



Assisted Reproductive Technology

For Prelims: Assisted Reproductive Technology, fundamental right, In Vitro fertilization

For Mains: Government Policies & Interventions, Issues Related to Women

Why in News?

The Kerala High Court has said that **personal choice to build a family is a fundamental right** and fixing an upper age limit for the same was a restriction which needs a relook.

What is the Issue?

- The court **passed the directive while disposing of a batch of petitions challenging the age limit of 50 years** for women and 55 years for men prescribed under the **Assisted Reproductive Technology (ART) (Regulation) Act, 2021**, for undergoing the assisted reproductive technology.
- According to the petitioners, **prescription of the upper age limit under Section 21 (G) of the ART Act is irrational**, arbitrary, unreasonable and violative of their right to reproduction, which is acknowledged as a **fundamental right**.
- They **sought to declare it as unconstitutional**.
- The High Court has directed the **National Assisted Reproductive Technology and Surrogacy Board to alert the Union government** about the need for having a relook at the upper age limit prescribed for using assisted reproductive technology.
- Apart from this, the petitioners have also **challenged the provision wherein medical practitioners have been brought within the purview of the Indian Penal Code (IPC)** and offences have been made cognizable.
- These provisions are having a **chilling effect on IVF practitioners across the country dissuading them from performing their professional duties** due to the fear of prosecution.

What are the Provisions of the ART (Regulation) Act, 2021?

- **Legal Provisions:**
 - The **ART (Regulation) Act 2021 provides a system for the implementation of the law on surrogacy** by setting up of the National Assisted Reproductive Technology and Surrogacy Board.
 - The **Act aims at the regulation and supervision of ART clinics and assisted reproductive technology** banks, prevention of misuse, and safe and ethical practice of ART services.
- **Definition of ART Services:**
 - The Act defines ART to include **all techniques that seek to obtain a pregnancy by handling the sperm or the oocyte (immature egg cell)** outside the human body and transferring the gamete or the embryo into the reproductive system of a woman. These include gamete donation (of sperm or egg), **in vitro fertilization (IVF)**, and gestational surrogacy.

- ART services will be provided through: (i) ART clinics, which offer ART related treatments and procedures, and (ii) ART banks, which collect, screen and store gametes.
- **Eligibility Criteria for Donors:**
 - A bank may obtain semen from **males between 21 and 55 years of age, and eggs from females between 23 and 35 years of age.** The woman may donate eggs only once in her life and not more than seven eggs may be retrieved from her. A bank must not supply gamete of a single donor to more than one commissioning party (i.e., couples or single women seeking services).
- **Conditions for Offering Services:**
 - ART procedures must be conducted only with the **written consent of the commissioning parties and the donor.** The commissioning party will be required to provide insurance coverage in favour of the egg donor (for any loss, damage, or death).
- **Rights of a child born through ART:**
 - A child born through ART will be **deemed to be a biological child of the commissioning couple** and will be entitled to the rights and privileges available to a natural child of the commissioning couple. A donor **will not have any parental rights over the child.**
- **Shortcomings:**
 - **Exclusion of Unmarried and Heterosexual Couples:**
 - The **Act excludes unmarried men, divorced men, widowed men,** unmarried yet cohabiting heterosexual couples, trans persons and homosexual couples (whether married or cohabiting) from availing ART services.
 - This exclusion is relevant as the [Surrogacy Act](#) also excludes above said persons from taking recourse to surrogacy as a method of reproduction.
 - **Reduces the Reproductive Choices:**
 - The **Act is also limited to those commissioning couples who are infertile** - those who have been unable to conceive after one year of unprotected coitus. Thus, it is limited in its application and significantly reduces the reproductive choices of those excluded.
 - **Unregulated Prices:**
 - The **prices of the services are not regulated**, this can certainly be remedied with simple directives.

Way Forward

- Mandatory counselling should be provided by independent organizations, not by clinic ethics committees.
- All ART bodies should be bound by the directions of central and state governments in the national interest, friendly relations with foreign states, public order, decency and morality.
- All the constitutional, medico-legal, ethical and regulatory concerns raised must be thoroughly reviewed before affecting millions.

[Source: IE](#)