



International Journal of Recent Development in Engineering and Technology
Website: www.ijrdet.com (ISSN 2347-6435 (Online) Volume 15, Issue 08, August 2026)

Posthumous Reproduction: Law, Ethics, and the Indian Judicial Response

Dr. Lini Priya Vasavan

Government Law College, Thrissur, India

Abstract— Posthumous reproduction, involving the conception of a child using the sperm, eggs, or embryos of a deceased individual, raises considerable legal, ethical, and social dilemmas. This paper explores issues related to consent, reproductive autonomy, genetic material ownership, inheritance, and the rights of children conceived posthumously. It provides a comparative analysis of the strategies adopted by France, the United Kingdom, the United States, and Israel, highlighting the lack of a consistent international framework. The paper places a particular emphasis on India, where the Assisted Reproductive Technology (Regulation) Act, 2021, and the Surrogacy (Regulation) Act, 2021 do not explicitly address posthumous reproduction. It reviews the 2024 ruling by the Delhi High Court in *Gurvinder Singh & Anr. v. Sir Ganga Ram Hospital & Ors.*, which dealt with the release of a deceased individual's cryopreserved semen to his legal heirs. The paper underscores ongoing ambiguities concerning consent, the rights of spouses and parents, the legal status of gametes, parentage, inheritance, and the rights of children born through posthumous reproduction. It concludes that India needs a comprehensive legislative framework to govern posthumous reproduction, ensuring a balance between reproductive autonomy, family interests, human dignity, and the welfare of the child born as a result.

Keywords— Posthumous Reproduction; Assisted Reproductive Technology (ART); Cryopreservation; Consent; Reproductive Autonomy; Surrogacy; Succession Law; Genetic Material; Posthumous Parenthood; Indian Law

I. INTRODUCTION

Posthumous reproduction involves conceiving a child using the sperm, eggs, or embryos of an individual after their death. This idea has evolved from a theoretical element of reproductive science into a common subject of legal debates, as cryopreservation technology has become widely used in fertility clinics and oncology departments worldwide. People undergoing chemotherapy, those facing military deployment, or individuals in high-risk occupations may opt to preserve their gametes as a precaution; in the event of an unexpected accidental death, a grieving spouse or parent might ask a hospital to retrieve sperm shortly after death.

Both scenarios raise the same essential question: should the law permit the creation of life using the genetic material of someone who can no longer give consent, raise objections, or participate in the child's upbringing?

This article examines posthumous reproduction through three related lenses. It begins by describing the medical and technical procedures involved, along with the ethical debates they generate. Following this, it analyzes how key jurisdictions, including France, the United Kingdom, the United States, and Israel, have approached these matters through laws and judicial decisions. Lastly, it provides an in-depth look at the Indian scenario: the absence of a dedicated law, the interplay between the Assisted Reproductive Technology (Regulation) Act, 2021 and the Surrogacy (Regulation) Act, 2021, and the pivotal 2024 ruling by the Delhi High Court, which has offered a judicial perspective on an issue that remains unaddressed by India's Parliament.

II. UNDERSTANDING POSTHUMOUS REPRODUCTION

II.1 What It Involves

Posthumous reproduction often involves Assisted Reproductive Technology (ART), which encompasses clinical methods designed to achieve pregnancy by manipulating sperm or eggs outside the body before introducing the gamete or embryo into a woman's reproductive system. Commonly employed techniques include In-Vitro Fertilisation (IVF), Gamete Intra-Fallopian Transfer (GIFT), gamete cryopreservation, and gestational surrogacy.

Two main scenarios frequently appear in documented cases:

Planned cryopreservation: Individuals anticipating fertility-compromising medical treatments, such as chemotherapy or radiotherapy for cancer, store sperm or eggs beforehand and pass away before utilizing them.

Post-mortem retrieval: Sperm is surgically collected from a man shortly after an unexpected death, typically within 24 to 36 hours to maintain viability, often at the request of a spouse or parents who were unprepared for the death.

Once genetic material is preserved, it can remain viable for many years, which is why legal disputes can emerge long after the individual's death. Courts are often called upon to determine, months or even years later, the fate of a sample that the deceased can no longer express wishes for.

