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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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THE LEGAL RIGHTS OF PERSON BORN THROUGH SPERM OR EGG DONATION

AUTHORED BY - RAGHAVARAMAN

ABSTRACT:

Out of 1000 million Indians, the World Health Organization (WHO) estimates that between thirteen and nineteenth million couples are attempting to conceive at the moment because either one or both of them are infertile.

The majority of these couples use cutting-edge assisted reproductive technologies (ART) including in vitro fertilization, or IVF, and intracytoplasmic sperm injections (ICSI), where male and female sperm and egg donations are crucial components of the process.

Thus, a person's contribution can eliminate the mental pain that many infertile couples experience in addition to bringing a new life into the world.

But in order to avoid specific health risks, each donor must go by certain regulatory Requirements.

INTRODUCTION:

What is egg donation

A woman can assist another woman in becoming pregnant by donating her eggs, or oocytes, through the process of egg donation. It is a component of assisted reproduction and a fantastic way to start a family for couples in which the male experiences substantial disruptions in gamete production and the woman either has premature ovarian failure or responds poorly to standard ovarian stimulation. Couples who carry inherited disorders and do not wish to significantly increase their child's morbidity as a result of their disease can also donate eggs. The Indian Council of Medical Research states that before an egg donor's eggs are utilized again, they should be thoroughly checked and the process should be anonymous.

Who is an egg donor

A woman who willingly donates her oocytes—her genetic material—to aid in another woman's reproduction is known as an egg donor. The ladies who donate the eggs must be in good health and typically have at least one kid of their own. In addition to being examined for infectious diseases like HIV and Hepatitis, they go through a thorough medical and psychological evaluation. All tests are conducted in accordance with the recommendations provided by the ICMR prior to donor selection. Only once the screening procedure and the legal documentation are finished may an egg be donated.

Ways through which donor eggs can be obtained:

1. **Anonymous donors:** Women who choose to remain anonymous or who are undisclosed to the beneficiary or recipients. These donors may be identified by organizations, programs, or reproductive clinic documentation related to egg donation. The legal framework in India suggests that the donation remain anonymous and should not be recognized by the recipient.
2. **Known donors:** Ladies who either the recipient or the couple know. Usually, a close friend or relative can serve as such a donor. Sometimes donors are directly advertised by couples or receivers in publications or online. In some cases, there is no middleman program or agency between the donor and the recipient(s), who are already acquainted. However, recipients should exercise caution if they are seeking donations directly without using a middleman program
3. **IVF programs:** Women undergoing IVF might consent to give infertile patients their extra eggs. Because it may be interpreted as coercive, this method of donation is restricted, especially if the donors receive a financial discount on their IVF cycle.

Requirements for being an egg donor

A fertilized egg donor must first demonstrate their willingness to donate eggs. In addition, the donor needs to pass a few tests and meet a few requirements in order to be eligible to donate eggs. They are listed below:

- The donor is tested for additional infections such as gonorrhea, chlamydia, and syphilis.
- The individual must be free of HIV and Hepatitis B and C infections, hypertension, diabetes, STDs, and any kind of identifiable or common genetic disorders, such as thalassemia. To be

certain that the donor does not have the cystic fibrosis gene, testing is required.

- Given the donor's medical history and ethnic background, additional genetic testing ought to be carried out. Certain programs carry out tests for Fragile X syndrome and chromosome analysis, which are not always reliable.
- It is necessary to ascertain and document the donor's blood type and Rh status.
- Details about the donor, including height, weight, age, occupation, and educational background. It is necessary to accurately record the skin and eye colors, family history, and any history of inherited disorders.

The donor's age cannot be below 21 years old or above 35 years old. Ideally, the donor should be a woman with at least one child.

Even though the egg donor needs to fulfill these conditions, a lot of fertility clinics in India don't always abide by the rules since the necessary laws aren't in place.

The age restriction is usually ignored when young girls, as young as eighteen, walk into the clinics to donate eggs in exchange for cash.

Sushma Pandey, a 17-year-old patient of a well known infertility clinic in Bombay, passed away two days after donating her eggs in 2010.

Regarding this incident, there is still a lot of unknowns.

As such, adherence to the guidelines set forth for safe donation is essential.

Who should be considered an egg donor

The fundamental reason a person asks a different woman to donate her eggs is infertility. There exist multiple other rationales for requesting an egg donation. They are

- Gonadal dysgenesis, which refers to abnormal development of the female gonads (ovary or egg sac), typically brought on by a congenital abnormality.
- The loss of normal ovarian functioning before the age of 40 is known as premature ovarian failure.
- Iatrogenic ovarian failure brought on by ovary surgery, chemical castration, or even radiation

exposure of any kind

- A female's poor response to ovulation induction, or the development of resistance against ovarian syndrome.
- Female carriers of autosomal recessive disorders.
- Women who reach menopause should consider IVF and ask for egg donation.

