

Embryo Cryopreservation and Ownership Disputes in India: A Legal Analysis under the ART Act, 2021

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Abstract- Embryo cryopreservation has become a vital part of assisted reproductive technologies (ART). It allows couples to delay parenthood, improves the success rates of in-vitro fertilization (IVF), and provides an option for fertility preservation. Despite these benefits, the freezing and storage of embryos give rise to complex ethical, legal, and ownership questions—particularly when couples separate, divorce, or disagree on how the embryos should be used.

Around the world, courts have taken different approaches to such disputes, often trying to balance one partner's wish to have a child with the other's right not to procreate. In India, the Assisted Reproductive Technology (Regulation) Act, 2021, along with the Surrogacy (Regulation) Act, 2021, provides an initial legal framework for ART practices. However, these laws do not directly address key ownership conflicts surrounding embryos.

This article explores the legal position of embryo cryopreservation in India under the ART Act, 2021. It reviews international case law, highlights the ethical debates, and examines the gaps in the Indian framework. Finally, it suggests reforms aimed at ensuring greater legal clarity, protecting patient autonomy, and safeguarding reproductive rights.

Keywords- Embryo cryopreservation; Assisted Reproductive Technology; ART Act 2021; embryo ownership; reproductive rights; India; surrogacy; bioethics; legal disputes; fertility preservation.

INTRODUCTION

The growth of assisted reproductive technologies (ART) has completely changed the way infertility is treated and how people make reproductive choices. One of the most widely used techniques today is embryo cryopreservation—the freezing and storing of embryos for future use. It is now a standard part of IVF programs across the world. While medically beneficial, this practice also raises serious ethical and legal debates, especially about who owns the embryos and what their legal status should be. These issues become even more complicated when couples

separate, one partner withdraws consent, or there are requests to donate or destroy embryos [1,2].

Different countries have responded in very different ways. In the United States and Europe, courts have treated embryos either as “property” or as “potential life” deserving special respect. These contrasting interpretations make it difficult to settle disputes. In India, the Assisted Reproductive Technology (Regulation) Act, 2021 was introduced as a landmark law to regulate fertility clinics and embryo storage. The Act lays down rules for consent, limits on storage time, and the responsibilities of clinics. However, it leaves many gaps, especially on the question of embryo ownership during divorce, separation, or conflict between partners [3,4].

These gaps affect reproductive autonomy, patient rights, and how far consent agreements can actually be enforced. With the growing number of single women, cancer patients, and non-traditional families choosing fertility preservation, there is a pressing need for clearer laws in India. This article looks at the medical, ethical, and legal issues of embryo cryopreservation, reviews global legal perspectives, and examines how the ART Act, 2021 deals with ownership disputes [5,6].

Medical and Ethical Dimensions

From a medical perspective, embryo cryopreservation improves IVF success rates. It allows multiple transfer attempts from one stimulation cycle, lowering both costs and emotional stress. It is also a lifeline for cancer patients and those who want to delay parenthood [7,20].

Ethically, however, embryos fall into a “grey area.” They are neither simple property nor full human beings. Some argue that embryos should be given “special respect” as potential life, while others believe that patient autonomy and consent should take priority. Because there is no universal

agreement, courts and lawmakers often struggle to handle disputes fairly [8,18,19].

Global Approaches to Ownership Disputes

Courts across the world have generally followed three different approaches:

1. Contractual Approach – Enforcing prior agreements between couples and clinics, as in *Kass v. Kass* (New York, 1998).
2. Balancing Approach – Weighing the right to have children against the right not to, usually favoring the latter, as in *Davis v. Davis* (Tennessee, 1992).
3. Status Approach – Granting embryos special moral/legal standing, which restricts their use or destruction without both partners' consent, as seen in Italy and Germany.

These models reflect the ongoing conflict between individual rights and the moral status of embryos [16,17].

India's ART Act, 2021

The ART Act, 2021 regulates clinics, gamete banks, and embryo storage. Its key rules include:

- Embryos may be stored for up to 10 years with written consent.
- Clinics must obtain consent from both gamete providers before freezing.
- Donation, sale, or research use of embryos requires explicit consent.
- Violations can lead to fines and imprisonment.

But the Act leaves major questions unanswered, such as:

- What happens to embryos after divorce or separation?
- Can one partner withdraw consent on their own?
- What is the legal status of embryos—are they just biological material?

Since Indian courts have never ruled on these issues, disputes are likely to arise [13,14,15].

Comparative Perspectives

Other countries have developed clearer rules. In the UK, the Human Fertilisation and Embryology Act (1990) emphasizes the right to withdraw consent. In the US, contracts are central, but courts often side with those who do not want to procreate. India, however, has no established judicial or statutory clarity yet [9,10,11,12].

Key Challenges

1. No case law in India on embryo ownership.
2. Embryos are neither recognized as property nor persons.
3. The Act does not clarify withdrawal of consent.
4. Cultural and religious sensitivities complicate policymaking.
5. Vague provisions make it hard for clinics to enforce rules.

SUGGESTED REFORMS

- Add clear rules on embryo ownership in cases of divorce.
- Recognize the right to withdraw consent before implantation.
- Issue guidelines on disposal, donation, and research use of embryos.
- Set up a national Embryo Registry to track storage, consent, and disputes.
- Encourage couples to sign advance directives before freezing embryos.

CONCLUSION

Embryo cryopreservation is not only a medical advancement but also a source of complex ethical and legal dilemmas. The ART Act, 2021 lays the groundwork for regulation but falls short in addressing ownership and consent issues. By learning from international practices, India should strengthen its laws to protect reproductive autonomy, reduce legal disputes, and treat embryos with both ethical care and legal clarity.

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