

**MOOT PROPOSITION**

**Ms. Y and Another v. Sumantra Hospital and Research Centre**

1. The Federal Republic of Samraat (hereinafter referred to as Samraat) is a democratic and secular country situated in the Southern part of the Asian Subcontinent. The Constitution and laws of the Republic of Samraat are in *pari materia* to the laws of India. Samraat is the most populous country, the seventh-largest country in the area, and the biggest democracy in the world. It is a pluralistic, multilingual, and multi-ethnic society. The beginning of the 21<sup>st</sup> Century witnessed a boom in Samraat in trade and commerce, infrastructural development, education, healthcare, and so on.
2. Since Samraat gained independence in 1947, hospitals and healthcare were given an important position in the developmental plans. In Samraat, the Government exercised stringent control over the hospitals, and they were directly controlled by the Government. However, by the end of the 20<sup>th</sup> century, the Government resorted to the new economic policy of globalisation, liberalisation and privatisation, whereby it opened up its economy for foreign direct investments. This change could be seen in the healthcare sector also where private foreign entrants started investing in healthcare and biomedical research.
3. The last few decades of the 20<sup>th</sup> century witnessed a steady rise in the infertility rates of the population of Samraat. This has led to the growth of Assisted Reproductive Technologies (hereinafter referred to as ART), wherein pregnancy is achieved through artificial means using the aid of science and technology. ART procedures such as Artificial Insemination (hereinafter referred to as AI), *In Vitro* Fertilization (hereinafter referred to as IVF) and Embryo Transfer (hereinafter referred to as ET) started gaining momentum in the country. After the initial reluctance, the healthcare sector and the public embraced these technologies as a means of assisting infertile couples. The expansion of ART in Samraat increased the number of infertility clinics and experts, including embryologists. The services offered at Samraat were one of the best in the world, with comparatively lower prices. This resulted in the influx of infertile couples from other countries coming down to Samraat to get ART services.
4. The lawmakers of Samraat also took note of the changing landscape of the flourishing infertility business within the country. The law-making body hence created stringent laws for regulating ART procedures in the country. Laws were made to prevent the exploitation

of individuals in the name of ART and to prohibit non-citizens from availing the services in India. The entire ART procedures under the laws were permitted only with licence procured by the ART facilities and hospitals.

5. The Sumantra Hospital and Research Centre (hereinafter referred to as Sumantra Hospital), a State-Funded Hospital in Vitara, was pioneers in the ART services. The scientists and infertility specialists of the Sumantra Hospital, working on ART developed a new technology, which they named “Artificial Womb Technology” (hereinafter referred to AWT). Researchers suggested that the benefit of an artificial womb is that it enables a foetus to develop outside the mother’s body, eliminating potential risks or complications associated with pregnancy and childbirth. It could also create a more controlled environment, free from pollutants that might lead to birth defects or future health issues. Additionally, Artificial Intelligence systems could remotely monitor foetal development, offering valuable data to assist doctors in making informed decisions about care plans for women with multiple pregnancies or those with high-risk conditions like diabetes or hypertension.
6. The researchers at the Sumantra Hospital prepared a research protocol to conduct studies on this newly developed technology. They submitted their research protocol to the Scientific Committee of the Sumantra Hospital and the proposal was cleared and forwarded to the Institutional Ethics Committee for consideration, which has scheduled its next meeting to consider the matter. The Institutional Ethics Committee is duly constituted under the Drugs and Cosmetics Rules, 1945, and ICMR National Ethical Guidelines for Biomedical and Health Research Involving Human Participants, 2017.
7. Meanwhile, Mr. X and Ms. Y are a married couple residing in *Amata* city in the state of *Vitara*. Ms. Y was pregnant and matrimonial discords between the couple were at their peak relating to the paternity of the child in the womb where Mr. X repeatedly declined the paternity of the child. Ms. Y was 18 weeks pregnant when she suffered an unexpected fall, resulting in distress to the foetus. Ms. Y was unconscious and was rushed to the Sumantra Hospital and after examination, the medical team comprising of the interventionists, embryologists, gynecologists, and foetal surgeons decided that immediate intervention was necessary to save the foetus.
8. Without informing Ms. Y or her family, the medical team transferred the foetus to an artificial womb, which was still in its developmental and experimental stages. The approval for the AWT trials was pending ethical clearance. The procedure was conducted

under emergency circumstances to save the life of the foetus, which the hospital cited as justification for not obtaining prior consent from Ms. Y or her family. However, after the procedure, the doctors reported that the foetus was stable. Ms. Y and her family were informed about the situation and the medical intervention that had taken place. When Ms. Y came to know about the procedures, she objected to the use of AWT and expressed her concerns about the impact of the technology on her parental rights.

