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Assisted Reproductive Technology: An Elixir for Socio-Legal Infertility

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Abstract

Purpose: *With modern medical innovation, the concept of procreation has been diluted to the point where procreation is no longer limited to heterosexual couples alone, and medical science technology has advanced to the point where parenthood's range has expanded both vertically and horizontally. But when it comes to reproductive rights, we frequently consider just the rights of women and very little about the rights of all people, regardless of gender. The concept of human procreation within the buckled notion of coitus conception has been changed under the aegis of assisted reproductive technology. The problem of childlessness is not a recent phenomenon. ART gives a means of procreation to every individual irrespective of heterosexual or homosexual couples, single women and men. Both medical and socio-legal infertility can be addressed with the help of ART. The term "socio-legal infertile" refers to people whose conception is prohibited by social and legal norms and laws. Another irrefutable fact is that every human being has a right to benefit from human invention. Numerous international agreements, including the ICPD, (ICPD, 1994) have previously acknowledged that everyone has the freedom to choose when, with whom, and how many children they want to have. Recognition of these rights at the national level through appropriate legislation is also necessary for their enforcement. In India, there is no suitable regulation regarding surrogacy or ART to address the issue of individual infertility. This article analyzes the problem concerning socio-legal infertility. The objective of this article is to find the gap and solution of socio-legal infertility under the ambit of ART to define the expanding horizon of parenthood. The article concludes by applying the framework to currently available reproductive techniques, such as artificial insemination, egg donation, and surrogate motherhood while balancing common shared morality and reproductive rights.*

Design/Methodology/Approach: *In this study, a qualitative and doctrinal strategy has been used to collect data. International Documents, journals, reports, acts and books will be studied in order to gather information. An analytical examination of socio-legal policies and reports will be conducted to conceptualize reproductive self-determination. In order to identify the gap in the existing legal framework regarding reproductive rights an investigation will be carried out into the existing legal framework of selected jurisdiction.*

Significance: *This study seeks to demonstrate how societal indifferences towards gender in society can be identified and addressed by conceptualizing reproductive self-determination in the field of assisted reproductive technology. This study aims to investigate the intricacies of reproductive justice by analyzing the concept of socio-legal infertility to explain the constitutional acknowledgement of reproductive rights as a way to achieve gender equality.*

Keywords: *Assisted Reproductive Technology, Infertility, Reproductive Rights, Socio-legal Infertility*

1.0 Introduction

The state of not having children is referred to as infertility because the expressions "do not want" and "could not have" are deferential. The involuntary option is indicated by one action, while the voluntary option is indicated by the other. When it is voluntary, one person's conscious decision to prioritize something else in life is referred to, while the other person's incapacity to do so despite having a strong desire is reflected. Therefore, the situation is referred to as "infertility."

Because it indicates biological childlessness, infertility is a broad term that includes social and legal infertility under the same heading as medical infertility. Medical infertility has been defined in several ways, but the majority of these conditions can be treated with the right drugs and technology. These conditions include ovulatory failure, endometriosis, tubal blockages, abnormalities in sperm production, and sperm duct blockage. Legal infertility refers to any situation in which a person or couple is unable to exercise their reproductive rights because of the legal system, whereas social infertility refers to couples or individuals who are unable to conceive because of social norms.

Assisted Reproductive Technology (ART) and surrogacy have significantly helped to address issues associated with infertility of any kind. With the help of contemporary technology, parenting might mean several things. In order to realize some rights, access to the benefits of inventions requires legal recognition or approval, and a lack of appropriate legislation may make this impossible. The idea of procreation has changed to the extent that it is no longer limited to the union of two heterosexual couples, or marriage, thanks to technological advancements in the medical field. Anyone can use contemporary medical innovation to address the issue of childlessness, including homosexual couples and single men and women. (La Marca & Sunkara, 2013)

