

PRESUMPTION OF LEGITIMACY AND DNA EVIDENCE: A GLANCE THROUGH THE LENS OF ASSISTED REPRODUCTIVE TECHNIQUES

Tanya Bansal, Dr. Trisha Mittal

Abstract: The 21st century has, over the past decade, shaped itself to become the age of technology. Technology has touched nearly every area of life, from home appliances and occupational necessities to health and bodily functions. Extensive research and development have been done in biological technology or biotechnology. Medical science has advanced leaps and bounds through technology, and what once used to be fantasy has been realised in physical medium.

One such highly celebrated achievement in the field of medical technology is the successful use of Assistive Reproductive Techniques (ARTs). Assistive Reproductive Technologies (ART), which includes methods such as in vitro fertilisation (IVF), surrogacy, and sperm or egg donation, have transformed the possibilities of parenthood, giving hope to many couples and individuals facing infertility. However, the advent of ART calls into question long-held beliefs about conception, parentage, and legitimacy. With techniques like IVF and surrogacy, the biological connection between the child and the parents can be complicated, involving donors and surrogates. This complication necessitates a rethinking of existing legal presumptions and frameworks to adequately address the liability of each party, their right with respect to their claim on the parentage of the child and other responsibilities.

The revamping of the Indian Evidence Act and its evolution into the Bharatiya Sakshya Adhiniyam had brought the hope that questions of legitimacy and its correlation with DNA testing which constantly circle around the ARTs would be put to rest. What happens to the child in such a dispute? Who is the actual parent? Is DNA evidence even reliable? These are just some of the questions which are still awaiting an answer even after the new and improved provisions of evidence in the BSA have been implemented. This paper tries to explore some of these uncertainties regarding legitimacy of a child and the validity of such presumption born of ARTs and propose a possible answer to them.

Keywords: technology, Bharatiya Sakshya Adhiniyam, Assistive Reproductive Techniques, DNA evidence, presumption, legitimacy

I. INTRODUCTION

Modern world sees a technological development every other day. However, some of the most revolutionary steps have been taken in the field of biotechnology. Rapid advances in science and technology have had a significant impact on many aspects of human life, including reproductive health. Assistive Reproductive Technologies (ART), which includes methods such as in vitro fertilisation (IVF), surrogacy, and sperm or egg donation, have transformed the possibilities of parenthood, giving hope to many couples and individuals facing infertility. However, the intersection of these advanced reproductive techniques and existing legal frameworks, particularly the presumption of legitimacy under Indian evidence laws, creates a complexity in the changing technological landscape.

In India, the question of legitimacy and the presumption to prevent any prejudice from being caused, are clarified through the Indian Evidence Act of 1872. This presumption states that a child given birth to by a married woman

is presumed to be the legitimate child of her husband, unless proven otherwise. This legal presumption seeks to maintain social order and family integrity by ensuring that children born within the existence of a marriage do not face the social stigma of illegitimacy. It provides a framework that protects privacy and family autonomy while also balancing societal interests in preserving clear lineage and inheritance rights. However, the advent of ART calls into question long-held beliefs about conception, parentage, and legitimacy. With techniques like IVF and surrogacy, the biological connection between the child and the parents can be complicated, involving donors and surrogates. This complication necessitates a rethinking of existing legal presumptions and frameworks to adequately address the rights and responsibilities of all parties involved, including the child, intended parents, donors, and surrogates.

Determining legal parenthood is a critical issue that arises as a result of the use of ARTs. When donor gametes are used, the biological father

may not be the husband of the woman giving birth. Similarly, surrogacy arrangements can result in situations in which the surrogate mother carries and delivers the child but is not the intended legal mother. These scenarios complicate the dependence on the presumption of legitimacy because the traditional legal framework does not account for the distinction between genetic, gestational, and intended parenthood. This event warrants a consideration into the existing debate of reliability of DNA evidence over the preponderance of presumption, and whether DNA evidence in situations where any ART has been used is even required. Furthermore, the anonymity that often comes with gamete donation adds another layer of complexity. While the Indian legal system maintains the presumption of legitimacy to protect children from the social consequences of illegitimacy, ART procedures may obscure the child's genetic origins, raising legal and ethical concerns about the right of a child to know the parents biologically related to them. The conflict between protecting the child's legitimacy and ensuring transparency about their genetic heritage is a pressing issue that the legal system must address.

