

**LIFE BEYOND DEATH: POSITIVE ASPECTS OF POSTHUMOUS REPRODUCTION****Dr. Sandli Brice**Advocate, Himachal Pradesh High Court, Ravenswood, Shimla, Himachal Pradesh, India  
bricesandli@gmail.com**Abstract**

*Human mortality has never marked the end of human aspiration; rather, law and science together now offer pathways through which legacy, lineage, and identity may survive death. Posthumous reproduction, enabled by advances in cryopreservation and assisted reproductive technologies, represents a profound intersection of autonomy, dignity, family, and continuity. While much discourse on posthumous reproduction focuses on its ethical dilemmas, this paper addresses a critical gap by systematically examining the underexplored positive ethical, legal, and societal dimensions, arguing that it serves not only private desires but also deeply rooted cultural and human values. Courts across jurisdictions have increasingly adopted a compassionate and rights-based approach, recognizing implied consent, reproductive autonomy, and property interests in genetic material, as reflected in landmark decisions in various countries. Indian constitutional jurisprudence further anchors posthumous reproduction within the fundamental right to life and personal liberty under Article 21 of the Constitution of India. By acknowledging posthumous reproduction as an expression of the right to continuity and legacy, the law moves beyond biological finality toward a more humane and future-oriented understanding of the family, inheritance, and remembrance. Ultimately, posthumous reproduction affirms that while life may end, the human will to create, belong, and endure persists.*

**Keywords:** Posthumous Reproduction; Reproductive Autonomy; Implied Consent; Right to Continuity; Genetic Legacy; Assisted Reproductive Technology

**Introduction**

When a person passes away, their life story does not carry on by itself.<sup>1</sup> Instead, it lives on through the life stories of those left behind, especially their loved ones. A significant way this legacy endures is through the fulfilment of their will, which reflects their wishes regarding financial matters and personal values (Kasher, A. (2003). Thus, their story continues to shape the lives of others even after they are gone. A person's life story lives on in more ways than just a memory and one powerful way is through their name (Kasher, A. (2003). After death, a first name is etched into a tombstone as a lasting tribute to their existence. In many cultures, others are named in their honour, carrying forward a piece of their legacy. Surnames persist through generations and are passed down to offspring. This shared surname creates a bond, a symbol rich in social meaning.<sup>2</sup> The practice of using surnames to signify lineage, although common today, is a relatively modern cultural tradition.<sup>3</sup>

As society advances, so do the ways in which we preserve and extend our legacies. Posthumous reproduction is a testament to humanity's unyielding desire for *legacy and continuity*. This groundbreaking approach enables individuals to transcend the boundaries of mortality, allowing their genetic lineage to thrive in future generations. It creates a profound and enduring connection, ensuring that the essence of one's identity lives on, weaving a lasting bond with descendants who are yet to be born. Posthumous reproduction occurs when a child is born after one or both parents have

died. It has historically occurred as a result of accidents or tragedies when fathers die before their child's birth or mothers die during childbirth.<sup>4</sup> Today, advancements in the cryopreservation of sperm and embryos, alongside the ability to sustain brain-dead pregnancies, have transformed it into an intentional act of foresight and hope. Posthumous reproduction is reshaping the narrative of life and legacy by offering a deeply meaningful way for individuals to leave an indelible mark on the future (Robertson, J. A. (1994). Posthumous reproduction touches on various interconnected aspects, including ethical, legal, social, and cultural dimensions. Given the prevailing focus on challenges, this discussion uniquely explores the positive perspectives on each of these issues—ethical, legal, social, and cultural to provide a more balanced and comprehensive understanding, delving into them in detail. This study employs a multi-jurisdictional legal and ethical analysis, drawing on landmark court decisions from the UK, US, Israel, and India, complemented by an examination of relevant statutes and cultural norms. This approach allows for a comprehensive understanding of how the legal and societal perspectives on posthumous reproduction have evolved.

**Ethical Issues**

To navigate the complex ethical landscape surrounding posthumous reproduction, this study undertakes a comparative legal analysis, focusing on key judicial developments in the UK, the US, and India. These jurisdictions were selected

because of their significant contributions to jurisprudence on consent, property rights, and key ethical questions surrounding posthumous reproduction, namely, whether the deceased had given explicit consent for their gametes to be used after their death.<sup>5</sup> The predominant ethical stance emphasizes that using a deceased individual's gametes without their consent could violate the "principle of autonomy" which is the foundation of bioethics.<sup>6</sup> However, courts and legal precedents have increasingly addressed cases in which consent was unclear, providing frameworks that uphold ethical principles while supporting the rights of surviving family members and partners.