Having children only through heterosexual couples' union is an example of a patriarchal society where only one gender—female community members—is expected to perform reproductive labour. (Geo, 2008) In light of this, the patriarchal structure of society has traditionally placed the whole responsibility of raising children on women, resulting in the societal norms that have been adhered to for thousands of years and are still in place today. A single man cannot use surrogacy to have his child in India after the Surrogacy (Regulation) Act was passed. In contrast to mothers, the patriarchal culture has always labelled "good mother" and "bad mother" and has never placed the entire responsibility for a child's physical and mental well-being on the father. (Sperling, 2011)

The ability of a single father to rear a kid is seldom respected by society, even though the Mahabharata makes numerous references to sororate unions or niyoga. Social norms support conventional human procreation by coitus conception through the exclusive union of marriage between heterosexual couples only, and they do not encourage or permit human procreation by single women, single men, gay couples, lesbian couples, or unmarried couples. This is because they do not support the idea of procreation outside of the institution of marriage.

In the era of equality and pluralism, the idea of motherhood has changed, and social parenting is now being promoted, expanding the definition of parenthood beyond the biological children of heterosexual married couples alone. All inventions and technology must, however, be legally accessible, which requires appropriate regulation. Until the legislation, explicitly or indirectly allows access, it could have more serious consequences. Legally infertile people are those who are unable to conceive or have children because the law prohibits them from doing so or because the law is silent on the subject, making it impossible for them to obtain it. If the legal system exclusively allows certain groups of people, like married heterosexual couples, and prohibits others, it is putting up a barrier to procreative autonomy and rendering them infertile. This is because, if the law lets it, anyone can now treat the problem of infertility thanks to modern science.

2.0 Human Procreation: An Evolving Medico-legal Jurisprudence

Surrogacy may be the foundation for intended parents to exercise their reproductive rights as a result of changing social structures and medical developments. In essence, surrogacy is a choice for intended mothers who are unable to conceive because of a reproductive problem. However, ART can be used as the basis for conception for intended parents—such as single men or homosexual male partners—who do not have a female partner to bear the child who would be genetically their own. Due to the blurring of the lines between gestational and genetic parenting, ART can help define a new type of motherhood. Due to infertility problems, many married heterosexual couples who plan to have children use assisted reproductive technologies. They can use this method to create their child, who will share genetic traits with one or both of the chosen parents. Therefore, intended heterosexual married couples who were facing medical infertility have the chance to become parents when genetic parenting and gestational parenting are

combined. Every individual can exercise their right to procreate by adopting assisted reproductive technology to overcome any form of infertility and give birth to a genetically related kid because of the egalitarian nature of society. (Robertson, 1983b)

The highest form of reproduction is assisted reproductive techniques, or ART, for human reproduction. As society has evolved, so too have the types of potential parents, which now include heterosexual unmarried couples, single men, single women, homosexual male partners, and homosexual female partners. Assisted reproductive technology is a technique that encompasses all the locations where all these distinct kinds of potential parents can fulfil their procreative decision. Artificial Insemination is a type of assisted reproductive technology that enables conception to take place outside of coitus conception by injecting sperm into the uterus to promote contact between sperm and egg.

Artificial insemination, in which the sperm of the intended father is placed into the surrogate mother's uterus without any sexual activity, is therefore very advantageous in the field of surrogacy. This allows the prospective father to have a child who will share his genetic ancestry. When donor sperm is required due to infertility, this particular artificial insemination technique is helpful. In-vitro Fertilisation, another type of assisted reproductive technology involves combining oocytes and sperm in a laboratory to produce embryos that can be inserted into the uterus to begin the gestation process. The surrogacy procedure, which enables in vitro conception utilizing either the recipient's or donor's gametes or one's own, also greatly benefits from this particular technology.

