Chapter-VII

Conclusion and Suggestions

The field of assisted reproductive technology (ART) is fast growing and changing and it will continue to dominate the future due to its widespread use. By changing the ways families were created, IVF and the assisted reproductive technologies have given birth to a host of novel legal issues, tensions, and challenges as well as an emerging body of sometimes inconsistent law and policy. After examining the history, development, various aspects and different issues as well as challenges arising out of ARTs, this chapter reframes the issues and recommends the ways to help frame, address and resolve some of the most pressing challenges.

Chapter first, as usual consists the introduction of topic, its relevancy and importance and methodology used in study and the scheme of the study.

Chapter second, titled “Conceptual framework of Infertility and Assisted Reproductive Technology” contains the meaning of infertility, its various definitions given under different international instruments and by scholars. The various causes of infertility, its consequences and the role of ART in order to remove infertility have also been discussed. It is found that since the infertility is known from a very long period but over the past several decades, its meaning has been slightly changed. In this chapter social implication of infertility has also been discussed such as isolation, denial of social status, contempt and abandonment. These are the byproduct of patriarchal society where motherhood is treated as essential part of being a women. This concept is strongly established by religion and its scriptures. So the infertility also relates with psychological elements. Through the introduction of new scientific methods in the form of ART now child bearing is not in the hand of nature only. An egg can now be forced to fertilize outside the body by ICSI. The study reveals that India with its strong patriarchal structure, son preference and the practice of sex selection became suitable ground for introducing ART. By taking the help of ART the motherhood may be provided to women, which will prove a boon for her. Now she may be out of the social stigma of infertility. The chapter shows that ART does not only provide a treatment of infertility to the women at large but also provide her a social recognition in the society.

Chapter third, with the title “Regulation of Assisted Reproductive Technology in India” highlighted the serious issue related to lack of legal regulation in the area of
ART. It has also been discussed that due to lack of regulation now ART has been used as a tool of exploitation by medical professionals. In this chapter it has also been suggested that there is an urgent need to have an effective legislation to check the misuse of ART and also to provide the relief to general public at large. In this chapter the draft Assisted Reproductive Technology (regulation) Bill and Rules 2010 (draft ART Bill) has also been examined and analyzed with the objective to highlight the loop holes and weaknesses of the Bill.

It is also found that fertility treatment confined primarily to the private sector and tertiary public sector institutions accessible to a select few. The basic health care system has no strategy to deal with infertility. Infertility is a worldwide problem affecting millions of people therefore it is suggested that the accessibility, availability and affordability of ART must be ensured to each and every people in the society irrespective of their financial status. The role of public sector’s Health Care institution is significant in this area.

The study reveals that due to lack of legally binding guidelines, the fast mushrooming of ART clinics may be seen in India. There are no standard treatment protocols for ART procedures. In order to ensure quality of care it is imperative that a proper and compulsory accreditation procedure with standardized guidelines should be followed in the establishment of ART centers. Legitimate social issues that go beyond the exclusive expertise of doctors and scientists or market choice by patients need to be accommodated within the regulatory regime. The accreditation, supervision and regulation of ART clinic is the need of the hour. The study also reveals that the medical professionals dealing with ART are governed only by the norms of ethics and non-binding guidelines. The liabilities and responsibilities of medical and technical professionals are major issues which should be dealt by the specific legal norms and principles.

The chapter also includes the examination of the two guidelines namely; the National Guidelines for Accreditation, Supervision and Regulation of ART Clinics in India, 2005 and the Ethical Guidelines for Biomedical Research on Human Subjects 2000. Since there is no law and legally binding regulation to govern ARTs, only these non-binding guidelines of ICMR govern the use of ART. An analysis of these guidelines reveals serious inconsistencies and ambiguities and lacunae on the issues of fundamental importance. A revision or reformation of these guidelines is therefore urgently required in India.
Apart from that the draft ART Bill 2010 proposed by ICMR and MOHFW has also been discussed in this chapter. It has been found that it is also full of lacunae, inconsistency and ambiguities. The draft Bill lacks clarity at various levels and full of ambiguous language. It creates obstructions in effective implementation of the Bill. The draft Bill contains contradictions at places and also left certain critical questions unanswered, like surrogacy, surrogacy contract, the payment to surrogate etc. The draft Bill also lacks proper mechanism to ensure the responsibilities of the parents and interests of the children born through ART. It has also shown in the chapter that there is a need to make special provisions to ensure the welfare of children. In this regard, the various recommendations of Law Commission has also been examined and discussed with an objective to propose an effective legislation in this area. The new recommendations made by different ministries seem like a clash of international and national interests in a transnational industry. A legislation that is purely domestic in nature, in reality has far reaching consequences globally. The Draft Bill should effectively regulate and monitor ART providers, consultancies, private agencies and other people involved in offering and promoting ART and surrogacy services.