II.2 Why the Law Struggles With It

Family law, property law, and succession law have traditionally been based on the assumption that an individual is present, gives consent, and can be consulted when a legal action is executed. However, posthumous reproduction challenges this foundation: the individual whose genetic material is central to the issue is not just unavailable they are permanently incapable of confirming, clarifying, or retracting a prior decision. This situation has compelled courts to adapt reasoning from unrelated areas, such as contract and bailment law in France, and property and inheritance law in the United Kingdom, the United States, and now India as well as constitutional arguments concerning bodily and reproductive autonomy.

III. ETHICAL DIMENSIONS

When examining posthumous reproduction, bioethicists typically revisit the four foundational principles of medical ethics: autonomy, beneficence, non-maleficence, and justice. They consider the interests of four main parties: the deceased, the individual seeking to use the gametes, the child that may be born, and the broader society.

III.1 Autonomy and Consent

The autonomy of the deceased is the most debated aspect. When an individual has provided explicit, contemporaneous written consent for posthumous use, most ethicists and legal frameworks concur that respecting this consent upholds personal reproductive autonomy, similar to how a will upholds testamentary autonomy. More challenging scenarios arise with inferred consent: if someone stored sperm solely as a safeguard against infertility due to cancer treatment, without specifying their wishes in the event of their death, it remains uncertain whether this act indicates a desire for posthumous reproduction or simply the wish to maintain the possibility of reproduction during their lifetime.

III.2 Interests of the Resulting Child

One common criticism is that posthumous reproduction intentionally creates a child who will never meet one of their biological parents, often referred to as a 'preplanned orphan.'

Supporters counter that children born through anonymous sperm donation or after a parent's death from unrelated events (such as a father passing away during pregnancy) are not automatically seen as harmed simply due to the absence of one parent. They argue that this logic should not automatically exclude posthumous conception. Legal frameworks that allow posthumous reproduction typically mandate that the child's legal status, including legitimacy, inheritance rights, and birth registration be clearly defined by law to safeguard the child's interests after birth.

III.3 Sociocultural and Religious Perspectives

Studies from different countries reveal a lack of consensus among religious groups on the topic of posthumous reproduction. The data indicates that people with strong religious convictions are somewhat less likely to personally favor the collection of gametes after death. Nonetheless, many highly religious individuals across various studies theoretically support the idea, suggesting that while religious beliefs shape opinions, they do not completely determine them. In India, cultural views are more heavily shaped by the societal focus on lineage and family continuity rather than strict religious teachings. This focus on family heritage is a factor that Indian courts have taken into account when determining whether grandparents can pursue having a genetic grandchild.

III.4 Risk of Commercialisation

Another ethical issue, especially relevant in India due to its past as a major center for commercial surrogacy prior to the 2021 changes, is the potential for gametes to be viewed as marketable items inherited, sold, or misused instead of being regarded as elements closely linked to individual identity and reproductive respect. In response, Indian courts have explicitly limited the use of gametes to non-commercial, family-building activities.

IV. THE INTERNATIONAL LEGAL LANDSCAPE

IV.1 France - Parpalaix v. CECOS (1984)

Alain Parpalaix, who succumbed to testicular cancer, had his sperm cryopreserved at CECOS, a government-operated sperm bank, marking one of the earliest and most significant cases. His wife, Corinne Parpalaix, initiated legal action to obtain the sample after the bank declined to release it. A French court ruled in her favor, considering the arrangement similar to a bailment linked to the couple's joint reproductive intentions.

The ensuing debate led France to adopt a more stringent regulatory approach, and now, posthumous insemination is largely forbidden without explicit prior approval, underscoring a policy that favors children being born to two living parents.

IV.2 United Kingdom - R v. HFEA, ex parte Blood (1997) and Yearworth (2009)

Diane Blood's husband succumbed to bacterial meningitis after falling into a coma. Sperm was retrieved from him without the written consent mandated by the Human Fertilisation and Embryology Act of 1990 for its storage and use. Initially, the Human Fertilisation and Embryology Authority denied her permission to use or export the sperm. However, the Court of Appeal eventually allowed her to seek treatment in Belgium, invoking the European right to access medical services across borders, despite the fact that domestic law prohibited the sample's use in the UK without written consent. This incident highlighted the inflexibility of the written-consent requirement and led to legislative changes, including the retrospective acknowledgment of the deceased as a legal parent for birth registration.

In a related but separate case, *Yearworth v. North Bristol NHS Trust* (2009), it was determined that sperm samples stored by a hospital could be considered the 'property' of the man who provided them, enabling a tort claim when the hospital negligently destroyed the samples. Although this decision was made outside the context of posthumous reproduction, the property-based rationale has had an impact elsewhere, such as in the Delhi High Court's 2024 decision discussed later in this article.