9. Ms. Y alleged that the hospital violated her rights by not obtaining consent from her or any of her family members before proceeding with the AWT. The hospital defended its actions, stating that the emergency nature of the case necessitated immediate action. The case garnered significant media attention as it was the first instance where AWT was used in the Republic of Samraat to save a foetus. Mass media reported the story and the state-run media agency, PNB News, extensively reported on the case, and detailed information about the situation was being telecasted.
10. The publication of the family's private matters and the extensive media coverage led to Mr. X seeking divorce from Ms. Y on the grounds of cruelty. The petition was filed at the Family Court of *Amata* and Ms. Y was served a copy.
11. As a consequence of all these events, Ms. Y decided to terminate her pregnancy, citing grave injury to her mental health caused because of all these events as a reason under the Medical Termination of Pregnancy (MTP) Act, 1971. However, the medical practitioners declined her request and submitted that the MTP Act and Rules apply only to a foetus within a woman's body and not to those placed in an artificial womb, thereby prohibiting abortion in this case.
12. Ms. Y approached the High Court of Vitara seeking permission to terminate her pregnancy. She also filed a Writ Petition in the High Court of Vitara alleging that the PNB News agency has violated the right to privacy of herself and her family.
13. Meanwhile, the *Society for Medical Ethics* (hereinafter referred to as SME), an NGO working in the State of Vitara approached the High Court of Vitara invoking its Writ Jurisdiction and alleged that the researchers at the Sumantra Hospital had committed a gross offence by violating the provisions of Drugs and Cosmetics Rules and the ICMR National Ethical Guidelines 2017 on clinical trials, thereby posing a serious threat to the public.
14. Ms. Y also filed a complaint in the State Consumer Commission of Vitara, claiming that there is a deficiency in services provided by the Sumantra Hospital as they failed in their

duty to take her informed consent before transferring her *in utero* foetus to the Artificial Womb, which was in an experimental stage. She claimed compensation of INR 5 Crores against the Sumantra Hospital for deficiency in service and lack of informed consent, thereby leading to medical negligence.

15. The High Court of Vitara accepted her plea and decided to hear the petitions of Ms. Y and SME together. Further, based on the petition of the Sumantra Hospital, the High Court stayed the proceedings before the Consumer Commission. The High Court framed the following issues for the hearing to be held on .....

- a. Whether Ms. Y can demand termination of pregnancy under the provisions of the MTP Act?
- b. Whether the transfer of foetus to the Artificial Womb without the consent of the pregnant woman amounts to grave mental injury under the MTP Act?
- c. Whether there is a violation of privacy and confidentiality of the patient and other stakeholders?
- d. Whether the petitioner can invoke a private law remedy simultaneously with the public law remedy?
- e. Whether the transfer of foetus to the Artificial Womb without conducting proper clinical trials is violative of the Drugs and Cosmetic Rules or any other laws?

**Note:**

1. Participants are free to add more issues. However, the participants should strictly adhere to the issues relating to medical consent, confidentiality, and legal aspects of abortion.
2. The Constitution and laws of the Republic of Samraat are in *pari materia* to the laws of India.
3. This is a work of fiction. Names, characters, businesses, places, events, and incidents are either the products of the author's imagination or used in a fictitious manner. Any resemblance to actual persons, living or dead, or actual events is purely coincidental.
4. The decisions of the organizers shall be final and ultimate, in case of any disputes.

***The moot proposition is drafted by Dr. Veena Roshan Jose, Assistant Professor, Maharashtra National Law University Nagpur & Alumni, CUSAT***