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ASSISTED REPRODUCTIVE TECHNOLOGY (REGULATION) ACT, 2021: A CRITICAL ANALYSIS THROUGH THE LENS OF GENDER JUSTICE AND TECHNOLOGICAL REGULATION

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ABSTRACT

An important turning point in India's legislative attempts to control reproductive healthcare was marked by the Assisted Reproductive Technology (Regulation) Act, 2021. This Act aims to protect the rights of all parties engaged in ART treatments, assure ethical practices, and stop the exploitation of women, donors, and children born using these technologies. Although it provides much-needed regulation in an unregulated area, the Act has several drawbacks, especially when it comes to equality between genders, reproductive autonomy, financial accessibility, and ethical technology. This article analyses the ART Act's provisions critically, considers the wider ramifications for India's reproductive rights, and makes important suggestions for changes that are required to provide inclusive and equal access to reproductive healthcare.

KEYWORDS: *Reproductive Rights, Informed Consent, Body Autonomy, ART Act,2021, Ethics.*

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INTRODUCTION

In vitro fertilisation (IVF), gamete donation, and surrogacy are examples of assisted reproductive technologies (ARTs) that have transformed fertility therapy in recent decades. These technologies are the sole way for many couples and people who are struggling with infertility or other reproductive issues to have a biological child. But in addition to their advantages, ARTs bring up difficult moral, legal, and societal issues that necessitate strict control.

The Assisted Reproductive Technology (Regulation) Act, 2021 was enacted to ensure ethics, accountability, and openness in this rapidly expanding Indian industry. Since India is one of the biggest ART markets in the world, it became essential to regulate surrogacy services, donor banks, and fertility clinics. However, even if the Act tackles a number of crucial issues, such as child welfare, procedure safety, and medical ethics, it also fails in other crucial areas, especially when considered from the perspectives of inclusion and gender justice.

RECOGNISING ART AND ITS SCOPE

Any surgery or therapy that uses human gametes or embryos outside of the body to help with conception is referred to as assisted reproductive technology (ART). These include of gamete donation, embryo transfer, intrauterine insemination (IUI), intracytoplasmic sperm injection (ICSI), and more. As the number of unlicensed reproductive clinics in India increased, it became clear that regulation was necessary. Guidelines were mostly provided by the Indian Council of Medical Research (ICMR) prior to the 2021 law, but they lacked legislative power. This legislative gap is now being filled by the Surrogacy (Regulation) Act and the ART Act.

IMPORTANT ASPECTS OF THE 2021 ART (REGULATION) ACT

1) **ART eligibility**: Married heterosexual couples and single women (divorced or widowed) are the only groups allowed access to ART under the Act. The guy must be between the ages of 21 and 55, and the lady between the ages of 21 and 50.

2) **Regulation and Registration**: A National Registry is required for all ART clinics and banks. Strict compliance inspections, encompassing personnel credentials and infrastructure standards, are applied to clinics.

3) **Gamete Donation**: Egg donors are limited to one donation per lifetime and must be between the ages of 23 and 35. Only one pair may receive sperm donations from sperm donors.

4) **Parental Rights**: An ART-adopted kid is regarded as the commissioning couple's biological child. Parental rights are not granted to donors.

5) **Research Regulations**: Unless specifically permitted under certain circumstances, there are strict restrictions on the use of embryos or gametes for stem cell research or export outside of India.

CONSIDERATIONS OF ETHICS AND MORALITY

Complex issues regarding ethics have been brought forth by technological advancements in ART. Regarding Preimplantation Genetic Testing (PGT), this procedure causes concerns about "designer babies" and eugenics, despite being helpful for identifying genetic problems. On the matter of the PCPNDT (Pre-Conception and Pre-Natal Diagnostic Techniques) Act and Sex Selection, India's restriction on preimplantation testing for non-medical sex selection strengthens the country's commitment to gender equality.

Concerning Saviour Siblings, there are significant ethical problems around the commercialisation of children when embryos are created in order to cure an existing sibling through organ or stem cell donation. Finally, with respect to Child Autonomy, ART-born children have the right to enquire about their origins. This right is partially recognised by the Act, which allows the revelation of non-identifying information.

IMPLICATIONS FOR CLINICAL PRACTICE AND HEALTH

Despite the largely positive health results for ART children, there are a few concerns to be aware of. Regarding low birth weight and preterm birth, infants conceived through ART are more at risk, especially when several embryo transfers are involved. On the matter of Birth Defects and Imprinting Disorders, there is a correlation between a higher risk of imprinting syndromes like Beckwith-Wiedemann Syndrome and specific ART methods, such as ICSI. Concerning Maternal Risks, for women receiving ART, invasive procedures, multiple pregnancies, and ovarian hyperstimulation syndrome (OHSS) raise health risks. Many clinics still employ experimental or

unproven methods in spite of these worries, sometimes without warning patients of possible negative effects.

