mental concerns.

ISSUE: The Possible Wrong Done to The Offspring By The Infertile Couple Who Uses IVF

Multiple pregnancies also put the offspring's health in jeopardy. Low birthweight and premature birth have their own set of issues. According to the few comparative studies that have been conducted, children born through IVF have a much higher chance of spina bifida and transposition of the major vessels, and that several of the medicines used to boost egg production raises the risk of serious birth abnormalities.

Given these findings and the paucity of evidence, some say that individuals who utilise IVF must demonstrate that the technologies used are safe, and that IVF should not be used until more proof of its comparative safety becomes available.

ISSUE : The Possible Wrong Done to The Community By The Use of IVF on The Parts Of The Physician And The Infertile Couple

Although IVF may cause harm but not harm to the infertile couple or their children, the overall effect of IVF is more harmful than the effects of coital pregnancy. Does this imply that IVF is harmful to the community? One could argue that the community has been wronged since the funds needed to support those who have been harmed by IVF are better spent elsewhere. This, however, ignores the fact that distributive fairness, while an important moral need, competes with other moral imperatives.

These include the individual's autonomy in trying to overcome infertility, the physician's commitment to try to save the unwell infant, and the need for medical research to improve IVF technology in order to eliminate or decrease the impacts of illness and disease.

Even though such efforts are exceedingly expensive and, in terms of the number of people

impacted, could be employed more successfully in other medical sectors, society has adopted the rescue attitude. Interest in managing finite resources may eventually put a stop to costly procedures like IVF. However, until that day comes, it's tough to argue that IVF is harmful to society.

(B) Legal Issues

1. Minimum age for Assisted Reproductive Technology (ART):

Two years of cohabitation/marriage without the use of a contraceptive for a woman between the ages of 20 and 30, unless the male is infertile, or the woman is unable to conceive physiologically. One year of cohabitation/marriage without the use of contraception for a woman over the age of 30. In most cases, no ART treatment should be performed on a woman under the age of 20.

2. Advertisements of an infertility centre:

Misleading claims on hoardings and print adverts are a low-cost method of acquiring a susceptible and easily misled clientele. Such commercials will be banned. Statistics, fee structure, quality of service, and service provided would be encouraged if the guidelines set out by the Medical Council of India in this regard are followed.

3. Adultery in the case of Assisted Reproductive Technology (ART)

The use of ART for a married woman with the approval of her husband does not constitute adultery on the side of either the donor or the wife. Artificial insemination by donor (AID) without the consent of the husband, on the other hand, can be grounds for divorce or judicial separation.

4. Consummation of marriage in case of AIH

The conception of the wife through Artificial Insemination by Husband (AIH) does not necessarily amount to the consummation of marriage and a decree of nullity may still be granted in favor of the wife on the ground of impotency of the husband or his willful refusal to consummate the marriage. However, such a decree could be excluded on the grounds of approbation.

5. Rights of an unmarried woman to Artificial insemination by donor (AID)

There is no legal prohibition against an unmarried woman applying for AID. A child born to a single mother as a result of AIDs would be considered legitimate. However, AID should typically only be performed on a married woman, and only with her husband's written approval, because a two-parent family is always better for the child than a single-parent family, and the

child's interests must always take precedence above all other considerations.

6. Posthumous Artificial Insemination by Husband (AIH) through a sperm bank

Though the Indian Evidence Act of 1872 states that a child born within 280 days after a marriage's dissolution (by death or divorce) is a legitimate child as it is the gestation period, it is important to remember that this Act was enacted in a time when no one had even heard of ART. The law must take into account scientific progress since that period. Thus, despite our Evidence Act's existing law of presumptions, a child born to a lady artificially inseminated with her deceased husband's saved sperm must be recognised a legal kid.

7. Need to have guidelines for couples seeking to use IVF'

IVF treatment for women beyond the age of 50, according to the medical community, is a severe misuse of ART. They believe that women who desire to conceive through IVF should be limited in their age.

