

## LEGAL AND ETHICAL IMPLICATIONS OF ARTIFICIAL INSEMINATION WITHOUT SPOUSAL CONSENT: EXAMINING ADULTERY IN THE CONTEXT OF REPRODUCTIVE AUTONOMY

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### **ABSTRACT**

This paper examines the legal implications of artificial insemination by donor (AID) in India, especially in relation to the grounds for divorce on the basis of adultery. It reviews the existing laws and judicial decisions on adultery and AID and analyzes the arguments for and against considering AID as a form of adultery. It also discusses the ethical and social issues involved in the use of AID without the consent of the spouse. The paper concludes that AID does not amount to adultery under the current legal framework, but suggests some possible reforms to address the concerns of the aggrieved parties. Keywords: artificial insemination, adultery, divorce, India.

**Keywords:** Artificial insemination, Reproductive autonomy, Spousal consent, Adultery Laws.

### **INTRODUCTION**

The institution of marriage is widely regarded as a cornerstone of societal relationships, rooted in religious and legal foundations, and fundamentally built upon trust and faithfulness. Consequently, fidelity is a natural and fundamental expectation within marriage. Extra-marital affairs, commonly known as cheating, are legally defined as 'adultery,' where one partner engages in sexual intercourse outside the bounds of marriage. In the context of a valid marriage, adultery occurs when a husband engages in sexual relations with a woman other than his wife, or when a wife engages in sexual relations with a man other than her husband. This voluntary sexual intercourse between a married individual and someone other than their spouse constitutes adultery. It is important to note that the act of adultery does not necessitate multiple occurrences of sexual intercourse; a single instance is sufficient to establish the act of adultery.

The contemporary landscape of reproductive medicine and ethical considerations has brought to the forefront the intricate and sensitive issue of artificial insemination without spousal

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consent. This practice raises complex legal and ethical questions, particularly concerning the rights of individuals in making reproductive choices and the implications of such actions within the institution of marriage. Moreover, the intersection of this issue with the concept of adultery adds another layer of complexity to the discourse on reproductive autonomy.

In this context, this research endeavours to meticulously examine the legal and ethical implications of artificial insemination without spousal consent, while also delving into the nuanced understanding of adultery within the broader framework of reproductive autonomy. By navigating through these intricacies, this study aims to contribute to a deeper understanding of the multifaceted ethical and legal considerations inherent in this evolving domain, shedding light on the complex interplay between individual rights, marital obligations, and reproductive autonomy.

**Assisted Reproductive Technology:** Assisted Reproductive Technology (ART) encompasses medical procedures aimed at achieving pregnancy through non-coital methods. ART serves as a solution for infertility, involving the manipulation of sperm and eggs outside the body, with resulting embryos being transferred into the uterus. Notable techniques within ART include Artificial Insemination (AI) and In Vitro Fertilization Embryo Transfer (IVF, ET), etc.

**Artificial Insemination:** Artificial insemination refers to a fertility treatment method that involves the deliberate introduction of sperm into a woman's reproductive tract, typically performed to facilitate conception in cases of infertility or for other reproductive purposes.

## **ADULTERY LAWS IN INDIA**

In India, the adultery law was formally laid down as part of the Indian Penal Code, 1860, under Section 497<sup>1</sup> during British rule. However, on September 27, 2018, the Supreme Court of India declared Section 497 unconstitutional, effectively eliminating it as an offense in India. The court ruled that while adultery cannot be a criminal offense, it can still be a ground for civil issues like divorce. Under the Indian Penal Code, Section 497 defined adultery as a criminal offense and outlined the punishment for it, including imprisonment for up to five years, a fine, or both. This section specifically targeted the act of sexual intercourse between a married woman and a man other than her husband, making the man guilty while exempting the wife

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<sup>1</sup> *Indian Penal Code 1860, s 497*

from punishment<sup>2</sup>. The history of this law reveals its roots in a patriarchal concept, treating women as the property of their husbands and considering the act of adultery as a crime against the husband. The law was challenged based on gender discrimination, leading to its eventual declaration as unconstitutional by the Supreme Court. Adultery is now a ground for divorce under family law in India, and it is treated differently in cases involving members of the armed forces<sup>3</sup>.

Under Hindu law, adultery is a ground for divorce according to Section 13(1) of the Hindu Marriage Act, 1955<sup>4</sup>, and similar provisions exist in Muslim and Christian laws as well. These legal provisions reflect the evolving understanding of adultery within the Indian legal system and its implications for marriage and divorce proceedings.

## LEGAL EVOLUTION

The case of *Joseph Shine vs. Union of India* in 2018 led to the striking down of Section 497<sup>5</sup>, with the Supreme Court ruling that the law treated women as subordinate to men and reflected social dominance prevalent at the time of its drafting. The law was found to be arbitrary and manifestly discriminatory, as it did not protect women and allowed husbands to deal with their wives, as they liked, while not providing similar protection to the other women involved. This historic judgment led to the decriminalization of adultery, marking a significant shift in India's legal landscape concerning marital relationships and gender equality<sup>6</sup>.

## RELEVANT CASE LAWS: ARTIFICIAL INSEMINATION AND ADULTERY

The legality of artificial insemination without spousal consent, and whether it amounts to adultery, has been a subject of legal scrutiny globally. In the case of *Oxford v. Oxford* (1921)<sup>7</sup> in Canada, the court ruled that a wife's recourse to Artificial Insemination by Donor (AID) without the husband's consent constituted adultery, highlighting the evolving legal stance on this issue.

