

Protection of Human Rights of Women: Issues and Challenges Reproductive Technologies and Rights of Women

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Abstract: *The world has seen various changes in the social advances of human being including the livelihood, lifestyles, colonisation, habitats and all other essential as well as non-essential wants and desires. However, when it comes to progeny there is still a wide grey area which is governed and dominated by the same old prevailing “male domination” tag line around the world. It is the women who is held accountable for not being able to conceive and considered as a misfortune to the society, not involved in family ceremonies and is treated as an outcast in the society. With the advancement in medical technologies, there have been significant developments in the Reproductive Technologies (RT) also known as Assisted Reproductive Technologies (ART) which include in-vitro fertilisation (IVF), intra-uterine insemination (IUI), oocyte and sperm donation, cryopreservation and includes surrogacy as well. The social stigma of being childless and child adoption process which are lengthy have led to the demand for ART in India. With the help of this article we try to look into the aspects like: Infertility, whether it is limited to one gender, the social stigma of being childless, technological advancements in the treatment of infertility, uninterrupted access to Reproductive technologies and the legal frameworks governing the access to Assisted Reproductive Technologies.*

Keywords: Reproductive Technologies and Rights of Women, Protection of Human Rights of Women: Issues and Challenges, Reproductive Technologies, childlessness, gender bias

1. Introduction

The world has seen industrial revolution which has given us fast growing economy, the world has seen technological revolution which has made life easy to an extent where we can live life using our smart phones, the world has seen medical technology revolution today where we come across proposals of 3D printed organs, 3D printed tablets, not to forget the most argued revolution i. e., Reproductive Technologies. If we hold back and give a thought to all these advancements and revolutions as to what have they given us, then the most probable majority of answers would be peace of mind, a hierarchical and systematic lifestyle, and the most important, happiness. However, all this happiness, peace of mind comes with a price; and the price being, using the technology responsibly, taking accountability of the technological choices we make and accepting the fact that the decisions made are very precious and have to be respected all the time.

The most talked about and the most sensitive topic of the society is parenthood, as the relationship between wife and husband begins with marriage and is considered complete after parenthood i. e., after bearing a child, which means that the circuit of the family starts with marriage and closes after the child is born. The happiness, peace, the systematic lifestyle that the parents get after the child birth is inexplicable, un-measurable, un-quantifiable. The feeling of being a parent is just out of the world experience which can only be felt and not expressed in words. This is just one side of the coin which looks simple, where all are happy. But when we flip the coin and look at the other side of the coin, it would tell us the whole saga of reaching to that stage where the husband and wife actually see and hold their child in their hands. It tells us about the struggles which they had to undergo mentally, socially and emotionally to be able to bear a child. What if after all the struggles the husband and wife are unable to bear children, that is when the chaos starts

in their lives which depresses them mentally, socially and emotionally which results in the breakdown of the person morally and psychologically.

But there is a universal fact which we all know and have quoted the fact many times under different circumstances i. e., “every question has an answer”. This is when the technologies can be put to work where they can assist the couple in overcoming and fighting back the moral and psychological breakdown. What we always need to remember is that whatever happens an individual whether go or bad only the person undergoing the sequence will know the pain and reap the fruits of outcome. Hence, the couple who are unable to bear children would actually know the pain and agony they undergo to fulfil their desire to complete the circuit of their family.

In the interest of such couples who want parenthood but due to various reasons are unable to complete the circle the medical technology has revolutionised to an extent where it is in an able position to assist such deprived couples in fulfilling their desire of parenthood. Such technology is known as Reproductive Technology or Assisted Reproductive Technology.

The realisation for reproductive freedom came in the twentieth century when it was violated the most in different ways such as forced sterilisation in many countries, by forced child-bearing under the Nazis, by forced abortions in China, and by forced sex in marriage. Freedom from coerced reproduction has now become an integral part of reproductive autonomy. With the new milestones clocked in reproductive technology and increasing awareness amongst the society has become a boon for sexually constrained women, who have now found new ways to induce as well as restrict pregnancy. In-vitro fertilisation technique has helped numerous women in conception which once seemed a very remote possibility. It is thus not surprising that the ART

industry is expected to grow by a compounded annual growth rate of 10%.