In light of these challenges, it is critical to consider how Indian evidence laws can adapt to the realities introduced by ART. The purpose of this research paper is to examine the existing legal provisions governing the presumption of legitimacy in India and assess their effectiveness in dealing with the complexities brought about by ART. This research seeks to propose reforms that can harmonise the objectives of upholding legitimacy, protecting the rights of all parties involved, and ensuring justice and clarity in parentage determinations by conducting a thorough examination of legal precedents, statutory provisions, and comparative legal frameworks from other countries.

The findings of this study will help to shape the ongoing debate in India about family law and reproductive rights. By addressing the interplay between the presumption of legitimacy and assistive reproductive technologies, this project hopes to pave the way for a more equitable and informed legal approach to parentage and legitimacy in the modern era.

A. Research Objectives

1. To compare the existing laws of India with those of other countries to develop a comprehensive understanding of presumption of legitimacy with respect to the use of ART.
2. To analyse case studies to understand the application of existing laws.

B. Research Questions

1. How is the question of legitimacy interpreted currently in India in case an ART is used?
2. What is the legal regime followed in other countries to better streamline the use of ARTs and reduce litigation?
3. What are the lessons to be drawn from various case studies to make the law more comprehensive and adaptive given the rapid advancement in reproductive technologies?
4. Does the Bharatiya Sakshya Adhiniyam (BSA) fulfil the adaptive potential that may reform the laws related to presumption of legitimacy?

C. Research Methodology

In order to achieve the above-mentioned aims and objectives of the research, the researcher has employed the doctrinal method of research. A careful study of relevant and related literature has been done in order to assess the said issues. The method of research adopted for the study is both analytical and descriptive in nature. The researcher has tried to critically assess all the sources, such as other research works and e-resources. Opinions and observations of research scholars, academicians and other experts who have dealt with these issues have been used, and e-resources have been used to gather recent and up to date information to help the author in her endeavour to study the subject.

II. INDIAN LAWS RELATED TO LEGITIMACY AND THE EVIDENTIARY THRESHOLD

The Indian Evidence Act, 1872, under Section 112, which is now reproduced as section 116 of the Bharatiya Sakshya Adhiniyam, 2023 (BSA) lays down the provision for presumption regarding the legitimacy attributed to a child in cases where it is called into question. Section 116 of the BSA reads thus:

“Birth during marriage, conclusive proof of legitimacy. – The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate child of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.”

The language of the provision indicates that a child's legitimacy and presumption to such hinges on the fact that they are born during the time when a valid marriage was in existence, or if they are born 280 days (approximately 9

months) after its dissolution, and such date of birth is considered to be the conclusive proof required to ascertain and attribute legitimacy to the paternity of the child. The only exception allowed is by proving that the alleged father and the mother did not have any opportunity of sexual intercourse, which has no relation to cohabitation at the predicted or probable time of conception of the child.

A. Etymological Origins of the principle of Presumption

According to the law of evidence, a court may accept certain facts—that is, make certain assumptions—without requiring proof of them. Presumption is the act of taking something for granted in the lack of contradicting evidence. The Latin phrase "presumere," which means to take before or for granted, is where the word "presume" originates.

Understanding why the presumption of legitimacy is necessary as a legal provision is crucial. "Odiosa et inhonesta non sunt in lege prae sumenda", or "nothing odious or dishonourable will be presumed by the law," is the foundation of this legal presumption. Therefore, the law forbids immorality and vice. The idea that children are legitimate in a civilized society is one of the best examples of the principle. The well-known adage "pater est quem nuptiae demonstrant", which translates to "he is the father whom the marriage indicates," is also the foundation of this theory. The onus to prove otherwise rests with the person asserting differently, as the presumption of legitimacy states that a child born to a married woman is presumed to be legitimate.

This provision is based on the English law notion of legitimacy and deems to protect the ostracization of an innocent child and an unchaste woman from society. However, the only exception from such a presumption is by proving that there is no opportunity during which the parties to the marriage could have had access to each other.

B. The Indian Law of Legitimacy

The fact that a person is married is established in this part as definitive evidence of legitimacy. Proving "no access," or that he could not, at any point around the time when the child is estimated to have been conceived, have had any access, that is to say sexual intercourse with the mother, is the sole evidence needed to bring the legitimacy of the child into question. In section 112 of the Act, "begotten" refers to "conceived" rather than "born." Further, given the Indian landscape, the provision gives significant emphasis on the subsistence of marriage or marital relations at least 280 days prior to

separation since birth follows marriage as per the natural order.