The study of this chapter also reveals that adoption is recognized amongst the Hindus only in India. The other communities do not recognize it. *The Hindu Adoption and Maintenance Act, 1956* read with *the Hindu Minority and Guardianship Act, 1956* applies only to Hindus, Buddhists, Jains and Sikhs. In 1990 the Central Adoption Resource Agency (CARA) was established by the Union Ministry of Social Justice and Empowerment for regulation of adoption within India, and international adoptions of children from India. In 1995 it issued guidelines on adoptions which provided that all registered/licensed adoption agencies are required to follow these guidelines. A Bill for a uniform law governing adoption was introduced in the Lok Sabha in 1980, but unfortunately, it was opposed due to lack of consensus and the bill was eventually lapsed. The legal position is thus very complex, and no general provisions can be made to all couple having children by ARTs or surrogacy. Therefore, there is an urgency to pass a uniform law relating to adoption of the child born through ARTs, which give an equal opportunity to the couple of all community to adopt the child.

The chapter fourth, titled “Laws in Different Countries Relating to Assisted Reproductive Technology” is a comparative study of the laws and policies in different
countries. The study reveals that few nations of the world have made laws and policies to regulate ART within their own regulatory framework which either allow it or impose some restrictions on it. It is found that most industrialized nations ban commercial surrogacy. The countries like Brazil, Israel, and the United Kingdom have established regulatory regimes or partial bans to control access to it. The study also reveals that the surrogacy market is unregulated in the United States. The federal Government has left the issue on individual States to develop regulatory policies. Although the use of ART is prevalent in many countries of the world, India has become one of the preferred destinations for fertility tourism in the world. The reason behind it is that the treatment in western countries comparatively involves high cost where the middle class people find it difficult to afford infertility treatment. To them, India is the best option where they can avail the treatment at comparatively low cost. Another reason is that commercial surrogacy is banned in many countries and India offers an open market access and easy destination due to lack of legal regulation. Therefore, there is an urgent need for regulation of transnational surrogacy and fertility tourism through international norms. The same may also be formulated in such a way that it should regulate international adoption and resolve the issue of nationality of the children born out of surrogacy.

The fifth chapter titled “Ethical–Moral and other Issues in Assisted Reproductive Technology” contains the discussion on other issues like social, moral, ethical, health and religious issues. These issues are attached with the topic of research in such a way that the research cannot be completed without examining these issues. The study reveals that the social ethical and religious norms should not be overlooked by undergoing the fertility treatment. The ART technology has posed a danger to the social institutions also. It should only be permitted to the extent to which the social, ethical and religious norms allow it. It has also been suggested in the chapter that ART should not be allowed to be misused in such a way that it will de-shape the face of the society. The feminist’s perspective of ART has also been discussed in the chapter with the objective that glamorous approach should not be allowed to distort female organs and the health of mother. It has also been suggested that commercial surrogacy should not be allowed at any cost. It should be made voluntary (altruistic).

The sixth chapter titled “Judicial Response and Assisted Reproductive Technology” wherein the decided cases relating to ART has been discussed and
analyzed. The output of the study is that the cases involve complicated issues of well settled family laws. The decisions attempted to make variations from the above settled principles like access to ART treatment, consent to use of gametes or embryos, artificial Insemination, surrogacy, frozen embryos, posthumous reproduction, same sex parentage. The study of the chapter shows that the judiciary has played dynamic role while resolving ART related issues. The courts have also touched the issues like limitation on number of embryo transferred, fetal reduction in the case of multiple pregnancy, the number of IVF procedure on a women, the use of sperm after the death of husband, the use of P.G.D. for sex-selection, the maternity and paternity in the case of sperm and egg donation and the same sex parentage and tried to resolve it by propounding new formulations in the area. The judiciary has also insisted legislating effective laws in the area of ART.\footnote{1} Recently, the Madras high court has extended the benefit of maternity leave to genetic mother in the matter of child born through surrogate baby.\footnote{2}

The last chapter titled “Conclusion and Suggestions” deals with summary of the study and detailed suggestions has been put forth for the regulation of assisted human reproduction. The conclusion of each chapter has already been discussed above. After the thorough exercise of the study following suggestions are mooted out:

**Suggestions:**

- ART has been involving a big business incorporating $3-4 billion-per-year. It has various participants like oocyte/sperm donor, surrogate mothers and major drug companies; families using donor gametes, etc. it is submitted that a strong law required to be legislated for controlling its misuse.
- The malpractices, misuse and exploitation of ARTs may also be regulated by developing a code of conduct with participation of medical professionals, religious leaders and the members of civil society and academicians.
- Transnational surrogacy is one of the most controversial issues, especially in India; which has secure favourite destination for the infertile couple all around the world because of easy and cheap availability of surrogate mother and lack