IV.3 United States - Hecht v. Superior Court (1993) and Astrue v. Capato (2012)

Before taking his own life, William Kane stored his sperm and specified in his will that it should be given to his partner, Deborah Hecht, for potential future use. However, his grown children from a previous marriage contested its release. The California Court of Appeal determined that sperm can be considered property subject to testamentary control, thereby honoring Kane's explicit wishes. In the case of *Astrue v. Capato*, the U.S. Supreme Court examined a similar yet distinct issue: whether twins conceived through IVF after their father's death, using his preserved sperm, were eligible for Social Security survivor benefits. The Court concluded that eligibility is determined by state inheritance laws rather than a consistent federal standard of biological parentage, resulting in varied outcomes across different states.

Only a few states, like Louisiana and Texas, have enacted specific laws regarding children conceived posthumously, while the majority of states lack such legislation, leaving the issue to be resolved through individual judicial decisions.

IV.4 Israel

Israel is frequently seen as the most permissive among major jurisdictions. In a widely publicized case, the parents of a soldier who was killed in action managed to obtain permission to retrieve and use his sperm. This resulted in the birth of a genetic grandchild via a surrogate chosen by the family, despite the absence of any written consent from their son. Israeli authorities generally permit such actions by inferring consent from the individual's life circumstances, such as being in a committed relationship or having shown a desire for children. This approach distinguishes Israel by recognizing claims from parents, in addition to those from a surviving partner.

IV.5 Comparative Summary

Table: comparative approaches to posthumous reproduction across select jurisdictions.

Jurisdiction	Approach
France	In the aftermath of <i>Parpalaix v. CECOS</i> (1984), posthumous insemination is typically forbidden unless there is explicit prior consent.
United Kingdom	Under the guidelines of the Human Fertilisation and Embryology Act, usage is allowed when written consent is recorded, as clarified following the case of <i>R v. HFEA, ex parte Blood</i> (1997).
United States	There is no consistent federal regulation; instead, it is managed by a varied collection of state laws concerning property, inheritance, and consent. According to <i>Astrue v. Capato</i> (2012), eligibility for survivor benefits is determined by state law.
Israel	Relatively lenient; allows retrieval and use even in the absence of explicit written consent, inferred from the deceased's life context.
India	There is no specific law, but courts have permitted the transfer of gametes to legal heirs if there is evidence of consent for cryopreservation and the gametes are not intended for commercial purposes (<i>Gurvinder Singh</i> , Delhi HC, 2024).



V. THE INDIAN LEGAL FRAMEWORK

India lacks a specific law addressing posthumous reproduction. This issue is not covered by two recent laws, as neither was created to address this particular situation.

V.1 The Assisted Reproductive Technology (Regulation) Act, 2021

The ART Act oversees the operations of ART clinics and gamete banks throughout India. It requires that written, informed consent be obtained for the donation, storage, and utilization of gametes. Additionally, it establishes age and screening requirements for donors and initiates a National Registry for ART clinics and banks. However, the Act lacks explicit provisions regarding the use of stored gametes from a deceased individual by their spouse or parents, leaving this particular issue unresolved.

V.2 The Surrogacy (Regulation) Act, 2021

The Surrogacy Act primarily limits surrogacy to an 'intending couple,' which is broadly defined as a legally married Indian man and woman who fulfill specific age and medical infertility requirements. Subsequent amendments have expanded eligibility to include certain categories of single women. The Act does not address surrogacy pursued by grandparents desiring a genetic grandchild, nor does it cover surrogacy initiated for or using genetic material from a deceased person's estate. This omission in the drafting became a focal point in the government's subsequent challenge to the Delhi High Court's decision, as discussed below.

V.3 Succession and Property Law

In the absence of specific guidelines for ART, Indian courts have resorted to applying general property and succession laws to determine who can claim the cryopreserved gametes of a deceased individual. This approach is similar to the one adopted in the Yearworth case in the United Kingdom, where a semen sample was classified as a type of property that could be inherited by legal heirs according to standard succession laws, rather than being left in an unregulated state. This classification is both important and debated, as it places genetic material, which is closely linked to personal identity and reproductive freedom, in the same category as inheritable assets such as money or land.