LEGAL ASPECTS AND THE STRUCTURE OF RIGHTS

Numerous legal ambiguities are attempted to be resolved by the ART Act. Regarding the Right to Parenthood, the Act explicitly defines legal parenthood, acknowledging that the commissioning couple is the legal parent and that surrogates and donors give up all parental rights. On the matter of Cryopreservation and Postmortem Conception, gamete storage and postmortem reproduction require written authorisation. Concerning Cross-Border Reproduction, citing worries about child statelessness and commercial exploitation, the Act prohibits foreign nationals from accessing ART.

Nonetheless, the following significant legal exclusions still exist: unmarried heterosexual couples; LGBTQ+ people and same-sex couples; and transgender people. Despite the constitutional protection of LGBTQ+ rights in India following Navtej Singh Johar v. Union of India (2018), these restrictions significantly restrict the reproductive rights of non-traditional families.

THE ART ACT AND GENDER JUSTICE

Women make up a sizable percentage of ART patients. However, the Act does not sufficiently address the particular vulnerabilities faced by women. Regarding Physical and Emotional Work, women frequently bear the physical weight of ART procedures, and they may feel forced by partners or family to have invasive and emotionally draining treatments. On the matter of Informed Consent, although mandated by law, societal or familial pressure can undermine informed consent in real-world situations, particularly in patriarchal environments. Concerning Commercial Exploitation, because ART services are unregulated, clinics might take advantage of women's desperate attempts to conceive by promoting needless or repetitive treatments.

With respect to Lack of Autonomy, women's freedom to decline treatment or discontinue ART operations once they have begun is not protected under the Act, especially when family or society pressures them to do so. This shortcoming stands out in a legal environment that is dedicated to gender equality under Article 15 of the Indian Constitution.

SOCIAL FACTORS AND THE COMMODIFICATION RISK

Regarding Child Trafficking and Commercialisation, ART may be abused for illegal purposes or child trafficking if it is not strictly enforced. The Act restricts the use of donors and outlaw's commercial surrogacy in an effort to stop this. On the matter of the Right to Identity, the child's psychological health may be impacted by the partial recognition of their right to know their biological origin. Concerning the Abandoning of Children, according to Bharatiya Nyaya Sanhita, abandoning is a crime under the Surrogacy Act. Enforcement is still unclear, though. With respect to Class Disparities, due to its high cost and lack of public healthcare assistance, ART therapies are mostly only available to upper- and middle-class people. Communities that are impoverished and marginalised are essentially shut out.

INFERTILITY COMMERCIALISATION

India's ART market is expected to expand rapidly. Commercialisation, however, brings up important issues. Regarding Unregulated Pricing, many people are still unable to get ART services since there is no price restriction. Clinics are motivated to suggest costly or superfluous procedures. On the matter of Over-Medicalization of Infertility, clinics frequently advertise ART as a one-size-fits-all remedy rather than addressing lifestyle factors that contribute to infertility, such as stress, obesity, and environmental pollutants.

Concerning the Absence of Holistic Treatment Options, despite the fact that these treatments might enhance reproductive results, few ART clinics give counselling, nutritional advice, or mental health assistance.

CRITICAL EVALUATION AND SUGGESTIONS

The ART Act's endeavour to provide a uniform, moral foundation for ART services is one of its strongest points. But for the Act to be genuinely inclusive and equitable, several changes are required. Regarding Broadening Eligibility, LGBTQ+ people, single males, cohabiting couples, and transgender people must all be included in the list of people who can obtain ART. On the matter of Controlling Price, access may be enhanced and financial abuse can be avoided with clear price standards and required insurance coverage. Concerning Assuring Informed Permission and Autonomy, it is imperative to establish strong systems to confirm sincere,

voluntary permission, particularly from women.

With respect to Prohibiting Unvalidated Techniques, clinics must provide thorough data reporting, and only clinically evaluated and validated procedures should be allowed. Regarding Addressing Lifestyle Factors, to prevent the overuse of ART treatments, ART facilities should be required to offer or refer patients for non-invasive, holistic therapies. Finally, concerning Acknowledging Reproductive Rights as Fundamental Rights, according to Article 21 of the Constitution, the right to reproductive autonomy is a necessary component of the right to life and personal freedom.

CONCLUSION

An important and forward-thinking move in regulating a field full of moral, legal, and medical ambiguities is the Assisted Reproductive Technology (Regulation) Act, 2021. The Act protects numerous vulnerable stakeholders by regulating the activities of ART facilities, guaranteeing safety, and enforcing ethical norms. It is, however, insufficient due to its inadequate recognition of women's rights and reproductive autonomy, its absence of price regulation, and its restrictive definition of qualified parents.

The ART Act needs to be rethought as inclusive legislation that respects the diversity of family structures, places a high priority on patient safety and autonomy, and defends reproductive rights as fundamental human rights if it is to truly function as a vehicle for gender justice and equitable technological governance. India can only genuinely guarantee that social fairness and ethical integrity are matched with technology advances in reproductive healthcare by implementing such changes.

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