In this process, the donor's oocytes and sperm may both be utilized. A surrogate mother is connected to the child both genetically and via gestation when she donates oocytes. Therefore, it is clear that genetic parenting and gestational parenting are merging while establishing a new rule of parenthood. These technologies have caused the scope of parenthood to grow both horizontally and vertically. The capacity to combine genetic and donated parenting using the parent's and donor's gametes, as well as pure genetic parenting with gestational parenting using the parents' gametes without natural coitus, are just a few of the many aspects of modern parenting. ("Emily Jackson, Regulating Reproduction: Law, Technology and Autonomy," 2003)

As a result, in certain situations, the child born through these technologies might only share genetic traits with both of the potential parents; in this scenario, the child would be born to a prospective mother rather than a surrogate mother. Once more, the same technologies can be used to combine genetic parenting with gestational parenting. In this scenario, the child may have genetic ties to both potential parents, but if a surrogate mother's gestation or, in certain situations, her gametes were used, the child would have genetic ties to both the surrogate mother and the potential father. Each of these technologies expands the scope of reproductive rights by allowing conception to take place outside of the accepted method of conception or natural coitus. Numerous international human rights treaties have recognized the right to procreate as a civil right; nevertheless, the continuous exercise of this right also requires that the right be recognized by effective national laws.

3.0 Phases of Procreative Arrangements in Ancient and Present Era

At a time when scientific progress on human reproduction was not well recognized, the idea of sexual cohabitation and reproduction was considered an essential component of civilization. As a result, marriage was widely seen as the most appropriate institution for the goal of starting a family in society. It was one of marriage's main objectives. Addressing the problem of offspring was one of marriage's main objectives, and society had to develop changes to the institution of marriage to achieve this, including polygamy, levirate and sororate unions, adoption, and other customs. To address social crises like infertility and the loss of a spouse without creating issues for the community, the early institution of marriage was established. Until society acknowledged the genetic contribution of women, men remained to dominate the concepts of bloodline and familial ancestry. In the case that his wife is unable to conceive, he may seek a second marriage. The problem arises if the husband dies without leaving any children or if the subsequent marriage does not result in any offspring.

To preserve the integrity of the traditional male lineage, society has put a great priority on faithfulness in marriage, which has always been seen as an exclusive

connection. As a result, any kind of outside interference would be a violation of the institution of marriage, which is a vow of loyalty. The practice of adoption was regarded as a legitimate substitute for birth control in some communities. Conversely, adoption has not been the only option available to address the crises of childlessness, nor has it been feasible in all situations. The primary goal of reproduction in prehistoric societies was to preserve family and bloodline continuity. In most human communities, the desire to produce a child that shares genetic traits with oneself has been deeply embedded as a way to guarantee the survival of human societies. The maintenance of the family line has therefore always been a topic of great importance in human groups. In the end, this resulted in the development of a new social arrangement, which is known as third-party-assisted conception.

To address the problem of infertility, third-party assisted reproduction became a viable substitute for the conventional institution of marriage. Therefore, understanding the fundamental features of assisted reproduction and looking into the practice's applicability to early traditions and customs of society are essential for analyzing the historical development of assisted reproduction. Sexual cohabitation and procreation were regarded as interdependent elements at a period when society was ignorant of the scientific aspects of human reproduction.

The institution of marriage has long been considered the most appropriate and commonly recognized way to create a family in society. In traditional societies, betrothal—a procedure that required getting the elders of the prospective husband and wife's families to agree—was usually used to formalize marriages. Within the community, this activity functioned as a social organization method. The term marriage mainly refers to a monogamous relationship between two people of opposite sexes. Addressing the issue of procreation was one of marriage's main goals.

When this goal was not achieved, communities adopted several modifications to the institution of marriage, including adoption, levirate partnerships, polygamy, and sorority marriage. Therefore, the original purpose of marriage was to solve social issues like infertility and the death of a partner without children. The ideas of bloodline and familial ancestry were largely shaped by men before society acknowledged the genetic contribution of women. When a lady is unable to conceive, her husband could decide to be married again. Complications may arise in subsequent marriages if the husband dies without leaving any children or is unable to conceive. In order to maintain the integrity of the male line, marriage is typically viewed as a unique partnership in which the community places a high value on marital fidelity. Therefore, it would be against the loyalty of the institution of marriage for a third person to interfere in any way. In several nations, adopting a child has been seen as a legitimate substitute method. Nevertheless, adoption has not been the only solution to the problems associated with infertility, nor has it always been practical. The maintenance of family lineage and bloodline served as the primary driving force behind reproduction in early societies. However, the child's genetic relatedness to the infertile spouse determines how successful adoption is. Such an alternative might not be available to all infertile couples. Additionally, it should be mentioned that not all communities welcome adoption. As a means of guaranteeing the survival of the human population, the desire to produce biological children has become deeply embedded in most human communities. Throughout human history, maintaining the family line has always been extremely important. This ultimately resulted in the emergence of a novel social arrangement which is known as the surrogacy arrangement as a means to tackle the challenges associated with childlessness or infertility.