However, the emphasis put on marriage and sexual intercourse between a man and a woman by the provision is one of the major causes of concern in light of the leaps and bounds taken by medical science, especially in the field of reproduction. Unfortunately, the same remains true for section 116 of the Bharatiya Sakshya Adhiniyam, since there have been no changes in the provision or additions to adapt to modern times where medical science has a prominent role in reproduction.

Other than this, the Indian Judiciary has categorically specified that blood-test or DNA test requested by the alleged father cannot be allowed as a matter of practice, and that there must be some strong prima facie evidence to dispute the legitimacy of the child. The rationale behind this clarification was that legitimacy of a child is not just a legal question, but a societal question as well. Putting such an existential question on a child as well as the mother attracts the ridicule and judgement of society.

But thanks to the advent of sperm banks or cryobanks, in-vitro fertilization, and surrogacy, sexual intercourse—that is, a man physically being close or having "access" to a woman—is no longer required in order to conceive a child. Despite the fact that the child is his biological child, the husband could demonstrate non-access as decided by the courts.

III. THE ROLE OF DNA TESTS AND THEIR EVIDENTIARY VALUE IN PROVING LEGITIMACY AS PER THE STATUS QUO

The section leans so heavily on presumption that it is regarded as "conclusive proof" of the child's paternity. The provision prohibits the production of any additional evidence to refute the paternity proof once it has been established. Here, we observe a departure from the standard procedure, which calls for examining every piece of evidence in order to develop a compelling theory and conclusion. While historically aimed at protecting women and children from stigma, this presumption now risks perpetuating injustice by barring DNA evidence since the courts still take DNA not as a routine but as an exception.

The criminal justice system is significantly impacted by forensic DNA analysis. This revolution has the benefit of providing more chances to convict the guilty and clear the innocent. The first paternity case in India that needed DNA proof was Kunhiraman v. Manoj.

The C.J.M. asserts that DNA evidence is a scientific analysis as well, and that Section 45 of the Indian Evidence Act, which allows for the admission of expert opinions, makes the opinion of a cellular and molecular biology expert admissible, just like the opinion of a chemical analyst or fingerprint expert. The Kerala High Court likewise affirmed this decision, ruling that paternity could be determined only by the results of a DNA test. The use of DNA evidence to decide upon paternity, although not a new or unexplored concept, is one saddled with debates surrounding the degree of reliance on the science behind it, and creating sound balance with the legal principles and considerations in place.

The degree of disagreement became so great that it was often proposed to change the Indian Evidence Act in order to remove section 112. It has been assumed, nevertheless, that "paternity" may be shown scientifically by DNA testing, while legally it can be established through the preponderance of presumption. The presumption contradicts the Best Evidence Rule, which requires courts to rely on the most reliable and accurate evidence available rather than presumptions or secondary inferences. DNA testing is undeniably the best evidence in paternity disputes, yet Section 112 compels courts to ignore it unless the highly restrictive condition of 'non-access' is met.

The ruling in *Nandlal Wasideo Badwaik v. Lata Nandlal Badwaik* requires the determination of truth and states that the court should be given the best available scientific evidence instead of depending on assumptions, especially when scientific discoveries provide conclusive answers. When a conclusive proof based on scientific advancement and a conclusive proof provided by law clash, the latter (the DNA test) must take precedence over the former (the presumption of conclusive proof as enshrined in "Section 112 of the Indian Evidence Act") because a DNA test result eliminates the need for presumption when the truth is known.

DNA test results are considered a strong piece of evidence in establishing paternity. Courts have acknowledged that DNA profiling can conclusively determine biological relationships, thus influencing decisions on maintenance and legitimacy. Concurrently, while DNA reports are powerful, they are often viewed as supplementary to other forms of evidence. Courts typically require a comprehensive evaluation of all evidence presented, including oral testimonies and circumstantial evidence, to reach a conclusion.