Infertility-whether it is limited to one gender and the social stigma of being childless:

Infertility is a worldwide problem with an estimated 8-12% of couples having difficulty conceiving a child at some point in their lives, impacting upwards of 60–80 million people. Generally a couple is considered clinically infertile when pregnancy has not occurred after at least twelve months of regular sexual activity without the use of contraceptives. There are two clinical types of infertility. Primary infertility is caused by anatomical, genetic, endocrinological, and immunological problems leading to the inability to have a child. This form of infertility has been estimated to cause childlessness in about 5% of couples worldwide. Secondary infertility is usually due to sexually transmitted infections, poor health care practices, exposure to toxic substances, and socio-cultural practices such as endogamous marriages (marriage between relatives) and female genital mutilation. Secondary infertility contributes to the majority of childlessness. It is important to keep in mind that the definition of infertility varies between cultures and that of the biomedical definition. It may surprise to know that, infertility may be understood as having no sons, or not becoming pregnant soon after initiating sexual activity. The notion of infertility is built upon socio-cultural perceptions, particularly perceptions regarding the value of parenthood as a social role in a given society.

One major socio-cultural institution that influences notions of infertility is gender. In this context Gender means socially fabricated roles, behaviour, activities and attributes that a society affixes for men and women. These socially constructed ideologies shape the lives of men and women around the world which are deeply rooted in their consciousness right from their birth. Women are expected to produce at least one son to carry on the patriline. Motherhood, preferably within the first year after marriage, is considered essential to prove a woman's fertility, give the family an heir and to secure her position within the marital home and within society. Due to this immense mental societal pressure, childlessness is not only unacceptable but it is also an unimaginable failure to adhere to the socio-cultural norms. Women are always blamed for childlessness irrespective of which partner is actually clinically infertile and regardless of well-established biomedical understandings of infertility that place men as potentially equal contributors to childlessness. In some scattered researches conducted upon men's experience on being childless, revealed some shocking facts like – verbal abuse, emasculation, loss of social status, less motivated to work, subjected to social stigma of blame and shame.

A diagnosis of infertility means you haven't been able to get pregnant after a year of trying.

Infertility isn't just a woman's problem. Men can be infertile too. In fact, men and women are equally likely to have fertility problems. According to the Office on Women's Health, about one-third of infertility cases can be attributed to female infertility while men's problems account for another third of infertility cases. The remaining third of

cases may be caused by a combination of male and female infertility, or they may have no known cause.

Talking about infertility, let's look at some scientific and medical reasoning leading to infertility not only in one particular gender but both.

Infertility in men is caused due to – lack of effective production, reduced count, malformation and movement of the sperms. Apart from these causes, there are various risk factors, medical conditions and medical treatments that can also affect fertility.

Some of the risk factors that are associated with infertility in male are – old age, heavy use of alcohol, being overweight, smoking cigarette, exposure to pesticides, toxins and heavy metals.

Some of the medical conditions causing infertility in male are – retrograde ejaculation, varicocele, malformed genitals, antibodies attacking the sperm and destroying them, hormonal imbalance.

Some medications and drugs causing infertility in male are – chemotherapy and radiation therapy used in cases of cancer, sulfasalazine used to treat Rheumatoid arthritis or Ulcerative colitis, calcium channel blocker used for high blood pressure, tricyclic antidepressants, anabolic steroids used for improved athletic performance or hormonal issues and recreational drugs such as cocaine marijuana etc.

Any of these or a combination leads to infertility in males.

Infertility in women is caused due to – ovulation problems, problem with egg and sperm fertilization, issues with implantation which occurs when fertilized egg latches on to wall of uterus where it can form into a baby.

Some risk factors causing infertility in women are – increasing age, heavy use of alcohol, smoking cigarette, being overweight or obese, or being significantly underweight, having certain sexually transmitted infections that can damage the reproductive system.