According to Dr Shivani Sachdeva, head of SCI IVF Hospital in Delhi "To help any woman become a mother at such an advanced stage is indeed a misuse of modern technology, a woman is necessary to retain a baby in her womb for nine months, thus she must be in good health. If there is a set age for parents who want to adopt a kid, then the maximum age for a woman who wants to become a mother through IVF should be set as well,"⁷

"According to Chapter 4, Section 37, Sub-Section 7-A of the 2017 version of the Assisted reproductive technology (ART), the lowest age required for becoming a mother with the help of ART should be 18 years, and the maximum age should not be more than 45 years."

VII. RULES AND REGULATIONS GOVERNING IN VITRO FERTILISATION

Following the birth of the first scientifically well-documented test tube baby in India in 1986, a slew of IVF clinics popped up all over the country with no accreditation, oversight, or government oversight, prompting the Indian Council of Medical Research (ICMR) to draught National Guidelines for ART Clinics in India in 2002. Later, the Ministry of Health and Family Welfare reviewed the guidelines and released the National Guidelines of the Government of India in 2005, with minor changes.

The Indian Council of Medical Research (ICMR) then developed a proposal of the Assisted Reproductive Technology (Regulation) Bill in 2008 and sent it to the Ministry of Health and Family Welfare, which was later revised by the Ministry of Law and Justice as the Assisted

⁷ Puja Mehrotra, *Modi govt wants 50-year age limit for women taking IVF treatment to get pregnant*, THE PRINT, (Oct. 20, 2021, 9:00 PM).

Reproductive Technology (Regulation) Bill-2013. The Assisted Reproductive Technology (Regulation) Bill, 2020 was introduced in Lok Sabha on September 14, 2020 & was approved to monitor medical procedures used to assist people to achieve pregnancy.

The ART (Regulation) Bill proposes to establish a National Board, State Boards, and National Registry of (ART) in India for accreditation and supervision of ART clinics and ART Banks, ensuring that services provided are ethical and that all stakeholders' medical, social, and legal rights are protected with maximum benefit to all stakeholders within a recognised ethical framework.⁸

(A) ICMR Regulations

1. Chapter 3 of the ICMR guidelines enshrines upon Code of Practice, Ethical Considerations, and Legal Issues

Clinics involved in any one of the following activities should be regulated, registered and supervised by the State Accreditation Authority/State Appropriate Authorities.

- a. Any treatment involving the use of gametes that have been donated or collected or processed in vitro, except for AIH, and for IUI by level 1A clinics who will not process the gametes themselves.
- b. Any infertility treatment that involves the use and creation of embryos outside the body.
- c. The processing or /and storage of gametes or embryos.
- d. Research on human embryos. The term ART clinic used in this document refers to a clinic involved in any one of the first three of the above activities.

2. Rights of children born out of IVF

- a. A kid born through ART is believed to be the couple's legitimate child because it was born in wedlock and with the consent of both spouses. As a result, the kid shall have a legal entitlement to parental support, inheritance, and all other benefits accorded to a child born through sexual intercourse to a couple.
- b. Children born from donor gametes and their "adopted" parents have a right to any medical or genetic information about the genetic parents that may be significant to the child's health.
- c. Children born through the use of donor gametes have no right to know their genetic parent's identity (such as name, address, parentage, and so on) (s). When the kid

⁸ Dr. M. Gouri Devi, *IVF in India - Swinging in Legal and Ethical Aspects*, THE ECONOMIC TIMES (Oct. 20, 2021, 9:29 PM), <https://health.economicstimes.indiatimes.com/health-files/ivf-in-india-swinging-in-legal-and-ethical-aspects/1725>.

becomes an adult, the child will be given all other information (including that indicated in Section 3.4.8) regarding the donor as and when the child desires it. While the couple will not be required to reveal the above "other" information to the child on their own, no attempt will be made by the couple or others involved to withhold this information from the child when it is asked.

If the offspring is of a donor programme – be it sperm or ova – the law of the land as it pertains to a normal conception would apply in the event of a divorce during the gestation period.

Furthermore, the Assisted Reproductive Technology (ART) Regulation Bill 2020 mandates pre-genetic implantation testing to prevent genetic diseases in the population born using these methods. These allow clinicians to check for faulty chromosomes in embryos before transferring them to the uterus.