The use of a DNA test as proof to establish a child's paternity is only permitted in situations where there is a prima facie case in the husband's favor, meaning that there is proof that the husband is incapable of being the child's father because of his physical incapacity, a serious illness, or permanent impotence. In *Kanti Devi v. Poshu Ram*, the Court once again determined that a true DNA test result is regarded as scientifically reliable, but it is still insufficient to avoid the conclusiveness of Section 112 of the Act, even when it shows that the child was not born to the spouse. In *Bhabani Prasad Jena v. Convenor Secretary, Orissa State Commission for Women and Anr.*, the court decided that although a court could order a DNA test, it had to consider a number of factors, including the presumption under Section 112 of the IEA, the advantages and disadvantages of such an order to balance the parties' interests, and the test of "eminent need" to determine whether the court could reach the truth without performing the test.

In the case of *Dipanwita Roy v. Rombroto Roy*, the court decided that it could draw an unfavourable conclusion if the party did not follow the DNA testing order. In the situation discussed and considered under *Priyanka Janardhan Patil v. Janardhan Raghunath Patil*, where the respondent-husband had a strong suspicion regarding the paternity of the child, who was born out of wedlock, so he filed the aforementioned application to test the child's and the parties' DNA. According to the court, it is now a well-established legal stance that the results of a legitimate DNA test are considered to be scientifically accurate.

However, even though all of this debate, the case of *Aparna Ajinkya Firodia v. Ajinkya Arun Firodia* established that the children's right not to have their legitimacy questioned frivolously is nothing but an indispensable part of their right to privacy enshrined under Article 21 of Indian Constitution.

However, the accuracy of DNA evidence, although unquestioned and well recognised, is of little help when it comes to the cases involving the use of ART, since certain assistive techniques use donor gametes which may or may not belong to the desirous parent. In such a case the DNA test would reveal the child to be related to the donor and not the husband of the mother, when the paternity is challenged, for example in a case of sperm donation. In such cases, blind reliance on DNA as the sole and conclusive evidence would not only prejudice the child and mother, but also the donor parent

who in no way else is related to a child he does not even know.

IV. LEGITIMACY LAWS AND ACCOMODATION OF MODERN TECHNOLOGY

With the advent of rapid technological prowess and medical research, there have been numerous cases where couples and even single parents have used ARTs as a crutch to have a child. Through a nationwide survey in India, it was summarily found that the country currently houses over 40,000 clinics which provided the services of assisted reproductive technology (ART). India began its journey into the exploration and proliferation of the use of ART with the birth of Kanupriya, also known as Durga, in Kolkata in 1978, which marked the first instance of the birth of a test tube bay in India. However, the laws have failed to keep track with the technology, which has led to many questions which have been left unanswered. The principle which is enshrined in Section 116 of the BSA was established prior to the discovery and successful application of contemporary scientific breakthroughs, including deoxyribonucleic acid (DNA) and ribonucleic acid (RNA) testing, sperm banks or cryobanks, in vitro fertilization, and surrogacy gained the attention of the public and became a household topic of conversation.

The prevalent application of these technologies has complicated both the current family laws and the relevant provisions of other secular laws. Most of these technologies require more than two people to have a child, with the exception of Artificial Insemination by Husband (AIH). Thus, the idea of parenthood has evolved as a result of the usage of these technologies. Hence, it becomes challenging to ascertain the legitimacy of children in the context of current personal and secular legitimacy laws.

A. Legitimacy and ART: A Continuous Tussle

The provisions of Section 116 of BSA mentions the child's "mother" and "father", which become a matter of interpretation against the backdrop of ARTs. This happens because in case a person opts for an ART, the biological parents may differ from the commissioning parents. Another of the uncertainty is that, in the instance of donated sperm, the child's DNA will match that of the donor, who was never in contact with the child's mother. Another scenario involves a widow who uses her deceased husband's preserved sperm to conceive after his passing. The problem is that section

112 calls for the "continuance of a valid marriage," and since the child is unlucky to be born after the marriage has ended, it can be easily shown that the child is not legitimate. Similar to this, evaluating legitimacy and parenting in surrogacy becomes difficult as a woman other than the mother is involved, even though the child is biologically connected to the mother.

Given the debate above, it is clear that any sort of definitive assumption has no place in establishing a child's legitimacy or paternity when convincing evidence is readily available thanks to recent technical developments. The court must only use its discretion after carefully considering the interests of the parties and determining whether a DNA test is absolutely required for a fair decision in this case, despite the apparent conflict between a person's right to privacy and the court's duty to discover the truth.