### **Consent and Respect for Autonomy**

A common concern is whether prior written consent is required for posthumous reproduction. While many argue that explicit consent is essential, several cases have demonstrated a more flexible approach to interpreting consent, favouring implied or inferred consent. In the case of (*Elizabeth Warren v. Care Fertility (Northampton) Limited and Other*, 2014), the England and Wales High Court (Family Division) held that written consent was not strictly necessary. This ruling emphasizes the need to balance procedural requirements with the dignity and rights of surviving parties, thereby ensuring reproductive autonomy even in unconventional circumstances. Similarly, in (*K.L.W. Genesis Fertility Centre*, 2016) the Supreme Court of British Columbia discussed cases where the husband's wishes were recorded, even partially, including decisions from the United Kingdom, where consent can be vague. In this case the court held that not allowing the petitioner to use the deceased's reproductive material would be an affront to her dignity.<sup>7</sup> The court declared the reproductive material to be the sole property of the petitioner, to be released for the purpose of creating embryos for her reproductive use, while prohibiting any commercial use of the embryos. In several jurisdictions courts have held in favour of posthumous reproduction on the basis of implied or inferred consent or due to the lack of opportunity for the decedent to offer explicit consent. This decision underscores the ethical importance of considering the surviving partner's emotional and reproductive rights alongside the deceased's potential wishes.

### **Implied or Inferred Consent**

In cases where explicit consent was not given, courts have relied on implied or inferred consent, acknowledging that the deceased might not have had the opportunity to express their wishes clearly. Several jurisdictions support posthumous reproduction under such circumstances. In (*Monica*

*Zhu & Yongmin Zhu*, 2019) the Supreme Court of New York allowed the genetic material of an unmarried son to be handed over to his parents, recognising them as the nearest of kin and *legal heirs*. Thus, they had the right to decide how genetic material should be dealt with. This decision reflects a compassionate approach, giving weight to family bonds and the ethical significance of honouring the deceased's lineage.

### **Reproductive material as property**

Another positive perspective lies in treating genetic material as property, enabling it to be treated as an ordinary succession. The High Court of Australia in (*Doodeward v. Spence*, 1908) marked a significant legal shift by recognising that body parts, once removed, could be subject to property rights. This concept was further expanded in (*Yearworth v. North Bristol NHS Trust*, 2009) the UK Court of Appeal held that sperm constitutes property owned by men who provided it, even after it has left their bodies. Thus, the court treated sperm and other reproductive materials as property. This precedent reinforces the idea that individuals retain the rights to their reproductive material.

Furthermore, in (*Re Application by VERNON*, 2020) the Supreme Court of New South Wales dealt with the posthumous retrieval of reproductive material. The court held that reproductive material may be retrieved even after the person's death. It also established a hierarchy of legal representatives with the *spouse ranked first, children second, and parents of the deceased third*. Court further recognised that the transplantation of reproductive material could be used either in the body of a living person or for research, development, and therapeutic purposes, while prohibiting commercial exploitation. Additionally, the Court held that once semen is removed from the body of a person awaiting burial, it constitutes a property.

### **Legal Issues**

The legal landscape surrounding posthumous reproduction is complex, with many jurisdictions grappling with issues of consent, property rights, and legal authority to request and manage reproductive material after death. While current laws often leave gaps or fail to explicitly address posthumous reproduction, courts have increasingly recognised the right to posthumous reproduction and the importance of addressing these legal challenges.

### **Recognition of the Right to Posthumous Reproduction**

In recent years, courts and legal frameworks have begun to recognise posthumous reproduction as a right tied to individual autonomy and the fundamental right to procreate. The Assisted

Reproductive Technology (Regulation) Act, 2021, aims to assist infertile couples or women and does not extend to cases where the parents of the deceased wish to have a grandchild through surrogacy using the semen sample of the deceased. Furthermore, the Surrogacy (Regulation) Act, 2021 applies only to intending couples or women with medical needs for surrogacy and does not cover grandparents as 'intending grandparents'. Therefore, neither statute deals with posthumous reproduction. In addition, there is no bar on the parents seeking the release of the semen sample or gametes for utilisation for posthumous surrogacy under the said statutes. Except that the ART Act defines a 'commissioning couple' to be of a particular age.<sup>8</sup> Thus, there is a legal vacuum. This legal vacuum also provides an opportunity for further legislative development to explicitly accommodate posthumous reproduction, offering a chance for the law to evolve in response to changing societal and reproductive norms.