Also, the Surrogacy Regulation Bill 2020, aims to prohibit commercial surrogacy, and the approval of the Medical Termination of Pregnancy Amendment Bill 2020, aims to provide safe, affordable, and accessible abortion services to women who need to terminate a pregnancy under certain situations.

The Assisted Reproductive Technology bill also establishes guidelines for the safe and ethical use of assisted reproductive technology (ART) in the Country. ART clinics and ART banks will be regulated and supervised by the National Board, State Boards, National Registry, and State Registration Authorities under the bill.⁹

(B) Major challenges for fertility treatment in India

In terms of expertise and adoption of methods such as in vitro fertilization (IVF), India has achieved significant development in the field of fertility therapy. Infertile couples now have the option of undergoing IVF therapy, which involves combining eggs and sperm and fertilizing them in vitro or outside the body. However, just 1% of infertile couples seek any form of reproductive treatment at this time.

1. Inadequate sensitization about IVF

There is a lack of public knowledge about infertility treatment especially IVF treatment. Despite agreeing to go through the IVF treatment, Couples undergoing IVF Treatment still feel that they did not completely understand the process of egg growth, semen production, embryo development outside the body, and the low success rates or being ready for the complications

⁹ Himani Chandna, *Modi govt wants 50-year age limit for women taking IVF treatment to get pregnant*, THE PRINT, (Oct. 20, 2021, 9:00 PM).

of the drugs used in IVF treatment. There is a lack of sensitisation about IVF, several myths about the treatment such as the impact of IVF treatment on their partner's risk for cancer and the risk for congenital abnormalities start stirring up.¹⁰

2. Fear of IVF treatment failure

The Couple seeking IVF treatment considers it to be a risky investment. They think the odds of success will not be favourable and yet the cost was too high. This overlaps with them on the financial burden and intensified men's fears of IVF treatment failure. Men, especially those who had done IVF before, usually are worried about the emotional toll another failed IVF would have on them and their partners.

3. Financial challenges

Fertility treatments are becoming a financial and physical concern for many people, and insurers can provide significant assistance to those who cannot afford them on their own. Fertility procedures and treatments are now excluded from coverage policies by both commercial and government health insurance providers. Infertile couples who have been unable to access modern medical facilities due to financial restraints would benefit greatly from health insurance plans that cover all procedures, treatments, and care.

In India, the cost of IVF ranges from Rs 1 lakh to Rs 2.5 lakh. Many couples who are thinking about having this procedure are frightened off by the cost. Reproductive therapy must be moved from the "out of pocket" category to the "insured" category. Experts can manage physical and medical dangers, but insurance can greatly minimise financial risks.¹¹

It's tough to get mediclaim for fertility treatments because insurance companies only cover illnesses and diseases that necessitate hospitalisation. Fertility therapies are for pregnancy-related or pregnancy-related difficulties, not illnesses. Fertility treatment is not covered by health insurance; only motherhood is.

Insurance companies only cover specific diagnostic and therapeutic procedures, not the total cost of the operation. The majority of the aftermath is usually covered by insurance, but not the planning. In the lack of comprehensive health insurance, paying out of pocket is not a practical alternative for many people. As a result, the majority of infertile couples are forced to avoid reproductive procedures.

¹⁰ Zaake, D., Kayiira, A. & Namagembe, I. Perceptions, expectations and challenges among men during in vitro fertilization treatment in a low resource setting: a qualitative study. *Fertil Res and Pract* **5**, 6 (2019). <https://doi.org/10.1186/s40738-019-0058-8>

¹¹ Dr Sahil Gupta, *The challenges for fertility treatment in India*, THE INDIAN EXPRESS (Oct. 18, 2021, 07:00 PM), <https://indianexpress.com/article/parenting/health-fitness/fertility-treatment-in-india-challenges-6102164/>

Fertility treatments are complex; as a result, extensive care and insurance coverage are required. Insurers should include intrauterine insemination (IUI), in vitro fertilisation (IVF), or frozen embryo transfer (FET) in their products, according to experts. For all stakeholders in the fertility industry, comprehensive care and coverage for fertility therapy would open up a new vision.