VI. INDIAN CASE LAW

VI.1 Gurvinder Singh & Anr. v. Sir Ganga Ram Hospital & Ors. (Delhi High Court, 2024)

Currently, this stands as India's foremost judicial decision regarding posthumous reproduction.

Preet Inder Singh, a 30-year-old bachelor, was diagnosed with Non-Hodgkin's Lymphoma. Foreseeing that chemotherapy might impair his fertility, he agreed to have his semen cryopreserved, which was stored at Sir Ganga Ram Hospital's fertility lab in New Delhi in June 2020. Although he received treatment, he passed away from the disease in September 2020.

His parents, Gurvinder Singh and Harbir Kaur, requested the hospital to release the frozen semen sample so they could pursue surrogacy and have a biological grandchild. The hospital declined, pointing out the lack of a formal policy for releasing samples to parents instead of a spouse, as well as the absence of statutory guidance on the matter. Consequently, the parents filed a petition with the Delhi High Court. Due to the complex statutory interpretation questions involved, the Court included the Union Ministry of Health and Family Welfare as a party in November 2022.

Holding

In October 2024, Justice Pratibha M. Singh approved the petition, stating the following: Indian law does not explicitly forbid posthumous reproduction, as long as the consent of the sperm or egg owner is proven. A semen sample is considered a type of genetic property that can be inherited by the deceased's legal heirs, supported by the reasoning in Yearworth. Since the son had agreed to cryopreservation before passing away and there was no indication of any objection to its future reproductive use, his parents being his legal heirs in the absence of a surviving spouse or children were entitled to access the sample. The sample was intended solely for non-commercial use, thereby distinguishing the decision from the commercial surrogacy concerns that Indian legislation seeks to restrict. The existing legal structure, which includes only the ART Act, 2021 and the Surrogacy Act, 2021, has left a noticeable void regarding this matter, leading the Ministry of Health to deliberate on the necessity of specific laws or guidelines. "Given the absence of a prohibition on posthumous reproduction and the fact that the Petitioner's son had provided consent prior to his passing, the Court finds it appropriate to authorize the release of the sperm sample to the Petitioners," stated the Delhi High Court in *Gurvinder Singh & Anr. v. Sir Ganga Ram Hospital & Ors.* (2024). The Court also took into account the Indian social milieu, observing that it is culturally prevalent in India for grandparents to raise children when parents are absent due to separation, divorce, or death, and that custody has previously been granted to grandparents in similar cases.



Subsequent Government Challenge

The Union Health Ministry later contested the decision, contending that it exceeds the boundaries of both the ART Act and the Surrogacy Act. These laws are designed for 'intending couples' dealing with infertility, not for grandparents desiring a genetic heir. Additionally, the ART Act prohibits single individuals from using surrogacy to have children, a limitation the government claims the ruling bypasses. This ongoing conflict highlights the tension between judicial intervention in legislative gaps and the executive's worry about the judiciary encroaching on what it sees as Parliament's domain.

VI.2 Bombay High Court - Widow's Claim to a Deceased Husband's Sperm

In Indian legal reporting, there is a documented case where the Bombay High Court allowed a widow to use her deceased husband's cryopreserved sperm for assisted reproduction. This decision was based on the husband's prior consent to ART and the fact that, as the surviving spouse, her claim was significantly stronger than one made solely by the parents. When considered alongside a subsequent ruling by the Delhi High Court, it indicates a nascent but evolving judicial trend: claims by a surviving spouse are handled relatively simply when consent is evident, whereas claims by parents desiring a genetic grandchild present more complex, unresolved issues, as thoroughly examined in the Gurvinder Singh case for the first time.

VI.3 The 2018 Pune Instance

Reports from Indian media mention a previous case from Pune in 2018, which was less formally litigated. In this instance, a mother allegedly used her late son's preserved sperm to seek surrogacy. Although this case did not result in a comprehensive reported judgment, it is often referenced in subsequent legal cases and discussions as an initial indication that Indian families and fertility clinics were dealing with this matter long before it was fully contested in the High Courts.

VII. CRITICAL ANALYSIS: GAPS AND THE WAY FORWARD

India's present position is significantly influenced by judicial innovation because of the absence of explicit legislation. This method has both advantages and disadvantages. On the upside, the Delhi High Court's choice to tackle an evident legal void, rather than dismissing the petition for lack of statutory backing, enabled the acknowledgement of a clear act of consent and stopped a potentially valuable sample from being destroyed or kept indefinitely.