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<sup>2</sup> Lavanya Gupta, 'Punishment for adultery in India' (2023)

<<https://blog.ipleaders.in/punishment-for-adultery-in-india/>> accessed on 24 January 2024

<sup>3</sup> Ibid

<sup>4</sup> Hindu Marriage Act 1955, s 13(1)

<sup>5</sup> *Indian Penal Code* 1860, s 497 (*Joseph Shine v Union of India* (2018) SC 1676)

<sup>6</sup> Sayeri Biswas, 'Why Was The Adultery Law Anti Women: A Look Back At Its History & Supreme Court's Verdict' (2022) <<https://feminisminindia.com/2022/11/30/why-was-the-adultery-law-anti-women-a-look-back-at-its-history-supreme-courts-verdict/>> accessed on 23 January 2024

<sup>7</sup> *Oxford v Oxford* (1921] P 409

A significant development in the United States, as illustrated in *Doornbos v Doornbos*<sup>8</sup>, involved a wife seeking court clarification on the legal status of artificial insemination. The court opined that heterologous artificial insemination, with or without the husband's consent, goes against public policy and good morals. It was deemed an act of adultery on the part of the mother, and any child conceived through this process was not considered born of legal wedlock, thus lacking legitimacy.

**MacLennan v MacLennan**<sup>9</sup>: This was a Scottish case in 1921, where the husband sued for divorce on the grounds of adultery by artificial insemination by a donor (AID). The court held that AID did not amount to adultery, as there was no physical union with another person<sup>1</sup>. In the Indian context, the legal interpretation of artificial insemination's impact on the consummation of marriage or potential adultery hinges on the personal law context of the petitioner. The issue remains open to interpretation, reflecting the need for a nuanced understanding within the diverse legal frameworks and cultural contexts surrounding artificial insemination without spousal consent<sup>10</sup>.

**Subbarma v Saraswathi**<sup>11</sup>: This was an Indian case in 1957, where the husband sought divorce on the ground of adultery by AID. The court ruled that AID was a form of adultery, as it involved the introduction of a third party's sperm into the wife's womb. The court also held that the husband's consent was irrelevant<sup>2</sup>.

**Banchanidde v Kamladas**<sup>12</sup>: This was another Indian case in 1960, where the husband filed for divorce on the grounds of adultery by AID. The court dismissed the petition, as it found that there was no conclusive evidence of AID. The court also observed that AID did not constitute adultery unless there was strong circumstantial evidence to prove it.<sup>3</sup>

## CONCLUSION

The legal and ethical implications of artificial insemination without spousal consent, particularly in the context of examining adultery and reproductive autonomy, present a complex and evolving landscape. The historical and contemporary considerations surrounding

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<sup>8</sup> *Doornbos v Doornbos* [2008] EWCA Civ 1544

<sup>9</sup> *MacLennan v MacLennan* [1958] SC 105

<sup>10</sup> Albert P. Massey Jr, 'Artificial Insemination: The Law's Illegitimate Child' (1963) 9 (1) Villanova Law Review

<sup>11</sup> *Subbarma v Saraswathi* [1966] 2 MLJ 263

<sup>12</sup> *Banchanidde v Kamladas* [1980] AIR 1981 Ori 1

adultery laws assisted reproductive technology, and relevant case laws provide valuable insights into this multifaceted issue.

The implications of artificial insemination without spousal consent go beyond legal definitions and extend into the realms of reproductive autonomy, marital obligations, and individual rights. The conflicting interpretations and societal attitudes towards artificial insemination underscore the need for comprehensive legal and ethical frameworks to address the complexities of this practice.

## SUGGESTIONS

***Clarity on Adultery Definition:*** There is a need for a clear and comprehensive definition of adultery within the legal framework, particularly in the context of assisted reproductive technologies, to address the intricacies of artificial insemination without spousal consent.

***Spousal Consent Legislation:*** Legislative measures should be considered to explicitly address the requirement of spousal consent in cases of artificial insemination, thereby providing a legal foundation for safeguarding the rights of individuals involved.

***Informed Consent:*** Ethical guidelines should emphasize the significance of informed consent from all parties involved in artificial insemination procedures, ensuring respect for individual autonomy and decision-making.

***Reproductive Autonomy:*** The ethical principle of reproductive autonomy should be central in shaping policies and guidelines related to artificial insemination, reflecting a balance between individual rights and marital responsibilities.

***Ethical and Legal Education:*** Initiatives aimed at educating the public about the legal and ethical implications of assisted reproductive technologies, including artificial insemination, should be prioritized to enhance awareness and understanding of these complex issues.

***Professional Training:*** Comprehensive training for medical professionals and legal practitioners on the nuances of artificial insemination and its ethical and legal considerations is essential to ensure informed and ethical practice.

## CONCLUSION

The exploration of the legal and ethical implications of artificial insemination without spousal consent within the context of examining adultery and reproductive autonomy necessitates a holistic approach that integrates legal clarity, ethical considerations, and public awareness. As this domain continues to evolve, it is imperative to develop inclusive and balanced frameworks that uphold individual rights, respect marital relationships, and adhere to ethical standards within the landscape of reproductive medicine and family law.