(C) Legitimacy Provisions

Section 112 in **The Indian Evidence Act, 1872** States about Birth during the marriage, conclusive proof of legitimacy. So the most important question is whether the Section 112 test of legitimacy is appropriate in view of modern scientific breakthroughs such as sperm banks, artificial insemination, surrogacy, and other procedures for child creation that do not require the actual presence of a man and woman.

The language of Section 112 can readily be interpreted to include situations of Homologous Artificial Insemination because the husband is the biological or natural father of the child. The topic of debate is whether Section 112 of the Evidence Act of 1872 extends to infants born using Assisted Reproductive Technology (ART).¹²

The Section 112 presumption is based on the assumption that sexual intercourse is required for child conception. It will be fascinating to see how courts interpret Section 112's presumption in the context of Artificial Insemination, which does not require a man and a woman to be physically present in order for a child to be conceived. Various countries have settled the matter by creating a law that defines the validity of children conceived by artificial insemination.

Artificial Insemination, as well as the status and rights of children born through such therapies, are currently unregulated in India. Only the Delhi Artificial Insemination Act of 1995 governs the donation, sale, and supply of human sperm and ovum for artificial insemination, despite the fact that semen banks exist in other states.

The 'National Recommendations for Accreditation, Supervision, and Regulation of ART Clinics in India' (2005) were released by the Indian Council of Medical Research (ICMR), but due to a lack of legislative support, these rules are not enforceable in a court of law.

The Kerala High Court in Case titled *X v. State of Kerala & Ors*¹³ (WP(C) NO. 13622 OF 2021) has ruled that requiring unmarried women who conceived using Assisted Reproductive

¹² Bhawna Gandhi and Pranav Singal, *The curious case of artificial insemination and legitimacy provisions*, THE DAILY GUARDIAN, (Oct. 27, 2021, 06:00 PM), <https://thedailyguardian.com/the-curious-case-of-artificial-insemination-and-legitimacy-provisions/>

¹³ X v. State of Kerala & Ors, 2021 SCC OnLine Ker 3285 : (2021) 5 KLT 310

Technologies to provide the father's identity for registering their children's births and deaths infringes on the mother's and child's right to dignity.

“The right of a single parent/ unwed mother to conceive by ART (Assisted Reproductive Technologies) having been recognized, prescriptions of forms requiring mentioning of the name of the father, the details of which is to be kept anonymous, is violative of their fundamental rights of privacy, liberty, and dignity,' the Bench ruled.”

This decision arose as a result of a petition filed by a lady who conceived through IVF, disputing the necessity under the Kerala Registration of Births and Deaths Rules, 1970, to include the father's information. She argued that leaving the field on the certificate needing the father's identity blank would violate the petitioner's and her kid's right to privacy because the fact that the child was born out of marriage constitutes personal information.

The Court agreed with the petitioner that a woman's freedom to make reproductive choices has been recognised as a fundamental right in India.

'It is sufficient to note that a single woman's right to conceive using assisted reproductive technology (ART) is recognised and approved in the country. After conceiving through an ART technique, the identity of the sperm donor cannot be revealed unless legally required. The Single Bench declared, 'It falls within the realm of the right to privacy.'

The Court found that there was no rhyme or reason in forcing the petitioner to give the name of the father in the form provided for birth and death registration because this right was recognised in the guidelines for ART clinics with very few exceptions.

(D) Presumption of Legitimacy Under Section 112 Of The Evidence Act, 1872

Every fact on which a party to a case wishes to pass judgement must be proven, according to one of the basic principles of evidence law. However, Chapter VII of the Evidence Act of 1872 establishes some facts that can be considered by the Court without requiring evidence. In the absence of evidence to the contrary, "to suppose" implies to accept something as true. A presumption is not evidence in and of itself; it merely establishes a prima facie case in favour of the party to whom it is granted.