On the downside, numerous essential issues persist unresolved and are unlikely to be fully addressed through judicial decisions alone:

VII.1 Standing of Parents versus Spouses

The framework for 'intending couples' under the Surrogacy Act did not originally consider grandparents. Although courts may sympathetically interpret the law to include parents, this approach introduces ambiguity regarding the potential extension of such claims to more distant relatives. It also raises the question of whether it is Parliament, rather than the judiciary, that should establish these boundaries.

VII.2 The Adequacy of 'Consent to Cryopreservation' as Consent to Posthumous Use

In the Gurvinder Singh case, the individual who passed away had agreed to have his semen frozen for medical purposes, specifically to maintain fertility prior to undergoing chemotherapy, rather than for his parents to use after his death. Interpreting this as adequate consent for reproduction after death may extend the typical understanding of informed consent in assisted reproductive technology (ART), which generally demands clear details regarding the intended purpose and future application of stored biological material. Implementing a statutory consent form that explicitly addresses posthumous use, similar to those employed in the United Kingdom, would eliminate this uncertainty in the future.

VII.3 Status of the Resulting Child

Neither the ART Act nor the Surrogacy Act provides a clear definition of legal parentage, inheritance rights, or birth-registration status for a child born through a surrogate after the genetic parent's death, particularly when grandparents are involved instead of a genetic parent. Ensuring clarity on this issue is essential to protect the child's interests following birth, irrespective of any previous disputes between the family and the hospital before conception.

VII.4 Need for a Dedicated Legislative Framework

The Delhi High Court itself proposed that the Ministry of Health consider formulating specific guidelines or passing legislation. A dedicated framework that specifies the required form and detail of consent, determines who can request the release of gametes, treats gametes as inheritable property, offers protection against commercial misuse, and defines the legal status of any child born as a result would provide far more certainty than addressing issues individually.



International Journal of Recent Development in Engineering and Technology
Website: www.ijrdet.com (ISSN 2347-6435 (Online) Volume 15, Issue 08, August 2026)

This strategy would also align India more closely with countries like the United Kingdom, which have already established laws on these topics.

VIII. CONCLUSION

Posthumous reproduction presents a complex intersection of medical technology, individual rights, family law, and public policy. There is no global consensus on this issue: France takes a cautious stance, the United Kingdom implements consent-based regulations, the United States follows a diverse approach varying by state, and Israel is comparatively lenient. These differences highlight the varying perspectives on prioritizing interests when the person whose genetic material is used is unable to voice their preferences.

India's Assisted Reproductive Technology (Regulation) Act, 2021, and Surrogacy (Regulation) Act, 2021 do not address this issue, and the Delhi High Court's 2024 decision in *Gurvinder Singh & Anr. v. Sir Ganga Ram Hospital & Ors.*, although a notable and closely observed precedent, was presented as a temporary judicial response to a legal gap and is still being contested in a higher court. Until Parliament enacts specific legislation regarding consent, eligible claimants, the legal status of gametes, and the rights of any resulting child, India's stance on posthumous reproduction will continue to be determined on a case-by-case basis.

This leaves grieving families to deal with an area of deep personal importance without the clarity that definitive legislation could offer.

REFERENCES

- [1] *Gurvinder Singh & Anr. v. Sir Ganga Ram Hospital & Ors.*, Delhi High Court (2024) — as reported in Indian legal and mainstream media (LawBeat; India Legal; The Print; Vision IAS Current Affairs; Today's Family Lawyer).
- [2] *R v. Human Fertilisation and Embryology Authority, ex parte Blood* [1997] 2 All ER 687 (England and Wales Court of Appeal).
- [3] *Yearworth v. North Bristol NHS Trust* [2009] EWCA Civ 37.
- [4] *Hecht v. Superior Court*, 16 Cal. App. 4th 836 (1993).
- [5] *Astrue v. Capato*, 566 U.S. 541 (2012).
- [6] *Parpalaix v. CECOS*, Tribunal de Grande Instance de Créteil (1984).
- [7] The Assisted Reproductive Technology (Regulation) Act, 2021 (India).
- [8] The Surrogacy (Regulation) Act, 2021 (India).
- [9] ESHRE Task Force on Ethics and Law 11: Posthumous Assisted Reproduction, Human Reproduction, Oxford Academic (2006).
- [10] Assorted peer-reviewed literature on the ethics of posthumous reproduction, including studies published via PubMed, ScienceDirect, and BMC Medical Ethics.