BENEFITS OF DONATING:

- The cost of IVF, including the number of cycles necessary, includes the cost of the sperm donor in India. In India, the price of a vial of donor sperm can range from Rs. 8,000 to Rs. 10,000. It may increase from Rs. 12,000 to Rs. 15,000, which might lead to a significant increase in the total cost of IVF when paired with the need for many rounds of the IVF cycle.
- Although sperm donation is not an easy or quick process, there are social and economical advantages. It not only brings in money but also enables you to assist others in realizing their aspiration of starting a family. Furthermore, there is a greater demand than ever for qualified donors because donor sperm is in low supply.
- The desire to help others and financial compensation were the main motivators for donors. Between one and nine hundred (median = 100) sperm donors and between one and five (median = 2) oocyte donors had made donations. Concerns regarding their donations were voiced by over one-third of oocyte donors and the majority of sperm donors. The primary worries were about the welfare of any offspring created with their gametes and the inability to communicate with them. The majority of sperm and oocyte donors thought it was crucial to know how many children were born thanks to their donation; 51% of sperm donors and 46% of oocyte donors requested personal data. Every donor who communicated with their donor offspring expressed satisfaction

Do sperm donors have parental rights?

The legal relationship you have with any children conceived through sperm donation is contingent upon the specifics of both the donation and conception.

There are two ways to conceive using donor sperm in the UK: insemination at home or using a clinic licensed by the Human Fertilisation and Embryology Authority (HFEA).

If you gave sperm to a known or anonymous recipient via a clinic licensed by the HFEA, you won't:

- Have parental rights over any born children.
- Be obligated by law to provide for any born
- Possess any influence over the child's upbringing
- Request financial support for the child
- Obtain a name from the birth certificate.

But if you give sperm at home or at a clinic not authorized by the HFEA, you will be considered as the child's legal parent unless it is specified otherwise on the birth certificate

- Conflicts about legal parenthood and parental responsibility may arise if sperm is donated outside of an approved fertility facility. Because of this, it is advisable to consult a qualified attorney before making any decisions regarding sperm donation.

What legal rights do birth parents of a donor-conceived child have?

A parent who conceives a child using donor sperm will be that child's legal parent and will be responsible for raising that child. They will also have parental rights if they are married to them or in a civil partnership with them, or if their partner has approved the process.

Unless otherwise agreed, the sperm donor will automatically be granted legal parenthood if the child was conceived at home or through a non-HFEA licensed clinic and the parents are not in a marriage or civil partnership.

What is legal parenthood?

Being a legal parent establishes your child's eligibility to inherit from you, receive your nationality, and have financial responsibility for you. This does not imply that you have parental responsibility, which is the authority to decide how best to raise and conduct a child on a daily basis.

The child's birth parent, their spouse or civil partner, anyone listed on the birth certificate, or someone who applies in court can all be given parental responsibility.

Do sperm donors have the right to remain anonymous?

Donor anonymity was eliminated in 2005. Previously, all sperm donors in the United Kingdom remained anonymous, and children conceived from your donation could only access your non-identifying information once they turned 18.

You still have the option to give up your anonymity if you donated sperm before 2005.

You could be identified by home DNA testing and online matching services whether you donated sperm before or after 2005. It is not possible to guarantee complete anonymity, so choosing to donate sperm should not be made hastily.

Can I be contacted by a child conceived through my s When a child conceived through donor conception reaches the age of 18, they will be able to make contact with their donor. You are not required by law to reply, so you will have to wait for them to get in touch.

Depending on their age, children conceived through an HFEA-licensed clinic receive information about their donor.

At 16-years-old, a donor-conceived child can find out:

The following details about your physical appearance: height, weight, eyes, hair, and skin color; place and year of birth; ethnicity of your parents or parents' parents

- If you had children at the time of donation, the number and gender of them
- Do you have a spouse?
- Relevant medical history, both personal and familial
- Any other details you supplied, such as your occupation, religion, or hobbies

Parents of a donor-conceived child can also ask for this info at any point after birth. **At 18-years old, a donor-conceived child can find out:**

- Your complete name; • Your birthdate and place of residence; • Your most recent address
- Any information omitted from the above details that might identify you
- Parents of children conceived through donation will never have access to this data.

Other ICMR recommendations

Along with meeting other requirements, there are some guidelines regarding egg donation that have been released by ICMR. They are listed below:

All of these clinics that treat infertility, encourage the creation and use of embryos outside of the body, and carry out embryonic research are required to be legally registered.

The requirements for staff working in these clinics are outlined in a code of practice.

The patient's written consent should be obtained before beginning any kind of treatment. The patients also need to get counseling and information beforehand.

No human embryo should be used in an experiment on a non-human animal, and the Institutional Ethics Committee must approve all research projects.

