

Assisted Reproductive Techniques Ethical And Legal Concerns

D Kharb

Citation

D Kharb. *Assisted Reproductive Techniques Ethical And Legal Concerns*. The Internet Journal of Law, Healthcare and Ethics. 2006 Volume 4 Number 2.

Abstract

One of the breathtaking breakthroughs in science in the recent years is its spectacular intrusion into the nature's closely guarded secrets. The unprecedented and rapid advances in medical sciences have revolutionised modern medicine and surgery in a number of ways. These advances like genetic engineering, assisted reproductive technologies, human cloning etc. have opened up the unimagined dimensions in the practical application of biomedical technologies. They promise unquestionable and undreamed of benefits to mankind. At the same time, they raise many questions of law and ethics stimulating public interest and concern.

WHAT ARE ASSISTED REPRODUCTIVE TECHNOLOGIES?

- Assisted reproductive technologies include any fertilization involving manipulation of gametes/embryos outside the human body and transfer of gametes/embryos into the body. They offer biomedical parenthood to various infertile couples who have often spent years trying to have a child and have exhausted all other avenues to have a child of their own. The new reproductive technologies give great help to infertile couples and
- Make many new reproductive arrangements possible. The possibilities available for couples contemplating parenthood in unconventional ways under these new reproductive techniques are-

1. Artificial Insemination
2. In-vitro Fertilization
3. Surrogate Motherhood

ARTIFICIAL INSEMINATION

It involves manipulation of fertilization by injecting of a sperm artificially through a needle into the uterus of the wife directly without sexual intercourse. When a man cannot produce sperms or his sperm count is low, the wife is

artificially inseminated with the sperm of an anonymous donor or the husband. Where the husband's sperm count is low or because of a disease can not ejaculate, the artificial insemination is done with the sperm of the husband [AIH]. But where the husband is not able to produce sperms the sperm can be taken from an anonymous donor [AID]. This accounts for the existence of sperm banks in certain advanced technological cities. Artificial insemination is also done in case of a lesbian couple by a donor sperm in one of the partners. It is normally the first infertility treatment a couple will try as it is simple to accomplish, involves no pain and is less expensive as compared to other reproductive techniques.

ETHICAL AND LEGAL CONCERNS IN AIH AND AID

AID raises ethical questions that are not raised by AIH as it takes place between husband and wife. Even though it is through advanced biomedical techniques and not by natural procedure, most of the people have no moral difficulty to accept it. It maintains the integrity of family and there is continuity between procreation and parenthood. Most people agree that there are no morally significant differences between AIH and procreation by intercourse. It is simply viewed as a medical technology providing assistance to what could not be accomplished by normal sexual intercourse.

Whereas AID introduces a third party into the reproductive matrix. Someone who donates sperm to be used for AID, is now contributing genetic material without the intent to

parent the child that will be produced through the use of his genes. Most of the religions also don't accept the impregnation of one's wife by the sperm of a third person as it doesn't make the child one's own and is looked down upon as illegitimate even in man-made laws. The donation is, however, always made anonymously so that the father could not be traced by the child, nor can the father elect to make contact with the child, potentially disrupting a harmonious family. Still, it is redefining the concept of family and turning traditional notions of reproduction upside down.

IN-VITRO FERTILIZATION

In-vitro fertilization [IVF] simply means fertilization 'in glass' as in the glass container of a test tube. It involves fertilization that is artificially performed outside the woman's body 'in a test-tube'. The procedure involves extraction of a number of eggs from the woman. To do this, she is given a drug that enables her to 'super ovulate,' or to produce more eggs in one cycle than she normally does. The eggs are then surgically removed and fertilized outside the body in the laboratory normally with the sperm of the husband. It includes two processes:

- Where the wife is not able to produce eggs, another woman is hired to be inseminated with the husband's sperm and she bears a child for them. This is called as Surrogate Motherhood.
- Where the wife is able to produce eggs but unable to carry a child to term. The eggs are extracted from the uterus of the wife and the embryo is externally formed by laboratory fertilization by husband's sperm. The embryo is then implanted in the uterus of the wife and she bears the child.
- Where the couple desiring to have children cannot produce any of the sperm or eggs necessary for conception. So, the wife's sister donates the eggs and husband's brother donates sperm. Fertilization occurs in vitro, that is outside the womb and embryo is implanted in the wife's womb, who carries the child?

Since the procedure is so expensive, all the eggs are fertilized in the lab so that in case of failure, reimplantation can be done without any additional cost and time. Usually more than one embryo is implanted in the uterus as it is not sure how many of them would be successfully implanted. The remaining embryos are frozen and stored for further

attempts.

CONCERNS REGARDING IN-VITRO FERTILIZATION

Stepping away from God's laws always introduces chaos into our lives. Nowhere is this truer than in the case of in-vitro fertilization. The reproductive revolution has had the ability to separate genetic parenting from gestational parenting and from social parenting; and the agent who brings it all about, a biotechnical, will be still another person. Sperm and eggs are being brought and sold and wombs are being rented. The fact that these techniques have been developed and have a certain success rate does not make them morally acceptable. The ends do not justify the means. Donation of sperms and ova, and the use of surrogate motherhood to bear the child are both contrary to the unity of marriage and the dignity of procreation of human being. Furthermore, these procedures lend themselves to commercialization and exploitation when people are being paid for sperm, ova and for surrogate motherhood. The in-vitro fertilization is acceptable within limits. Some of the ethical issues involved in this technology are:

- Bypassing the natural method of conception,
- Creating life in laboratory,
- Fertilizing more embryos than will be needed,
- Discarding excess embryos,
- Unnatural environment for embryos,
- Expensive technology, not affordable for common man,
- Creating embryos, freezing them and keeping them in limbo,
- Destroying embryos in research,
- Potential to select embryos,
- Selective termination of embryos etc.