Some medical conditions causing infertility in women are – ovulation disorder, polycystic ovary syndrome or hormonal imbalance, pelvic inflammatory disease, endometriosis, uterine fibroids, premature ovarian failure and scarring from previous surgery.

Some medications and drugs causing infertility in women are – chemotherapy or radiation therapy, long term usage of high dosage nonsteroidal anti-inflammatory drugs like ibuprofen and aspirin, antipsychotic medication and usage of recreational drugs like marijuana and cocaine etc.

Hence being diagnosed with infertility does not mean that the parenthood dream has come to an end. It might take some time but eventually be able to have children on their own or with the help of medical assistance and artificial reproductive technology. The right treatment depends on various factors including age, cause of infertility, and personal preferences.

In the wake of all the mostly criticised condition of infertility, which is actually treatable with medication and technological aids, we as a social being claiming of living in a social environment need to think analytically who is to be blamed and why is it that they are to be blamed and why not seek for answers rather than ponder upon the problem statement.

Technological advancements in the treatment of infertility:

While infertility will always be an emotional challenge, technological advances in infertility treatment have made pregnancy possible for the majority of “barren” women. Infertility is no longer a tragedy because today’s would-be families have hope.

When we talk about Assisted Reproductive Technology the first term that we think of is IVF – In vitro Fertilisation and AI – Artificial Insemination.

Looking at history of these fertility techniques, Artificial Insemination – contrary to many people’s thinking that AI is a latest technique, it is quite an old procedure. For the first time it was attempted on Juana, wife of King Henry IV of Castile. In 1677 the Dutch scientist Anton van Leeuwenhoek saw spermatozoa through the newly invented microscope. Efforts to develop practical methods for AI were started in Russia in 1899. Papers on artificial insemination in horses had been published by 1922. By the mid 1940’s artificial insemination had become an established industry. In 1949 improved methods of freezing and thawing sperm were developed. The idea for adding antibiotics to the sperm solution came in 1950 from Cornell. Improved methods of sperm collection were developed in the 1970’s and 1980’s. Research to improve methods of artificial insemination continues and is usually studied under animal science curriculums.

Some legal challenges relating to Artificial Insemination. There are two important terminologies pertaining to AI before we move forward with the legal challenges.

A.I. H. Artificial insemination with semen obtained from the husband.

A. I. D.-Artificial insemination with semen obtained from a donor.

These two terms are important because, AIH – child born as a result of AIH raises no questions being a product of its own parents. However, when it comes to AID fertilization takes place with two possible variations and an AID child is thus born, genetically linked to parent outside its family.

In India there is no legislation regarding artificial insemination, but the medical practitioner needs to follow general principles of law. A child born as a result of artificial insemination is considered legitimate provided it is born during lawful existence of marriage.

Conception of the wife by AI does not amount to consummation of marriage; if there was no successful sexual act due to the impotence of the husband. The marriage can be declared null and void and in that case the child will illegitimate.

AID does not amount to adultery (even though it might have been done without the consent of husband), reason being, for adultery both the parties should be physically present and engage in sexual union. AI (Artificial insemination) is not sexual intercourse; C Howel V. R S Howel (Delhi HC, 05th May 1982) – court stated Artificial insemination by a donor not the husband is not adultery, since there is no penetration.

In Vitro Fertilization (IVF) and Embryo Transfer (Et) – IVF commonly refers to Test Tube Baby and involves fertilization of an ovum outside the body and then the embryo is transferred into the woman’s uterus. Latin meaning for In vitro is In Glass, which is referred to as test tubes. In fact no glass or test tubes are used, the term is used generically for laboratory procedures. IVF is most widely practiced assisted conception procedures. Similar to AI the IVF technique also is not a new miracle to the world but can be dated back to 1978 on July 25th, when the first test tube baby Louise Brown was born as a result of this procedure in the United Kingdom. Similarly in India for the first time in Calcutta test tube baby was produced on October 3rd 1978. Though there were mixed reactions were seen amongst public where some criticised and some debated on the procedure.