3.1 Pre-Art Conventional Arrangements

Conflict can occur in both public and private domains. The overt use of physical force is frequently associated with violence. But occasionally, certain social norms or practices might show out as psychologically aggressive, leading to disputes that require cultural mediation or resolution. One prominent instance in Early India was the belief that the absence of a son in a household had the power to influence people's general happiness and well-being in one life as well as the next. In the world of early Indian literature, particularly in the Sanskrit classics, the act of procreation is highlighted as the primary religious and social obligation for both men and women.

Nevertheless, what would happen if there was a failure to conceive because of impotence or early death? His sense of masculinity—or the perception of it—may be compromised by this. The modern normative authority found a different mechanism called levirate, or niyoga. P. V. Kane claims that the practice of Niyoga, also called

levirate, is choosing a widow or wife to conceive a son by having sex with a chosen male partner. Both legal and social authorities legally endorsed the method or plan, and the procedure's exact phases were often described in written materials or followed as standard procedure.

It was an attempt to combat human infertility through assisted reproduction. Generally, the wife of a husband who was either dead or impotent would be asked to have a sexual relationship with another man to conceive a child for the husband, but in certain cases, the situation can be reversed, allowing the wife of an infertile woman to have a sexual relationship with another man to conceive a child. Therefore, niyoga can be viewed as a unique aspect of ancient Indian sexual ethics and should not be considered merely as a solution to the pressing problem of childlessness, which is covered by apaddharma. (Niyogi, 2016)

A man's feeling of manhood, which might have been damaged by admitting his infertility, could also be restored by niyoga. Even if it would not be honourable under normal conditions, it was acceptable to use this behaviour in dire situations without facing any repercussions. The kshetra, which means the wife or the field, and the kshetrin, sometimes called kshetrika, who was the husband who owned the field, the kshetra, were the participants in the niyoga practice. The niyogin was the person assigned to generate offspring or contribute their genetic material, and the kshetraja was the male child that resulted.

Surrogacy can be categorized into a wide range of groups based on various genetic linkages. When heterosexual couples are involved, the use of donor oocytes and/or sperm may be necessary if a non-uterine medical condition threatens the pregnancy's survival. The development of artificial insemination and *In-vitro* Fertilisation (IVF) has significantly changed the potential for reproduction in the field of Assisted Reproductive Technology (ART) by eliminating the need for sexual contact. As a result, a clear separation between the act of sexual activity and the process of conception has been established.

3.2 Procreation Based on ART

Reproductive medications, which have been around for a while, have not been able to help much in circumstances that call for medical therapy or assisted reproduction. The situation has changed significantly as a result of the consolidation of assisted reproduction techniques over the last twenty years. These methods include *In-vitro* Fertilization (IVF), artificial insemination (AI), and ovulation induction. Currently, assisted reproductive technologies (ART) can address a wide range of fertility problems by using gametes from either the donor or the prospective parents. These problems can be classified as male (oligoasthenospermia, azoospermia, vas deferens obstruction and hereditary causes), female (anovulation, endometriosis, fallopian tube obstruction, and ovarian failure), or combination. (Allahbadia, 2017a) However, the only method for a woman who does not have a uterus to have her children is through the process of surrogacy, which allows for the use of assisted reproduction techniques in conjunction with the utilization of the uterus of another woman for gestation.