ART REGULATION ACT 2020,

- On September 14, 2020, the Assisted Reproductive Technology (Regulation) Bill, 2020 was presented to the Lok Sabha. The purpose of the bill is to establish national regulations for services involving assisted reproductive technology.
- **Technology for Assisted Reproduction (ART):** According to the Bill, artificial reproductive technology (ART) refers to any method used to try and conceive a child by handling sperm or oocytes (immature egg cells) outside of the body and putting gametes or embryos into a woman's reproductive system. Gamete (sperm or oocyte) donation, in-vitro fertilization (fertilizing an egg in a lab), and gestational surrogacy (when the kid is not biologically linked to the surrogate mother) are a few examples of ART services. The following channels will be used to deliver ART services: (i) ART clinics, which provide ART-related surgeries and treatments; (ii) Gametes are supplied and stored by ART banks.
- **Banks and ART clinic regulation:** The Bill mandates that all banks and ART clinics register with the National Registry of Banks and Clinics of India. The Bill calls for the

creation of the National Registry, which will serve as a national database containing information on all ART clinics and banks in the nation. To expedite the registration procedure, state governments will designate registration authority. Only those clinics and banks that meet specific requirements (namely, specialized staffing, physical infrastructure, and diagnostic capabilities) will be allowed to register. The registration is good for five years, after which it can be renewed for an additional five. If the entity violates any of the Bill's terms, registration may be canceled or suspended.

- **Requirements for gamete donation and supply:** Only an ART bank with registration is authorized to screen gamete donors, gather and store semen, and provide oocyte donors. Males between the ages of 21 and 55 can donate semen, while females between the ages of 23 and 35 can donate eggs. A woman who has been married for at least three years and has at least one living child is eligible to donate eggs. The lady is limited to one oocyte donation per lifetime and can only have up to seven oocytes extracted from her. Gametes from a single donor cannot be provided by a bank to more than one commissioning couple (couple requesting services).
- **Conditions for providing ART services:** Only with the donor's and the recipient's signed informed permission may ART treatments be performed. In order to get ART services, the party requesting the oocyte donor's insurance coverage must offer coverage for any loss, damage, or death of the donor. It is forbidden for a clinic to offer to furnish a kid whose sex is predetermined. Prior to the implantation of the embryo, the Bill also mandates that genetic disorders be checked for.
- **Rights of an ART child:** A child born via ART will be regarded as the commissioning couple's biological child and will be entitled for all of the same advantages and rights as a commissioning couple's natural child. The child will not grant the donor any parental rights.
- **National and State Boards:** The Surrogacy (Regulation) Bill, 2019 established the National and State Boards for Surrogacy, which would function as the National and State Boards, respectively, for the regulation of ART services. The National Board's primary

responsibilities include: (i) advising the federal government on matters pertaining to ART policy; (ii) reviewing and overseeing the Bill's implementation; (iii) developing standards and a code of conduct for ART clinics and banks; and (iv) supervising various bodies that will be established in accordance with the Bill. In accordance with the National Board's recommendations, rules, and regulations, the State Boards will coordinate the execution of the ART policies and guidelines.

- **Penalties and offenses: The Bill lists the following as offenses:** (i) aborting or abusing children born via assisted reproductive technology; (ii) buying, selling, trading, or importing human embryos or gametes; (iii) using middlemen to acquire donors; (iv) abusing a commissioning couple, woman, or gamete donor in any way; and (v) transferring the human embryo into a male or an animal. For the first infraction, these offenses will carry a punishment of five to 10 lakh rupees. Subsequent violations will result in a fine of between 10 and 20 lakh rupees in addition to a sentence of eight to twelve years in jail.
- Any clinic or bank that advertises or provides sex-selective ART faces a five-to ten-year jail sentence, a fine of between Rs. 10 lakh and Rs. 25 lakh, or both. Courts will not consider offenses under the Bill unless they receive a complaint from a National or State Board, or from an official designated by the Boards

As previously said, adult donor-conceived children are entitled to know their origins and the story of their birth, in addition to having an interest in getting to know their parents as much as possible. It is in their interest to have access to at least non-identifying information about their donor(s) for medical reasons and to avoid consanguinity; but, access to identifying information is typically also in their interest for identity-building and personal development. However, in my opinion, it should be up to the donor-conceived individuals themselves to decide whether to take use of their right to obtain this information. In addition, I think having a large number of half-siblings is not in the best interests of those produced through donor conception.

Conclusion

Winston Churchill is credited as stating, "We make a life by what we give, but we make a living out of what we get." A donor of eggs and sperm should feel pleased of their act, since it aids another

individual or couple in beginning their own family. For doctors, patients, donors, and everyone else interested in ART services, the ART Bill Regulation, 2020 serves as a reference. It safeguards their rights and serves as a reminder of the responsibilities they have as members of ART. As of right now, the legislation governing the donation of sperm and eggs are quite simple and basic. The only issue that India continues to have is the implementation of these laws. Even though there is many guidelines and rules have been laid down, strong legislation is the need of the hour because it is not worth risking a donor's life only to bring another life to this world.

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