The irrefutable presumption of legitimacy of a child born out of legitimate wedlock is embodied in Section-112 of The Evidence Act, 1872. The fact of marriage is established as irrefutable proof of legitimacy in this section. The provision's legislative goal is to preserve children's rights and interests, as well as women's chastity. When one event, such as a person being born during the continuation of a valid marriage or within 280 days after its dissolution,

is proven, it is irrefutable proof that the kid born is legitimate, as held in *Banarasi Dass v. Teeku Datta*¹⁴.

The only method to refute the validity is to show 'no access,' i.e. that he could not have had sexual intercourse with the kid's mother at any point during the time when she may have conceived the child. This can be demonstrated either by demonstrating that the guy was in another city or at a distance from the mother where he could not have had sexual intercourse with her, or by demonstrating that he was impotent at all times during which the child could have been conceived. If the husband is unable to show any of these, he will be presumed to be the biological father of the kid.

The legitimacy of a child born within 280 days of the termination of the marriage is contingent on the woman remaining single. The second portion of the provision would not apply if the lady remarries before the child is born. Under the first half of the section, the kid would be deemed to be the legitimate child of the second husband unless it can be demonstrated that the second husband had no access to the woman at any time when the child could have been conceived.

This legal presumption is based on the maxims '*odiosa et inhonesta non sunt in lege praesumenda*,' which states that the law would not presume anything detestable, and '*pater est quem nuptioe demonstrant*,' which states that 'he is the father whom the marriage indicates.'

The Supreme Court in the *Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik*¹⁵ held, "Interest of justice is best served by ascertaining the truth and the Court should be furnished with the best available science and may not be left to bank upon presumptions unless science has no answer to the facts in issue.

(E) Legitimacy Of Child Vis-À-Vis ICMR Guidelines & Artificial Insemination

The issue of foremost importance which arises here, with this legal provision, is up to what extent the test of legitimacy as laid down in Section-112 is justifiable in present times where several modern scientific developments such as sperm banks, artificial insemination, surrogacy, and many more methods which doesn't require the physical presence of a man and woman for the conception of a child.

Because the husband is the biological or natural father of the child, the language of Section-112 can readily be understood to embrace cases of Homologous Artificial Insemination (AIH). This should not raise legal concerns because, in this process, the husband's sperm is combined

¹⁴ Banarasi Dass v. Teeku Datta, 2005 4 SCC 449

¹⁵ Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik, 2014 2 SCC 576

with the wife's ova, resulting in a marriage that is artificially consummated rather than by the traditional approach.

As per the ICMR's National Guidelines for Accreditation, Supervision and Regulation of ART Clinics in India (2005), "Conception of the wife through AIH does not necessarily amount to the consummation of marriage and a decree of nullity may still be granted in favor of the wife on the ground of impotency of the husband or his willful refusal to consummate the marriage."

In *Doornbos v. Doornbos*¹⁶ "Homologous Artificial Insemination (where the specimen of semen utilised is received from the woman's husband) is not averse to public policy and good morals, and does not provide any legal difficulty," the American Superior Court concluded. Also, in the instance of posthumous AIH, a child delivered to a lady artificially inseminated using her deceased husband's stored sperms should be deemed a legitimate kid notwithstanding our Evidence Act's existing presumptions regulation, keeping in mind the legislative goal behind Section 112.

The procedure of homologous artificial insemination (AID) raises two legal concerns: first, the validity of the child born as a result of AID, and second, whether it constitutes adultery for the purposes of divorce. The AID procedure includes using sperm from an unknown donor and is typically used when one of the spouses has a biological problem. As a result, a child produced as a result of AID would not strictly meet the requirements of Section 112; also, the husband might readily demonstrate his lack of contact with the woman.

In *People v. Sorensen*¹⁷, the California Supreme Court held that a man who consented to his wife undergoing AID was the lawful father of the child born as a result of the AID, and hence was liable to pay child support when the couple divorced. "It would be ridiculous for an act of AID to be characterised as adultery for the doctor, the donor, or the lady undergoing AID," the Court said, "since the doctor may be female, the donor may be hundreds of miles away, or the husband may himself be inserting the semen via a syringe."