Similar questions rise as in AI technique regarding the legitimacy of the child born through ART. A child born through ART shall be presumed to be the legitimate child of the couple, born within wedlock and with consent of both the spouses and with all the attendant rights of parentage, support and inheritance. Sperm/oocyte donors shall have no parental right or duties in relation to the child and their anonymity shall be protected. A child can be given status of legitimacy also by adoption. *Anonymous v. Anonymous.* ((1964) 246N. Y. S.2d.835) a husband had consented to his wife's therapeutic impregnation. On the wife's claim for alimony the husband pleaded that the child was illegitimate. Rejecting his plea, the court awarded the alimony on the ground that consents in writing carried with it an implied promise to furnish support for the resulting progeny.

ART in a married woman with the consent of the husband does not amount to adultery on part of the wife or the donor, as there is no sexual intercourse involved. AID without the husband's consent can be ground for divorce or judicial separation. The Union government of India proposed in the ART bill 2020 that children born through assisted technology should enjoy all the rights of the natural born biological child.

Uninterrupted access to Reproductive technologies and the legal frameworks governing the access to Assisted Reproductive Technologies

Reproductive Rights – does it ring a bell in our minds? Probably very few of us. This is the right which is a very less discussed amongst the common people as a matter of fact everybody in the society. It could be due to lack of awareness or ignorance or any other reason best known to them. What are these Reproductive Rights?

Reproductive Rights – these are the rights of all couples and individuals to make a decision freely and responsibly as to the number, spacing and timing of their children.

Right to highest standard of reproductive health.

Right to information and means to make a decision.

Right to make decision concerning reproduction without any discrimination, coercion, violence.

International conference on Population and Development (ICPD) 1994 on reproductive rights stated – women have the right to: decide freely and responsibly the number, spacing and timing of their children; have the information and means to decide freely and responsibly the number spacing and timing of their children; attain the highest standard of sexual and reproduction health; meaning you have the right to be physically, mentally and socially healthy with access to medical, mental and social facilities, services and supports to exercise your sexual and reproductive rights. Make decisions about your reproduction free of discrimination, coercion and violence. It is your decision whether you undergo female sterilization now or when you are 50 or not at all.

The promotion of these rights should be the fundamental basis for government and community sponsored policies and programmes. The government must consider your rights as a fundamental part of the laws it enacts, the policies it puts in place and the programmes it creates.

Have we ever given a consideration to Reproductive Decisions as a Right to Equality.

This very right which allows to choose when and whether to marry and start a family; decide freely and responsibly the number and spacing between children. Also the right to make decisions pertaining to reproduction when it comes to the physical self, health and ones family.

Right to sexual and reproductive security is of next important consideration; where one enjoys the right to live a life free of gender based violence like sexual violence, incest, trafficking, violence related to dowry and rape based on the fact that one is a female including protection of mental and physical integrity.

A provision which gives the right to reproductive and sexual health services like – safe and affordable methods of family planning. Safe motherhood which gives the right to survive pregnancy especially during child birth.

The right of access to information and education include the right to access information regarding sexual and reproductive issues so that women can make informed decisions.

If we have to look at the rights in view of the Constitution of India then we should consider Article 21 which speaks about the right to life – “No person shall be deprived of his or her life or personal liberty except according to procedure established by law”, where the supreme court of India issued that Article 21 includes: the right to health and the

infringement of this right would have been made in case of maternal death; the right to be free from torture and inhuman treatment and the violation of this right would be forced abortion; the right to shelter and violation would amount if the women are left homeless during pregnancy and lactation; the right to privacy and dignity where violation come in if the female is sterilized by coercion.

Article 14: right to equal access to law, where the constitution provides for equality before the law or equal protection of laws in India. Which entrusts the same rights to women to access the law and take its protections as anyone else in the country.

Article 15: prohibition of discrimination against a person based on religion, race, caste, sex, place of birth, or any of them – which means and does not discriminate the right to live without discrimination.

Lets take a look a case which have been settled relating to the states obligation towards maternal health, as an example.