\footnote{1}{*Baby Manji Yamada v. Union of India* 2008, 13 SCC 518, *Jan Balaz v. Anand Municipality* 2010(2) ALL MR. (JOURNAL) 14}

\footnote{2}{*K. Kalaiselvi vs Chennai Port Trust*, Judgment delivered on 04.03.2013, high court of Madras.}
of legal regulation. The silence on the part of government and policy makers have created legal disputes resulted in legal battle in the court of law. In this way it can be suggested that there should be a monitoring agency to check transnational surrogacy which can supervise, control and counsel the infertile couple from abroad.

- The Government of India should established special fast track court for the speedy trial of the cases related to transnational surrogacy. It will be in the best interest of the child.
- There is a lack of legally binding regulatory mechanism to deal with the complex legal, ethical issues surrounding ART such as sex selection, PGD, multiple embryo implantation, fetal reduction and inducement of pregnancy in post menopausal women. These issues are needed to be addressed by law.
- There is lack of legally binding guidelines regarding the fast mushrooming of ART clinics and there quality, cost and safety. In the light of National Guidelines for Accreditation, Supervision and Regulation of ART Clinics in India, 2005, a new law is also required to be legislated to regulate and restrict the fast growth of ART clinics in India.
- Studies show that women hiring themselves out as surrogates almost invariably do so out of economic necessity and indeed, are exploited by range of middle men and women. The Commercialization of female body parts in the name of surrogacy should not be allowed, therefore commercial surrogacy should be banned.
- The process of adoption must be simplified and there should be counseling for the infertile couple so that they can understand the risk of IVF and other technologies. The complexities and legal hurdle in the process of adoption must be removed and there should be a uniform law on adoption for all person of various communities.
- A National database must be maintained by the Ministry of Family Welfare (MOHFW) regarding the number of couples coming to India for surrogacy.

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Suggestions Relating to Draft ART Bill 2010

The draft ART Bill and Rules 2010 is yet to become law. The following suggestions may be proposed to make the Bill more comprehensive:

- The Draft Bill in its present form is unacceptable, and there is an urgent need for regulation of present practices of ARTs, not only regularization.
- There is a need to review the Bill on ARTs within the framework of the India’s health policy other relevant policy.
- A provision in the draft ART Bill should be incorporated that before undergoing ART procedure, a counselling by medical and technical professionals should be made compulsory and a responsibility should be fixed on them that they should revealed to patient about all sort of hazards, health risks and complications of ART. The Draft Bill should clearly indicate the various health risks and adverse results of ARTs.
- There should be a provision in the draft ART Bill for health insurance and rights of surrogate mother and child born out of surrogacy arrangement. It is also suggested that the government should initiate a scheme for compulsory insurance for health of surrogate mother and child born out of surrogacy and the premium should be made payable by the genetic parents.
- The Bill should permit genetic surrogacy, and not restrict to the more complicated, expensive and invasive gestational surrogacy. The upper age limit for undergoing ART procedure should be clearly stated by the Bill.
- The Draft Bill must ensure that the commissioning parents understand and agree to the fact that the surrogate has a right to physical integrity and bodily autonomy, i.e. she cannot be forced for abortion, go for foetal reduction or made to follow certain diet. After the birth of the child, the birth must be officially documented.
- Considering the fact that these technologies do not treat or cure infertility, and keeping the potential risks for the mother and child in mind, a responsible legislation regarding infertility and ARTs must encourage adoption and present it as a course of action as significant as ARTs.
The various medical procedures and the steps involved need to be laid down in detail.

The central database as mentioned in the Draft Bill should also keep a record of live birth rate/take home rate, number of implantation rate, number of still births, number of healthy IVF children born etc.

The requirement of cryo bank in terms of the facilities needed, kind of personnel and qualification to run a cryo bank must be clearly spelt out and explained in the Draft Bill. It should also make adequate provision for the inspection, monitoring and regulation of cryo banks.

The Draft Bill must ensure that the act of taking ‘informed consent’ should be a continuous process. It should include explanation and interaction over a period of time and not merely restricted to taking a signature of the concerned person.

The Draft Bill should also deal with the issue of sex-selection more stringently. Further, the use of techniques such as Pre implantation Genetic Diagnosis should be strictly monitored.

The draft ART Bill should not be taken as final. There should be an open debate and discussion across the country, at various levels and regions. The government should incorporate the suggestions while materializing the proposed Bill.

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