### **Legal precedents Supporting Posthumous Reproduction**

Legal precedents have also been instrumental in recognising the right to posthumous reproduction. In (*Nandini K. v. Union of India*, 2022) the Kerala High Court ruled that the right to procreate is a fundamental right under Article 21 of the Constitution of India which guarantees right to life and personal liberty. This is further supported by the case of (*ABC v. Government of NCT Delhi and Ors.*, 2021) the Delhi High Court ruled in favour of parents seeking access to their deceased son's semen sample for posthumous conception. The court affirmed that any biological material belonging to a deceased individual who has *passed away intestate would belong to his heirs*, as per the Hindu Succession Act, 1956.<sup>9</sup> In this case, the parents, as *Class-1 legal heirs* in the absence of a spouse or children, were granted the right to request the use of the deceased's gametes for reproductive purposes even after death. This positive legal recognition empowers surviving family members, particularly parents, to make decisions regarding the deceased's reproductive material, reinforcing the importance of family autonomy and the protection of reproductive rights.

### **Cultural And Societal Issues**

Drawing on established sociological observations of Indian society, the deep-rooted cultural practices concerning grandparental involvement in child-rearing are examined. This specific cultural context is crucial for understanding societal acceptance and positive framing of posthumous grandparenthood, particularly in cases where bereaved parents seek to continue their child's lineage. It is common for

grandparents to assume full responsibility for raising children, particularly in cases of separation, divorce, or the death of one or both parents. This cultural ethos fosters a strong sense of familial duty and ensures that children thrive in a supportive and nurturing environment. In custody disputes, Indian courts have often prioritized the welfare of the child over biological ties, highlighting the significant role that grandparents can play. In (*Nil Ratan Kundu v. Abhijit Kundu*, 2008) the respondent, the father of a minor child, filed an application under the Guardians and Wards Act, 1890, seeking custody of his son. The child was in the custody of the appellants, the maternal grandparents, following the death of the child's mother. The trial court granted custody to the respondent, reasoning that as the father and natural guardian, he was better suited to secure the child's future. The High Court upheld this decision. However, the child refused to go with the respondent when asked by the Supreme Court. The Supreme Court, allowing the appeal, held that the subordinate courts failed to apply the well-settled legal principle that the *welfare of the child* should be the paramount consideration in custody cases. The Supreme Court in this case highlighted the importance of the children's welfare, not the right of their parents, ultimately favouring the maternal grandparents over the biological father. This decision underscores the society's acknowledgment of grandparents as capable and loving caregivers, reinforcing the cultural acceptance of posthumous grandparenthood.

### **Post-mortem Grandparenthood (PGM) as a Cultural Phenomenon**

The concept of Post-mortem Grandparenthood (PMG) is gaining acceptance, particularly among bereaved parents seeking to create grandchildren using their deceased child's preserved genetic material. This practice is seen not only as an extension of familial bonds but also as a commemorative act that honours the deceased's memory and fulfils their perceived wish to continue their lineage. PMG allows families to maintain a connection with their lost child, offering emotional solace and a sense of continuity in the face of tragedy. The legal acknowledgment of a parent's interest in grandparenthood can be based on several compelling reasons. One key rationale centres, around the emotional bond parents share with their deceased child. The desire for grandchildren often becomes more pronounced after the loss of a child, as parents may yearn for a continued connection. For many, posthumous reproduction provides a deeply meaningful way to preserve 'a living link to their lost child,' allowing their legacy to live on through future generations.<sup>10</sup>

In the case of *Ms. Rajashree Patil*, a mother and sister honoured the wishes of a deceased unmarried son who had cryopreserved his sperm before undergoing cancer treatment.<sup>11</sup> With his prior consent, the preserved sperm was used to fertilise a surrogate, fulfilling his desire to have a child and granting his family a deeply meaningful connection to his legacy.<sup>12</sup> This case illustrates how the societal values of family unity and the continuation of lineage can be expressed through modern reproductive technologies. The integration of reproductive technologies into societal practices has reshaped attitudes toward families and legacies. Practices such as sperm preservation and surrogacy have become more widely accepted, especially when used for compassionate purposes, such as posthumous reproduction. These advances are increasingly viewed as tools that can support grieving families, allowing them to find solace and meaning in creating lives that honour the memory of their loved ones.

