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SOCIAL, ETHICAL AND LEGAL ISSUES OF ASSISTED REPRODUCTIVE TECHNOLOGY

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ABSTRACT

At present the Assisted Reproductive Technology is a source to the infertility of woman. The couple who are not having children they can opt this technology to grown up their family. This technology helps to lead happy life in the society. But at the same time there are many drawbacks, which are irrecoverable in nature. So this paper narrates the problems that are faced by the infertile couple chooses this technology.

Out of several problems of this technology far most important problem is psychological problems of women, surrogate child which are not to be pacified even with appropriate legislations. Woman faces many hurdles to give birth to child like health problems, social stigma, mental agony etc.

The laws at the same time are not clear, which are supportive to this technology. As our country is traditional and with different religions and different cultures the people in the society are not come forward for using this technology. It leads to give new definition to mother and father, the family institution etc.

INTRODUCTION

Assisted Reproductive Technology (A.R.T) creates enthusiasm over the last two decades. The fertility clinics in India gave an assurance to the childless couple regarding the fertility. As because of development in science and technology many techniques adopted for salvation of infertility problems. Where there is development, always there is legal hurdles and involvement of social and ethical issues in that aspect. Eminent scholars worried about the effects of Assisted Reproductive Technology on women and child. It effects badly on basic units of society i.e. institution of marriage, family and the concept of parenthood in Indian society.

It is difficult to select the right treatment for a particular type of infertility, knowing fully well that none of the available techniques offer 100% success. But the medical practitioner not reveals the same to the couple and assured that there is a success of 100%, which leads to raise ethical issues. At the same time it raises issues in the aspect of family law relating to succession. Apart from surrogacy the gays and the single man and women also can get child, which considers that marriage is optional and leads to spoil the family institution. What will be the effect on the children born with the help of

A.R.T in the case of single men and women, as they would be brought up by single parents? Will this have any psychological or physical effect on the children? It ultimately leads to raise social issue¹.

Another issue is the parents have a right to design their own babies? It may cause disability to the child because of genetic technologies. Does this also mean that it gives an opportunity to man to play God? There are several other questions like: violation of fetus right to live in mother's womb? Women considers as a reproductive object under this system. Therefore these questions are directly concerned with ethics and society.

ASSISTED REPRODUCTIVE TECHNOLOGY AFFECT ON CHILD

A.R.T badly affects the human social relationships and parentage. The reason is that women are now conceiving children without sexual intercourse. Fertile males, on the other hand, are producing descendants without direct social interaction with females. At the same time immensity of word 'mother' becomes meaningless. The cause for this is if, an egg is removed from one woman, fertilized in vitro and placed in another woman for gestation and eventual childbirth, there are factually, two women who have made contributions to the creation of the new life in the resulting child. One woman has provided the genetic material without which there could be no embryo; the other has provided the gustative environment and the nature without which the embryo could not develop into a child.

In India, the Bill of 2016 on A.R.T. states that, a child born to a married couple through the use of assisted reproductive technology shall be presumed to be the legitimate child of the couple, having been born in wedlock, with the consent of both the spouses, and shall have identical legal rights as a legitimate child born through sexual intercourse².

The genetic father may be the husband of commissioning mother or of the carrying donor. There are thus many possible combinations of persons who are relevant to the child's conception, birth and early environment. Sometimes commercial consideration associated with womb leasing, egg and sperm donation, and the outright distortion of the mother-child relationship.

Gay, Lesbian and single individuals also can give birth under this system, which leads to hazardous affect on society. At this juncture it is need to define the words "mother" and father" once again in the context of changing notions of composition of family and shall provide the rules for determination of parentage.

Give birth to the child with A.R.T is particular as because he is born through artificial process and not through natural process. This leads to differentiation between natural and artificial child. The natural child can get love and affection from parent's comparatively more than artificial child. It leads to moral hazard in the society. The child due to lack of love and affection may get psychological disorder and ultimately he becomes anti social element³.

It will be wrong to keep secret about anything from others and especially if it is about the identity of an individual as t from where he comes? Who are the genetic parents of the child? Isn't it a natural instinct in a human being to know the origin? The child... shall have the right from birth... as far as possible to know and be cared for his/her parents⁴.

The Indian bill on A.R.T. makes the provision for the child to seek information about donors and surrogate mothers on attaining 18 years of age. But at the same time it excludes information regarding personal identification and only in some cases like medical reasons allows disclosing the

¹ Emily Galpem "Assisted Reproductive Technologies: Overview and Perspective Using A Reproductive Justice Fame Work.

² Assisted Reproductive Technologies In Nigeria: Placing the law above Medical Technology, Journal of the Indian law Institute, 66-93 (2001)

³ Dr. P.K.Pande, Children's Rights, Laws, Policies and Practice, S.P. Kalamdhad, "Rights of Children Born Through Assisted Reproductive Technology", Regal Publications.

⁴ Art. 7, U.N. Convention on the Rights of the Child.

information with prior consent of the donors or surrogate⁵. But appropriate records not to maintain by the fertility clinics by adopting guidelines prescribed by ICMR, which leads to lack of information about donors or surrogate mothers.