Section 116 is now out of date if we apply it to contemporary ARTs. In surrogacy, a woman consents to serve as a surrogate mother and, after being implanted with the embryo, consents to give birth to a child for the commissioning parents as a gestational carrier. In that case, section 116 remains silent as to what presumption is to be drawn. In other words, which set of parents will be presumed to be the legal or legitimate parents of the child so born. This question arises because, as per a strict interpretation of the law, the child would be regarded as the legal child of the surrogate's husband, who is not involved in the entire arrangement, because the child was born while the surrogate and her husband were still legally married. However, this can be refuted on the basis of the husband and wife's inability to access one another.

This is where there stands a deficit of laws on the use of Assisted Reproductive Technologies (ART) in India. In 2005, ICMR has issued non-binding guidelines representing the first regulatory step under surrogacy. Under such guidelines, a child born through ART will be treated as the legitimate offspring of the intended parents, who enjoy the same rights and privileges as those born naturally. If the child is born via surrogacy, the biological parents may establish custody through DNA proof maintained by the clinic which would strengthen their rights to custody and parentage. Directives suggest that surrogate mother's hand over the child to the intended parents within 72 hours after birth, a timeframe in which these intended parents' rights shall be vested. Legitimization in surrogacy births is important

for the purposes of law of property among such surrogate-born children; hence, legal changes must be uniform in jurisdiction for such rights to exist.

V. ART ON THE GLOBAL STAGE

A. Family Law Reforms Act of 1969 of the United Kingdom

The societal approval of legitimacy is granted to any child so long as they are born during the existence of a legally valid wedlock unless proven differently by the presumption of validity, which has been accepted by English courts historically and is based on the dictum "pater est quem nuptiae demonstrant" (the father is whom the marriage indicates). Legitimacy was traditionally assumed even in cases where a woman had cheated, unless there was proof of the husband's incapacity or lack of access (i.e., no chance for sexual relations). Strict evidence requirements were loosened throughout time by legislation motivated by social and scientific developments, most notably the Family Law Reform Acts of 1969 and 1987. These rules allowed courts to make parental declarations, approved paternity testing (even without guardian approval), and reduced the bar of proof to refute the presumption from "beyond reasonable doubt" to a "balance of probabilities." Courts, however, upheld strict standards for demonstrating non-access, placing more weight on convincing evidence than on simple accusations of adultery. Although accusations of infidelity alone are still inadequate to undermine legitimacy, the presumption can now be refuted using evidence of non-access under a more straightforward threshold. Maintaining marriage presumptions while adjusting to contemporary demands for biological truth and justice is balanced in this progression.

B. Sieglein V. Schmidt

In *Sieglein v. Schmidt*, the Maryland Court of Appeals addressed the legitimacy and parental responsibility in cases involving Assisted Reproductive Technology (ART), specifically in vitro fertilization (IVF). Stephen Sieglein consented to IVF with his wife Laura Schmidt, resulting in the birth of a child. However, following their separation, Sieglein challenged his legal paternity, arguing that Maryland's artificial insemination statute did not cover IVF. The court interpreted the statute broadly to include all ART methods, extending legitimacy protections to children born through

ART if conceived with the consent of both married parents.

This ruling ensures the legitimacy of children conceived through ART, granting them rights akin to those of naturally conceived children, including inheritance and parental support. It clarifies that consent to ART processes establishes parental responsibility, supporting a uniform standard of legitimacy for ART-conceived children. This broad statutory interpretation impacts other ART cases by creating a legal precedent that recognizes the legitimacy of children born via various reproductive technologies, minimizing potential disputes over parentage and enhancing protections for all ART-conceived offspring.

C. Surrogacy and Legitimacy in Thailand

The Protection for Children Born Through Assisted Reproductive Technologies Act, 2015, enacted by Thailand's National Legislative Assembly, establishes legal safeguards for children born via ART, particularly surrogacy. This law addresses the rights of intended parents and the child's legitimacy, creating a legal framework to secure the child's status. Under the Act, intended parents are considered the child's legal parents, providing the child with inheritance and social benefits and protecting the child's legitimacy irrespective of gestational surrogacy complexities. The law requires genetic ties between the child and at least one intended parent, prohibiting commercial surrogacy to prevent exploitation and restricts surrogacy to married heterosexual Thai citizens or residents.

This legislation impacts ART legitimacy issues by setting standards that secure legal parentage and prohibit foreign procreative tourism, thereby attempting to limit potential human trafficking and exploitation in commercial surrogacy. By requiring intended parents to be legally recognized, the law supports ART legitimacy in cases where traditional parental definitions might otherwise apply, thus strengthening ART regulation and child protection in the Thai context.