### Right To Continuity And Legacy

Posthumous reproduction revolves around the deep human desire for 'genetic continuity', where individuals, both men and women, seek to leave a lasting legacy, a part of themselves that lives on<sup>13</sup>, preserving their lineage and connecting them to future generations.<sup>14</sup> The belief that individuals desire genetic continuity is supported by numerous personal accounts from people who expressed interest in posthumous reproduction before their deaths. While these accounts are anecdotal, they offer valuable insights into the significance of preserving genetic legacy. *Irit Rosenblum*, director of the New Family Organisation in Israel<sup>15</sup>, has documented one notable case, where a young man specifically requested that his sperm be used to father children after his passing. Telling *Irit Rosenblum*:

*"Now I can die peacefully, knowing that life is not embodied only in the body. Life has energy, and that energy has a mission. Energy is concealed in every person who delivers the energy of life. Please help me to pass it on."*<sup>16</sup>

Legal systems in several jurisdictions have grappled with the ethical, moral, and legal questions surrounding posthumous reproduction. Notable cases reflect the increasing recognition of the right to continuity. In the landmark case of *Cohen v. Attorney General of Israel*<sup>17</sup> the Israeli legal system affirmed the young man's right to father children after death and independent of a female partner, validated the biological will, and recognised its benefits for children, parents, and grandparents (Rosenblum, I. (2016). This ruling highlights how the law can respect individual

autonomy and honour a person's legacy wishes, fostering emotional healing for grieving families. In *Anonymous v. Anonymous*<sup>18</sup>, the Supreme Court of Israel faced a nuanced debate. While the majority rejected the parent's application to use the deceased's sperm, (Simana S., 2018) *Justice Hanan Melcer's* minority opinion emphasised the importance of protecting the *deceased's right to continuity*. He asserted that evidence made it clear that the deceased wanted to have continuity through reproduction and leave a mark in this world. The court, thus, he argued, must protect the deceased's interest, and parents should be allowed to use the sperm of the deceased.<sup>19</sup>

Similarly, the Delhi High Court in (*ABC v. Government of NCT Delhi and Ors*, 2021) the petitioners were the parents of the deceased who intended to use the semen sample for the purposes of continuing the legacy of their son. The son died intestate. He was unmarried at the time of his death and did not have any partner or spouse. Thus, his primary legal heirs were his parents. As legal heirs, the petitioners were entitled to make decisions regarding the preservation and use of his biological material in the absence of any express objection from the deceased. The court emphasised that there was no statutory prohibition in India against using deceased person's sperm for reproductive purposes. This allowed the court to consider the petitioners' plea on equitable and compassionate grounds, guided by the absence of any legal barriers. The court observed that while posthumous reproduction raises ethical concerns, such decisions should also consider the emotional dimensions of the grieving family. The petitioners' intent to preserve their son's legacy was viewed as a genuine and deeply emotional pursuit, rather than a mere legal formality. Although there was no explicit written consent from the deceased regarding the posthumous use of his sperm, the court inferred that his lack of opposition to the sperm's preservation during his lifetime suggested tacit consent. The court considered the unique circumstances of the case, including the petitioner's sincere intent and the absence of competing claims or disputes in the matter. Thus, posthumous reproduction empowers individuals to have control their legacy and ensure that wishes are respected, even after death. It promotes the idea that a person's aspirations for continuity, whether through biological offspring, cultural contributions, or other means, deserve legal protection and societal support.