As a result, the AID's procedure is not inherently adulterous to the woman, the doctor, or the donor." To summarise English legislation on the subject, a child born through AID with the consent of the husband is regarded legitimate and has all of the rights and benefits of a normally born child of the marriage. In terms of Indian law, if Section 112 is interpreted in a relevant and intentional way, the spouse can be considered the father of an AID-affected child unless he can show that he did not consent to the treatment.

¹⁶ *Doornbos v. Doornbos*, No. 54 S. 14981, Super. Ct., Cook County, Ill. (1954).

¹⁷ *People v. Sorensen*, 68 Cal.2d 280

As per the ICMR's National Guidelines for Accreditation, Supervision and Regulation of ART Clinics in India (2005), "Assistive Reproductive Techniques used for a married woman with the consent of the husband does not amount to adultery on part of the wife or the donor. AID without the husband's consent can, however, be a ground for divorce or judicial separation". ICMR Guidelines further provide, "A child born through ART shall be presumed to be the legitimate child of the couple, born within wedlock, with the consent of both the spouses and with all the attendant rights of parentage, support, and inheritance."

"While adjudicating legitimacy disputes, Court must recall the goals of the Constitution given down in the Preamble, which states that every individual has separate and individual dignity of his own," the Supreme Court said in *Revanasiddappa v. Mallikarjun*¹⁸. As a result, the Court must investigate whether illegal, immoral, or illegitimate parent-child connections jeopardise the dignity of the child produced from such relationships. Because a child born from such a relationship is innocent and enjoys all of the rights guaranteed by the Constitution, the child's status must be equal to that of a child born from a legitimate marriage."

VIII. CONCLUSION

In India, there is an urgent need to streamline the artificial insemination process and solve the legal, ethical, and technical difficulties that arise as a result of legislative action. The Assisted Reproductive Technology (Regulation) Bill, 2020, is currently being considered. It aims to improve and streamline the artificial insemination procedure. It specifically states that a child born using assisted reproductive technology (ART) shall be considered a biological child of the commissioning couple and will be entitled to the same rights and privileges as a natural kid.

The Bill, on the other hand, fails to address a number of legal, medical, and ethical issues. One of the Bill's major flaws is that it only enables married couples and single unmarried women to use assisted reproductive technology, leaving single unmarried males, LGBTQ individuals, and couples out.

The use of IVF has risen in recent years, owing primarily to delayed childbearing, and there is no reason to assume that this trend will slow down. Recent projections imply that by the year 2100, 400 million people, or 3% of the world's population, will have been born as a result of assisted reproductive technology (ART)¹⁹. This projection is based on the idea that

¹⁸ *Revanasiddappa v. Mallikarjun*, (2011) 11 SCC 1

¹⁹ Faddy MJ, Gosden MD, Gosden RG (2018) A demographic projection of the contribution of assisted reproductive technologies to world population growth. *Reprod Biomed Online* 36: 455-458.

in the next years, the usage of IVF would increase even more in medium and low-income nations. As a result, therapy safety and effectiveness are critical considerations. IVF research will continue to face obstacles in the future.

The availability of cheap fertility treatments in India will improve, and the adoption of technology to improve fertility treatments will almost probably result in an increase in demand for more fertility centres in the future years.

The vast majority of infertile couples are driven to avoid reproductive treatments. Because insurance companies primarily cover illness and disorders that necessitate hospitalisation, providing mediclaim for fertility treatments is a challenge. Many people cannot afford to pay out of pocket if they do not have proper health insurance.

Fertility treatments are complex; as a result, extensive care and insurance coverage are required. Insurers should include intrauterine insemination (IUI), in vitro fertilisation (IVF), or frozen embryo transfer (FET) in their products, according to experts. For all stakeholders in the fertility sector, comprehensive care and coverage for fertility therapy would open up a new vision.

As we all know, there are several ethical and legal concerns surrounding the use of IVF. While we cannot resolve all of these concerns because ethical and legal concerns vary by society, this can be treated as a hallmark by adopting a new bill, law, or other measures to address such concerns. As the usage of IVF treatment grows, enacting an unique law will ensure that IVF has a clear path to success in India.