There are several reasons why a person can decide to adopt assisted reproductive technologies. The absence of the uterus may be acquired or congenital, as in the case of Rokitansky syndrome benign disorders, the most common of which are severe fibroids; acquired conditions, such as hysterectomy; and malignant tumours. Some causes of this condition include endometrial atrophy brought on by pelvic radiation therapy, multiple myomatosis (whether or not it was operated upon), severe Asherman's syndrome, and other non-functional uterine conditions of gynaecological origin. Additionally, gestation is not advised in the presence of other medical conditions, even if the uterus is working. These conditions include kidney disease as well as immunological, rheumatological, and oncological pathologies, all of which might create obstacles to conception or the process of conceiving. Patients who have a functional uterus but have a history of unsuccessful *In-vitro* Fertilization (IVF) attempts (sterile or infertile women) or who have experienced repeated miscarriages (infertile women) may be candidates for this treatment. As a reflection of the various types of family life that are prevalent in today's culture, several individuals who are considering becoming parents have shown an interest in ART in recent times.

4.0 Emerging Horizon of Parenting

There are numerous divisions into which surrogacy can be divided according to different genetic connections. If a non-uterine medical problem jeopardizes the life of the pregnancy in heterosexual

couples, donor oocytes and/or sperm may be required. By removing the necessity for sexual interaction, the advancements in artificial insemination and *In-vitro* Fertilization (IVF) have fundamentally altered the possibilities for reproduction in the field of Assisted Reproductive Technology (ART). This has led to the establishment of a distinct division between the act of sexual activity and the process of conception.

The concept of motherhood has changed as a result of the use of Assisted Reproductive Technologies (ART), which has given rise to distinctive elements in the parenting domain. (Smith, 2000) These characteristics can be categorized into three groups: gestational parenting, genetic parenting, or a mix of the two ideas. Before the invention of Assisted Reproductive Technology (ART), infertile couples who wished to become parents through social parenting had no choice but to adopt. It is not acceptable to force adoption as a solution to the issue of childlessness when there are medical options to treat infertility and the possibility of having a biological child remains.

A common procedure in the realm of Assisted Reproductive Technology (ART) is artificial insemination, which entails implanting sperm into the uterus via a medical technique. This procedure is intended to facilitate interactions between sperm and eggs, hence removing the need for sexual activity. Artificial Insemination (AI) can be categorized based on the sperm's origin, distinguishing between circumstances where the sperm is obtained from a sperm bank and those where it is received from the intended father.

This is because Artificial Insemination (AI) ensures that the surrogate mother will always give the female gamete (oocyte), which in turn causes genetic material to be transferred from the surrogate mother to the child. Artificial Intelligence (AI) can therefore be used as a genetically-based parenting model or as a model that integrates genetics and gestational parenting. The phrase "In-vitro Fertilization," or "IVF," refers to a range of biological and medical procedures performed in a lab environment to facilitate the fusing of oocytes and sperm. Depending on whether the sperm and oocytes are taken from donors or the intended parents, the outcomes of In-vitro Fertilization (IVF) may vary. One can determine whether the final parenting arrangement is purely genetic or a combination of genetic and gestational parenting by making this difference. Either the patient's gametes or gametes obtained from donors can be used for In-vitro Fertilization (IVF). Depending on the origin of the gametes utilized, the child produced via assisted reproductive methods may have genetic paternity that can be assigned to either or both of the intended parents. The ability to have a child without the need for sexual activity has been made possible by Assisted Reproductive Technology (ART), which has increased the number of people who consider becoming parents. This development has led to the incorporation of a variety of groups, including heterosexual couples, lesbian couples, single women, and single men, among others. (Brandão, 2022)

The dimensions of parenting can be broken down into various categories through the use of technology. It can be done according to genetic tie gestational tie or others. In the case of a heterosexual pair, the use of donor oocytes and/or sperm may be necessary if there is a medical issue that is unrelated to the uterus and that threatens the viability of the pregnancy. For a woman who does not have a male partner (either because she is part of a lesbian pair or because she is a single woman): donated sperm is necessary. The intended parent(s) may be required to use donor oocytes if there is a medical issue in addition to the one that is related to the uterus. This could come from the surrogate mother, or it could come from a third woman who will only be acting in the capacity of an oocyte donor. Absence of a female intended parent (male homosexual couples or single man): in this scenario, in addition to a surrogate mother to gestate and give birth, an oocyte donor will be necessary. The oocyte donor may be the surrogate mother herself or another woman. Parenting can be broken down into three categories according to the level of involvement of the surrogate mother also: In one category the surrogate mother is involved only during the pregnancy and delivery of the child. The child is the biological offspring of the intended parents, and the surrogate mother does not contribute any of her genetic material to the offspring in any way. The child is the biological offspring of a couple that was unable to have children (the intended parents) in the case of a heterosexual relationship. In another category apart from carrying the embryo to term, the surrogate mother also contributes to one or more of her oocytes. Both the biological mother of the child and the intended father will have contributed genetic material to the offspring. If a woman does not have a male partner or if the male partner suffers from azoospermia, then the woman may