CHARM v. State of Bihar and Others (2011) – where the allegations were made against the respondent stating denial of maternal health care in Bihar and the violations were observed for collection of fees by doctors and nurses for referral and registration of pregnancy; dilapidated and unsanitary health facilities without electricity, toilets, running water and blood supplies; lack of transportation services for pregnant women; lack of safe abortion services; lack of grievance redressal system for violations suffered – resulting in maternal deaths. It was argued and concluded that Bihar government has obligation to ensure access to maternal health services under the constitution of India and international human rights law.

With infertility on the rise, more and more couples are opting for ART or adopted babies. The safe success rate of ART is 40%. ART today is about 30 billion industry in India with over 3000 clinics across the country. It is good to know that Govt has all set to make laws for it. This will be the hallmark to resolve the ethical and legal issues related to IVF thereby paving the way for IVF to bloom in Indian societal conditions.

The Union Cabinet, chaired by the Prime Minister, Shri Narendra Modi has approved a historic Bill for the welfare of Women in the Country – the Assisted Reproductive Technology Regulation Bill 2020. This follows the introduction in Parliament of the Surrogacy Regulation Bill 2020, and the approval of the Medical Termination of Pregnancy Amendment Bill 2020. These legislative measures are path breaking steps to protect women’s reproductive rights.

Once the Bill is enacted by the Parliament, the Central Government shall notify the date of the commencement of the Act. Consequently, the National Board will be constituted.

The National Board shall lay down code of conduct to be observed by persons working at clinics, to set the minimum standards of physical infrastructure, laboratory and

diagnostic equipment and expert manpower to be employed by clinics and banks.

The States and Union Territories shall constitute the State Boards and State Authorities within three months of the notification by the Central Government.

The State Board shall have the responsibility to follow the policies and plans laid by the National Board for clinics and Banks in the State.

The Bill also provides for National Registry and Registration Authority to maintain a Central database and assist the National Board in its functioning. The Bill also proposes for a stringent punishment for those practising sex selections, sale of human embryos or gametes, running agencies/rackets/organisations for such unlawful practices.

The major benefit of the Act would be that it will regulate the Assisted Reproductive Technology services in the country. Consequently, infertile couples will be more ensured/confident of the ethical practices in ARTs.

The need to regulate the Assisted Reproductive Technology Services is mainly to protect the affected Women and the Children from exploitation. The oocyte donor needs to be supported by an insurance cover, protected from multiple embryo implantation and children born through Assisted reproductive technology should be provided all rights equivalent to a Biological Children. The cryopreservation of sperm, oocytes and embryo by the ART Banks needs to be regulated and the bill intends to make Pre-Genetic Implantation Testing mandatory for the benefit of the child born through assisted reproductive technology.

In order to provide artificial reproductive technology access to maximum number of deprived couples in our state of Telangana, the government had decided and inaugurated the first infertility centre in a government hospital at the state run Gandhi Hospital back in January 2019. This would ease the burden of cost that was once out of reach for the common public, the cost of per IVF session ranges from anything between rupees 1 lakh to 2.5 lakh or more depending up on the case and health conditions of the couple.

Hence the access to parenthood and fulfilling the dreams of many deprived couples is no more a dream and very soon it shall be available to public at large.

2. Conclusion

The advancement in the reproductive technologies has undoubtedly opened new ray of hope for infertile people. However, no matter how appealing the argument for rights of born adults to make autonomous choices regarding that family life, parenthood and descendants, rights of the unborn children should also be taken in to consideration when considering access to reproductive technologies. The access to these technologies poses a serious challenge to the health authorities and law makers, as well as serious ethical and societal question about the welfare of the child. This is especially in the case in terms of unrestricted access to RT to

all competent adults, including lesbian couples, homosexual male couples, single parents, parents with history of genetic disease, persons with anti-social biographical elements etc. apart from rights and rules being made to check and ease the usage of ART in India, there is a wider need for imparting knowledge and education regarding ART. The social stigma of blaming one gender especially women for not being able to bear children with a pre judged mindset should be stopped and more stronger measures need to be taken to spread awareness about infertility both ethically and scientifically. Its time that our society starts thinking about solutions rather than ponder upon blaming each other over the problem. I leave it to you to decide how this stigma and mindset could be reformed and refined into a better place to live.