Another important issue is that financial support to the child. After gave birth to surrogate child both the father and mother divorced, then who will look after the child is the problem that requires suggestion. In *People vs. Sorenson*, court held that husband is the lawful father, who consents to the use of sperm, not belongs to him cannot deny supporting child⁶. Upto this extent it is suggestible, but if birth given to a child by single parent like homosexual, then who will take care of child. He only gets financial support from single parent.

ASSISTED REPRODUCTIVE TECHNOLOGY AFFECT ON WOMEN

Even after 69 years of independence there is no change in the lives of women and the oppression on woman still prevails in all areas. Development scientifically is needed but it shall not be the cost of somebody's sufferings. That somebody here in Artificial Reproductive Technology is woman. Exploitation of women for eggs or wombs is ethically unacceptable. The market for eggs and wombs is profitable in India.

A.R.T rescue the infertile couple, especially rescue the woman who can't become mother naturally. The reason is that give birth to child is the task of women and if she fails to do she won't be in a position to enjoy the womanhood. So the woman, if it is not possible to give birth naturally, she can go through this method. While applying A.R.T method, the doctors or the male partner not to consider the psychology of woman. Not only the psychology, but this technology badly affects the health of women like, unhygienic storage of sperm, abortions and side effects etc.

Now a day's performed cesarean operations indiscriminately, it leads to affect the health of woman and the same followed in the aspect of A.R.T. The statistics in this field shows that an increasing number of private nursing homes in India treat every pregnancy to surgery. Another important corner, which noticed here, is that amniocentesis. Mainly it is used for diagnosing chromosomal abnormalities by drawing out and examining cells in the amniotic fluid. This technique today misused and leads to get abortion after determination of sex.

Prior to applying A.R.T the procedure is to ascertain surrogate motherhood. Basically it involves donor insemination, for which women who donates the egg has to undergo a host of tests. She is routinely treated with hormones, so-called fertility drugs, to ascertain the time to release the eggs. Moreover, retrieving a large number of eggs requires hyper stimulating the ovaries by injecting hormonal drugs, which often involves serious medical complications for women⁷. It causes serious harm to the woman undergoing for the test of motherhood.

Infertility drugs that chemically manipulate a woman's body are a prime example of the confusion between experiment and therapy. The drug contains estrogen was given to women helps to avoid miscarriage for 20 years. But recent experiments disclose that it leads to abnormalities in the woman's uterus which can make it impossible to successfully carry a pregnancy to term. In addition to that female child in future may suffer from deadly type of vaginal cancer. Side effects of drug clomid lead to breast tenderness, bloating, stomach pain, severe dizziness and blurred vision⁸.

Indian society considers a woman as woman when she conceives and given birth to child. Thus, liability to conceive is extremely stressful for women who want to have a family. It causes stress and tension to the Indian woman as they didn't fulfill the expectation of the family members and the society takes her to great paid and mental trauma. Even they choose A.R.T the joy of having a child outweighs the stresses. Even pregnancy is successfully achieved under this method, many

⁵ Clause 36 (1) of The Assisted Reproductive Technology (Regulation) Bill 2008

⁶ 62 Cal.Rep.462 (1967)

⁷ Mary Joe Frug, *Women and The Law*, 1992

⁸ Ronald Burkman, et al. *Fertility and Sterility*. Infertility drugs and the risk of breast cancer.

women anxious regarding pregnancy will go to term, whether child will be born healthy, and they may be unsure about parenthood.

ASSISTED REPRODUCTIVE TECHNOLOGY AND INSTITUTION OF MARRIAGE

This technology badly affects the social institutions like marriage, as because even without sexual participation or a marriage one can give birth to child. It exclusively ruined the traditions followed by Indian community from long back. But the same not accepted by the developed nations. Child development only possible because of good parentage and it only possible where there is marriage between spouses. Good relationship between family members and development of child is often required to form a good society.

When go through the definition for marriage, in the words of Lord Penzance *Hyde vs. Hyde*⁹ “the voluntary union for life of one man and one woman, to the exclusion of all others”. However, medical advances have challenged our traditional views not only of parentage but also of sex and sexuality. The marriage is legally a relationship between a man and a woman, and not between two men or between two women; legal systems ought to define the words male and female in this aspect.

Another important aspect is that trans-sexualism, which means change of biological sex to opposite sex. Later, they got marry the same biological sex. Now the point is when question relates to the birth of child to these persons then the position of law is vague. Undoubtedly, every individual has a right to marry, however the question here is not of a capacity of transsexual marriage and it is in regard t the institution of marriage. Therefore if at all the question comes in regard to the access of A.R.T services by these persons, what would be the reaction of society or the courts exclusively in India.

In India, the natural institution of family is characterized by a stable union between a man and a woman, who commit themselves to love each other and transmit life. Thus one of the primary aims of institution of marriage is procreation of children through heterosexual conduct between the parties to a marriage. From the moment sexual conduct is separated from the reproduction, the natural institution is damaged and legal dispositions that regulate it remain without object.

⁹ (1866) L.R.IP & D.130,135