D. The Assisted Reproductive Technology Act 2021

The Assisted Reproductive Technology (Regulation) Act, 2021 in India clearly establishes law guidelines protecting the legality and rights of children born through ART. It holds that children born via ART are the biological children of the commissioning couple, thus protecting the child's inheritance rights, social privileges, and legal parentage. Surrogate mothers and donors must waive all parental

rights, making the commissioning parents the child's legal guardians.

This framework addresses legitimacy concerns by assimilating the rights of ART-born children with those born naturally to align the legal parentage in all reproductive technologies. The Act impacts the practice of ART through its enforcement, which deters unauthorized ART activities and commercial surrogacy, thereby reducing the risks of trafficking and exploitation. It enforces strict criteria for eligibility to access ART services with altruistic surrogacy only, insurance coverage for the surrogates, and legal accountability for violations. In other words, the Act finally lays down a comprehensive legal framework that safeguards the rights of a child born through ART and respects parental intent by establishing parental rights and ethical practices, which reduce the ambiguity surrounding parentage and responsible use of ART in India.

E. Shailja Nitin Mishra v. Nitin Kumar Mishra

In *Shailja Nitin Mishra v. Nitin Kumar Mishra*, the Bombay High Court ruled that a sperm or egg donor in surrogacy has no parental rights over the child. The case involved a woman who, along with her husband, pursued surrogacy using her sister's egg. After personal conflicts, the sister sought visitation rights, claiming maternal status. The court rejected her claim, affirming that only the commissioning couple has legal parentage. This decision strengthens the legitimacy of children born through ART, safeguarding them from custody disputes involving donors and reinforcing parental rights for intending parents.

VI. CONCLUSION

In conclusion, the rapid advancement in Assisted Reproductive Technologies (ART) necessitates legal frameworks that adapt to new complexities surrounding parentage and legitimacy. The presumption of legitimacy under the *Bharatiya Sakshya Adhiniyam*, still based on traditional norms from the Indian Evidence Act, requires evolution to accommodate ART's realities, where genetic, gestational, and intended parenthood can differ. Existing laws often overlook these distinctions, causing legal ambiguity and, at times, hardship for individuals striving for parenthood. Updating the *Bharatiya Sakshya Adhiniyam* to recognize ART-based reproduction and provide clear guidelines on legitimacy will protect the rights of intended parents, surrogate-born children, and other stakeholders.

The following steps can be undertaken to achieve clarity in paternity for ART procedures:

1. The rapid advancements in Assisted Reproductive Technologies (ART) demand a legal framework that clearly categorizes procedures based on gamete sourcing—whether from the husband, a donor, or a third party. Such categorization should establish definitive rules for determining paternity, ensuring that contractual agreements between all parties (including donors, intended parents, and surrogates) are legally binding to prevent prejudice against the child. This would eliminate ambiguity in parentage disputes arising from ART procedures.

2. Additionally, the evidentiary threshold in legitimacy disputes should not be left to judicial discretion alone. A procedural mandate must be introduced, particularly in cases where the husband's sperm is used, making DNA testing obligatory when contested. However, where the male gamete is sourced from a donor, DNA evidence should not be ordered, and the presumption of legitimacy under Section 116 of the *Bharatiya Sakshya Adhiniyam* (BSA) should prevail, provided there is a prior contractual agreement. This would prevent frivolous litigation where husbands later deny paternity despite prior consent.

3. The requirement of "conclusive proof" under Section 116 should be redefined beyond mere "access" between spouses. Factors such as documented consent to ART procedures, medical records, and prior agreements should also be considered to establish legitimacy conclusively.

4. Lastly, in surrogacy arrangements, the law must explicitly distinguish the legitimate father—whether the commissioning father or the surrogate's husband—based on prior agreements and genetic linkage. Clear guidelines should negate any unwarranted claims by the gestational mother's spouse, ensuring legal certainty for all parties involved. By incorporating these reforms, the BSA can effectively adapt to modern reproductive realities while safeguarding the rights of children and parents alike.

Harmonizing India's approach with ART advancements will help fulfil the dream of parenthood, ensuring it remains accessible, ethically regulated, and legally secure. This evolution is essential to streamline ART processes, reduce potential conflicts over parentage, and uphold justice in a way that respects both biological realities and the evolving societal understanding of family.