The legal problems that arise from in-vitro fertilization are legion. The number of persons who can assert for parental rights extends to five- the sperm donor, the egg donor, the surrogate motherland the parents who raise the child. The child with multiple parents is surely going to invite multiplicity of litigation- a bonanza for lawyers. Further, if during the time in which the embryos are in storage, the

couple divorces, legal complications may arise as to the custody of the embryo. But the possibilities that raise significant legal and moral issues about IVF are-

THE EMBRYOS IN STORAGE

Since the procedure is so expensive, more embryos than required are fertilized in the lab so that if none of the fertilized eggs are successfully implanted, reimplantation can be done without much additional cost and time. The spare embryos are frozen, discarded, donated or used for experimentation. Freezing is an expensive procedure, it can also kill some of them. These embryos are human lives that, given a chance, would develop into a man or a woman. If they are used for experiment action, it can be fatal for them. Since some religions believe that life begins at conception, it may amount to abortion which is contrary to both law and ethics. Using them for experiment indentation is also not permissible as science cannot experiment with someone with basic human rights without prior permission. Donation involves separation of the biological and social roles of parenthood that is significant part of family concept and is equivalent to adoption before birth thereby calling for amendments in adoption laws of most of the countries.

HAVING MORE EMBRYOS IN THE UTERI THAN SHE CAN CARRY

When the implantation is successful and she is carrying more developed embryos than she can carry, it can endanger her life. The only alternative available to avoid risk to her health and life is to carry out selective termination of one or more of the developing embryos. This not only involves trading of one life or more but the doctor is faced with the decision of which one's to terminate and how to make this decision.

SURROGATE MOTHERHOOD

Surrogate motherhood involves a woman bearing the child of another woman. Where the woman can not produce eggs, they enter into a contract with another woman to be artificially inseminated with the husband's sperm and she bears the child for them. Also where the woman can produce eggs but she is unable to carry a child to a term, the embryo is externally formed by in-vitro fertilization of husband's sperm and wife's ova, the embryo is implanted in surrogate mother's womb and she bears the child for them. This can be done in two ways-either the husband's semen is squirted in the vagina of the surrogate or the fertilization is done externally in the lab by IVF and the embryo is implanted in the uterus of the surrogate mother. The surrogate mother is

paid by the married couple for renting her womb. In this case the child would inherit the genetic code of the contracting couple and the sanctity of marriage is maintained. Still the surrogate motherhood is the most controversial of the new reproductive techniques.

LEGAL AND ETHICAL CONCERNS IN SURROGATE MOTHERHOOD

Subrogation involves a contract of sale between the married couple and the surrogate. Certainly the most serious ethical objection to commercial surrogacy is that it reduces children to objects of barter by putting a price tag in them. Legally also, it is no less than selling or trafficking of human beings violating the basic fundamental rights of a human being. Some women could be pressurized into surrogacy by their husbands for money. Pregnancy is a complicated and risky procedure. In India, the surrogate does not enjoy the same rights as in the west. The Indian medical guidelines allow doctors to implant five embryos into a surrogate, whereas in Britain, the maximum is two and many European countries are moving towards a single embryo implant. In India, the surrogate mother's right to the child is not on the same footing as in the west. Under British laws a surrogate mother who has provided an egg can claim the baby back within two years of child's birth. However in India, she has no right over the child after delivery. She can cancel the contract only when it is proved that it was not a valid contract according to section 23 of Indian Contract Act. Surrogacy throws up another problem of post partum blues if the mother and the baby bonds. Ethically also subrogation raises many issues like tempering with the normal process of procreation, undermining the institution of marriage and family life, treating children as objects of sale etc. Most of the religions also don't approve of the idea of subrogation. There is no law concerning this issue until very recently arising from surrogacy. The Indian Council for Medical Research has laid down certain guidelines for clinics practicing ART and their handling of surrogates in India.

CONCLUSION

God gave mankind the ability to discover and apply all kinds of technological innovations. It does not follow that the mankind has the responsibility to use every bit of technology that has been discovered. The need for uniform ethical guidelines for research on human subjects is universally recognized. Infact it has acquired a new sense of urgency as the critical issues in the area of this research have become acute. On one hand, there is need to respond to legitimate public concern, and on the other, there is need to appreciate

and encourage and not unduly deter new scientific innovations for the benefits of mankind. The guidelines can be neither exhaustive nor static. They need to be updated, consistent with the speed of changes in science and

technology.

References

1. ICMR Guidelines on Biomedical Research 2000
2. Medicolegal Update
3. <http://www.lifeissues.net>

Author Information

Deepa Kharb, Ph.D.

Lecturer in Law, Institute of Law and Management Studies