### Conclusion

Posthumous reproduction stands at the confluence of law, ethics, technology, and deeply human emotions, challenging traditional notions of life,

death, and family, while simultaneously reaffirming the enduring human desire for continuity. As this research has demonstrated, advances in assisted reproductive technologies have transformed posthumous reproduction from an accidental consequence of tragedy into a deliberate and meaningful choice that allows individuals and families to preserve lineage, identity, and memory beyond the biological death. Challenging the perception that posthumous reproduction inherently undermines ethical values, this study specifically argues that evolving judicial approaches demonstrate a growing sensitivity toward autonomy, dignity, and compassionate justice, particularly through the recognition of implied or inferred consent and the treatment of reproductive material as property. The evolving jurisprudence underscores a clear judicial trend that the law is increasingly willing to adapt to scientific realities and societal needs where no explicit statutory prohibition exists. Indian courts, in particular, have emphasised the primacy of personal liberty, reproductive choice, and family autonomy under Article 21, while cultural practices further legitimise the role of parents and grandparents in nurturing posthumously conceived children.<sup>20</sup> Beyond its biological implications, this paper posits that posthumous reproduction is not merely about creating life after death; it is fundamentally about respecting human intention, preserving dignity, and recognizing the right to continuity as an extension of the right to life. As legal systems continue to evolve, a sensitive, principled, and humane framework can ensure that even in death, an individual's hopes, values, and legacy are not silenced but carried forward into the future.

## References

1. Kasher, A. (2003). Life in the heart. *Journal of Loss and Trauma*, 8(4), 247–260. <https://doi.org/10.1080/15325020305885>
2. Almack, K. (2005). What's in a name? The significance of the choice of surnames given to children born within lesbian-parent families. *Sexualities*, 8(2), 239-254. <https://doi.org/10.1177/1363460705050857>
3. Davies, H. (2011). Sharing Surnames: Children, Family and Kinship. *Sociology*, 45(4), 554 - 569. <https://doi.org/10.1177/0038038511406600>
4. Robertson, J. A. (1994). Posthumous reproduction, *Indiana law journal*, 69(4), 1027–1065.
5. Schiff A. R. (1997). Arising from the dead: challenges of posthumous procreation. *North Carolina law review*, 75(3), 901–965.
6. Kroon F. (2016). Presuming consent in the ethics of posthumous sperm procurement and conception. *Reproductive biomedicine & society online*, 1(2), 123–130. <https://doi.org/10.1016/j.rbms.2016.05.003>
7. ABC v. Government of NCT of Delhi and Ors, W.P. (C) 15159/2021(Del HC), Judgment dated 4 October, 2024.
8. The Assisted Reproductive Technology (Regulation) Act, 2021, s. 2(e).
9. The Hindu Succession Act, 1956, s.8.
10. Young, H. (2014). Presuming Consent to Posthumous Reproduction. *The Journal of Law and Health*, 27, 53.
11. Ghosh, S. (2024, October 13). Why Delhi HC allowed 60-year-old couple to access dead son's sperm. *The Indian Express*. <https://indianexpress.com/article/explained/explained-law/delhi-high-court-60-year-old-couple-access-dead-sons-sperm-9615212/>
12. Isalkar, U. (2018, February 15). Pune women who lost son to cancer becomes grandmother to twins born from dead son's preserved semen. *Times of India*. <https://timesofindia.indiatimes.com/city/pune/using-late-sons-preserved-semen-couplegets-twin-grandkids-through-ivf-surrogacy/articleshow/62923421.cms>
13. Simana S. (2018). Creating life after death: should posthumous reproduction be legally permissible without the deceased's prior consent?. *Journal of law and the biosciences*, 5(2), 329–354. <https://doi.org/10.1093/jlb/lsy017>
14. Callahan, J.C. (1987). On Harming the Dead. *Ethics*, 97, 341 - 352. <https://www.journals.uchicago.edu/doi/10.1086/292842>
15. Rosenblum, I. (2013, Dec. 05). Creating new life from the dead by Biological Will. *The Times of Israel*. <https://blogs.timesofisrael.com/creating-new-life-from-the-dead-by-biological-will-2/>
16. Rosenblum, I. (2016) *Garden of God: The history of the family revolution*. Modan Publishing House.
17. Family Court (Tel-Aviv) No. 4940/05.
18. File No. 7141/15 SC Jerusalem.
19. Morgan, L.W, Morgan, H.G. (2020). The Legal and Medical Ethics of Post Mortem Sperm Retrieval on Behalf of Grandparents. *Journal of the American Academy of Matrimonial Lawyers*, 33(1) 67-72. ([https://www.aaml.org/wp-content/uploads/Comments\\_About\\_this\\_Issue.pdf](https://www.aaml.org/wp-content/uploads/Comments_About_this_Issue.pdf))