use donor sperm to conceive a child. (Bhowmik, 2024) [Unpublished doctoral dissertation, ICFAI University, Tripura].

Because of technological developments, soon-to-be parents who are anxiously trying to enter the phase of parenthood can now choose the parenting style that best fits their particular situation. Before the invention of technology, coitus procreation was the only method for producing a child with a genetic link. This was because the issue of having a biological kid could only be handled through coitus procreation, even in the event of assisted reproduction. Apart from that, adoption was the only opportunity for childless parents to become parents and enjoy the pleasures of parenthood. The only way to make things better was through adoption. However, technology has replaced the option of coitus procreation if there is an issue with infertility of any kind. These inconsistencies are occurring in order to make technology accessible to everyone unable to participate in coitus procreation, even though procreation has already resolved many ethical concerns related to coitus procreation with third parties. For some who could not even imagine the possibility of having a biological kid of their own, assisted reproductive technology has proven to be the greatest boon. However, social norms and legal restrictions are making it difficult for people to access technology. With the help of sperm from a sperm bank, a woman who is not in a relationship can now enjoy the pleasures of pregnancy and raising a child—a form of procreation that excludes natural coitus. An unmarried man can also enjoy the sensation of being a father to his kid with the help of a surrogate mother. Homosexual couples can likewise do similar things. When there are two women who are partners, they can share motherhood beginning with the conception of the child. Therefore, this technology is a one-stop solution for all of the problems that are associated with infertility. There are just societal and legal restrictions that need to be removed for every individual who is capable of carrying out such a treatment to be able to achieve this right.

5.0 Contrasting Concepts of Desire for Child and Sexual Orientation

One's sexual orientation and the desire to have children are not always related. There are neither of these associations. The sense of fulfilment that comes from becoming a parent and starting a whole family is one of the unique qualities of the desire to have a kid. People who identify as homosexual or lesbian and have either married or had intercourse with someone of the opposite gender, have had children through coitus or marriage, or have reproduced in some other way, make up a sizable portion of the population. (Stacey & Biblarz, 2001)

In some situations, one parent can be unable to ascertain the other's sexual orientation while still allowing the family to function within the same conventional framework. The welfare of the children is not adversely affected in any manner when a spouse cannot ascertain the sexual orientation of their partner and the two can live together. However, when these relationships have ended because of a person's sexual orientation, it is not unusual for one parent to try to limit the other parent's access to custody or visitation rights. (Bem, 1996)

This is especially true when the children involved are young. It has been argued by this person that exposing a child to a gay lifestyle can harm their overall health, particularly if the child lives with a gay partner or shows affection for gay partners. In the vast majority of situations, legal decisions have repeatedly found that the sexual orientation of an individual does not constitute a relevant criterion in determining whether or not a parent is responsible for a child. On the other hand, a considerable number of jurisdictions use a "nexus" examination, which means that the sexual orientation of a parent is not necessarily one of the grounds for restricting visitation or custody rights. On the other hand, if the opposing party can demonstrate that the gay behaviour of the parent hurts the well-being of the kid, then it may be considered relevant.

6.0 Legal Framework

Since India did not have any recognized regulation in the field of surrogacy and assisted reproductive technologies until the year 2021, the country faced tremendous hurdles in this area. Due to the absence of any explicit legislation in this area, the recommendations that were developed by the International Committee of Medical Research in 2005 were the primary source of authority for the provision of services throughout the nation. In order to ensure that justice is administered appropriately, the legal system and society must continue to develop in parallel. In the

modern era of egalitarianism, it is not permissible to deny persons their rights or to subject them to discriminating treatment without providing adequate justification.

