

# Delhi HC issues notice to govt: What rules govern frozen embryo donation, why they have been challenged

The petition has been filed by an IVF specialist and questions why the law permits some forms of non-genetic parenthood while blocking others. We explain the details.

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The HC observed that the petitioner was seeking an expansion of the scope of Section 28 of the ART Act, and sought a response from the Union government. (File)

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The Delhi High Court last week issued notice on a **PIL that asks whether the law can require viable frozen embryos to be destroyed rather than donated, even when couples consent on both sides.**

To oppose what it describes as a “blanket prohibition” on “altruistic, voluntary, consent-based donation” of unused frozen embryos to infertile couples, the plea challenges provisions of the Assisted Reproductive Technology (Regulation) Act, 2021, and its Rules, which permit embryos to be created using donor sperm and donor eggs **but prohibit the donation of unused frozen embryos** for reproductive use by another couple.

Under this framework, such embryos may be stored for up to 10 years and must be “allowed to perish” or be donated for research. The plea describes this as the “irrational destruction of viable embryos” and argues that it is ethically incongruent to mandate they perish when **willingly recipient couples exist**. Hearing the plea, the Division Bench of Chief Justice D K Upadhyaya and Justice Tejas Karia observed that the petitioner was seeking an expansion of the scope of Section 28 of the ART Act, which governs the storage and handling of embryos, and sought a response from the Union government.

The petition has been filed by IVF specialist Dr Aniruddha Narayan Malpani, and questions why the law permits some forms of non-genetic parenthood while blocking others. “You allow certain technology but not another technology,” Maneka Guruswamy, representing the petitioner, submitted in the court. “It appears to be a legislative oversight.”

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## What the law permits on frozen embryos

The ART Act, enacted in 2021, permits altruistic donation of sperm and eggs under regulated conditions. It also allows donor-assisted IVF, including “double-donor IVF” where an embryo

is created from donor sperm and donor oocytes are transferred to a commissioning couple. In such cases, the child has no genetic link to either parent, a position the statute accepts.

What the law does not permit is the donation of surplus frozen embryos.

These embryos arise because IVF cycles often create multiple embryos to improve success rates. However, not all of these are implanted. Many couples later decide they do not want another pregnancy, but their embryos remain cryopreserved. It is at this stage that the law restricts their use.

## How the prohibition operates

There is no explicit ban on “embryo adoption”. The restriction primarily flows from multiple provisions read together. Clinics must preserve unused embryos exclusively for the original commissioning couple and are barred from using them for any other person. Transfer of embryos to their parties is prohibited except where a couple seeks transfer of its own embryos for personal use with regulatory permission.

Section 28(2) further limits storage to 10 years. After this period, embryos must either be “allowed to perish” or donated to registered research institutions, subject to consent. The statute provides no framework for the donation or adoption of the embryos to another couple for reproductive use.

Consent forms under the rules mirror this structure. Couples are asked to decide what should happen to embryos in events such as death or separation, but donation to another couple is not an available option.

## Fresh and frozen embryos

A central issue raised in the plea is the distinction the law draws between fresh donor embryos and frozen embryos. Fresh embryos created using donor sperm and donor eggs may be transferred to a commissioning couple. Frozen embryos, once thawed, are biologically equivalent and routinely used in IVF practice.

Despite this, frozen embryos are treated as non-transferable for reproductive purposes. The petition describes this as a “double standard”; genetic non-linearity is accepted when embryos are created fresh, but rejected once embryos already exist and are frozen.

## The constitutional challenge

The plea rests its challenge on Articles 14 and 21 of the Constitution. On equality, it argues that the law creates an “arbitrary and constitutionally untenable distinction” between couples who receive fresh donor embryos and those who seek frozen embryos. In both cases, the child has no genetic link to the parents. According to the petition, the classification lacks an “intelligible differentia,” i.e., a clear rational basis for explaining why one category is permitted and the other prohibited, and bears no rational nexus to the object of law, thereby failing the test of equality under Article 14, which permits differential treatment only where a clear basis exists.

On personal liberty, the petition places reproductive choice within the right to life, dignity and privacy. Decisions about whether and how to have a child through ART, it argues, fall within decisional autonomy. By denying embryo donation as a medically recognised option, the state effects an “unwarranted intrusion” into reproductive choice.

A recurring theme in the challenge is the law’s insistence on destruction. After 10 years, embryos must be “allowed to perish” if not used by the original couple. The petition argues that compelling embryos to perish while barring their transfer to consenting recipients results in a “legislative absurdity”

## Why the case matters

Infertility affects an estimated 27-30 million couples in India. IVF is expensive and often requires repeated cycles. Traditional adoption involves long waiting periods. The plea states that embryo donation could provide a regulated option for some couples and allow pregnancy and childbirth where other routes are unavailable. It also points to access concerns, noting that couples with resources may seek embryo donation abroad, while others cannot, effectively turning reproductive choice into a matter of means.

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