Over the course of history, the phenomenon of 'family formation' has experienced considerable alterations, which have occurred along with the development of societal norms. In India, the regulation that pertains to ART places limitations on the extent of assisted human reproduction. These limitations include the inclusion of unmarried heterosexual couples, homosexual couples, and single men. However, it is important to note that the abortion law has been greatly tightened concerning this topic, even though there is now no legislative framework in place to prohibit sexual intercourse that is conducted with the consent of the individual. As a result of performing an investigation into the many different assisted human reproductive procedures, it has become increasingly clear that the process of procreation is not limited simply to conventional approaches. People of all sexual orientations, including heterosexual couples, homosexual couples, and single men and women, are now able to have their biological children as a result of technological advancements. The emergence of a new technology known as ROPA has made it possible for homosexual and lesbian partners to actively participate in the process of conception, in addition to the surrogacy strategy that has been in place previously. There are, however, a number of socio-legal challenges that are associated with the enforcement of procreation. These challenges go beyond the conventional definition of procreation, which is restricted to married heterosexual couples. In many cases, the denial of access to such technology for homosexual couples is justified because it is necessary to protect the health and safety of children. Even within the context of traditional family structures, the well-being of children is not currently guaranteed. This is because the welfare of children involves a wide variety of elements. Among the many characteristics that are included in the concept of children's welfare are their safety, their financial stability, the behaviour of their parents, the behaviour of other members of their family, their education, their interactions with their peers, and their protection from being abused. It is extremely difficult to protect the overall well-being of children within the limitations of traditional family structures because these aspects are not effectively maintained inside those structures. (Bhowmik, 2024) [Unpublished doctoral dissertation, ICFAI University, Tripura] The divided family structure that exists now makes it more likely that children may experience a decline in their well-being. Given that the exclusion of natural intercourse is not being taken into account or regulated for any of the aforementioned reasons about the well-being of children; it is therefore not justifiable to rely solely on this factor as a basis for restricting access to ART.

7.0 Conclusion

The reproduction process is a complex activity that involves many different behaviours and changes with time. The relevance of the as a whole is fuelled by the genetic, biological, and social events that are a part of the procreation process. Reproduction is an essential impulse that gives society members who are in charge of maintaining and extending the social order and serving others. ART is not the exclusive technology addressing human biology. Numerous groundbreaking inventions address issues relating to the human body. These technologies aim to address conditions that are challenging or impossible to cure with medication. Technologies are designed to identify issues and provide remedies for them. Technologies involving human beings must be operated carefully to prevent any potential misuse. During the era of egalitarianism, technology's benefits must be equally accessible to all individuals and not restricted to any one group or person. Medical technology should be regulated to ensure that the biggest number of people can benefit from it. Assisted Reproductive Technology (ART) is a technology that can help those facing infertility issues. With the invention of Assisted Reproductive Technology (ART), individuals now have the option of non-coital procreation, allowing them to have biological children that were previously unimaginable. Some questions are creating obstacles for individuals to access ART based on social norms influenced by a patriarchal system. Fertility issues have always been viewed as a concern exclusive to women in patriarchal societies and access to ART has also been restricted based on patriarchal reasons and other reasons.

Accessing the benefit of technology is a civil right for all individuals. To address such concerns with the balance between individual reproductive rights and the welfare of the child, the 'intention doctrine' notion

can be explored. While it is not a strict rule that only children from planned pregnancies receive greater care or nurturing. (Jacobs, 2005). When faced with a choice between life existing or not existing, it is better to choose existence because in most cases the notion of 'best interest of the child' is used only to make a restriction on the access of ART for homosexual couples. The concept of the best interest of the child is interpreted in a narrow sense in such a situation. Therefore, the intention plays a significant role in deciding the question regarding such an issue of a biological child by prospective parents. Procreation using ART results in the creation of a child due to the deliberate intention of the prospective parents. The prospective parent/parents can get access to such technology if their right to procreation is recognized by the state.

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