A.R.T.: Are We Heading towards Designer Babies?

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I. Introduction:

We are living in the age of 'Designer wear'. Today everyone wants to have designer apparel, designer purses/ handbags, designer shoes and with the advent of genetic engineering one wonders whether the modern man is ushering into the era of Designer Babies, wherein he can design or customize his next generation!

Where nature is seen to be cruel or flawed - as in the case of a woman unable to conceive *in vivo* - then science and technology may be called upon to repair the natural order. The contemporary human being is blessed to have the medical science to his rescue in the form of Assisted Reproductive Technology. This paper attempts to trace the developments in the medical field for assisted reproductive technology. This paper shall also attempt to examine the various legal, social and ethical issues arising out of this and scrutinize whether it is lawful to permit these medical techniques of reproduction. The paper shall also attempt to analyze the Bill and compare it with the law in various different countries.

II. A.R.T: Techniques for alleviation of Infertility:

The world's second and India's first IVF (in vitro fertilization) baby, Kanupriya alias Durga was born in Kolkata on October 3, 1978 about two months after the world's first IVF boy Louis Brown was born in Great Britain on 25 June 1978. Since then the field of assisted Reproductive Technologies has developed rapidly. Till date Assisted Reproductive Technologies (A.R.T.) has enabled millions of people in the world to have biological children who otherwise would not have been able to do so. According to the European society for Human Reproduction and Embryology, more than three million babies have been born using A.R.T. worldwide in the last 30 years, enabling infertile women and men, single women and men, and lesbian, gay, and transgender couples to form genetically-related families.

II. I. What is Assisted Reproductive Technology (A.R.T.)?

Assisted reproductive technologies or A.R.Ts are fertility treatments that enhance a woman's ability to get pregnant. A.R.T. is a group of different methods used to help infertile couples. A.R.T. works by removing egg from a

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woman's body. The eggs are then mixed with sperm to make embryos. The embryos are then put back in the woman's body. A.R.Ts include anything from fertility enhancing drugs to more complex procedures such as in vitro fertilization. The National Institute of Health Report those up to 2/3 of couples who use A.R.Ts are able to conceive[2].

II. I. I. How Often is Assisted Reproductive Technology (A.R.T.) Successful?

Success rates vary and depend on many factors. Some things that affect the success rate of A.R.T. include:

- Age of the partners
- Reason for infertility
- Clinic
- Type of A.R.T.
- If the egg is fresh or frozen
- If the embryo is fresh or frozen[3]

A.R.T. can be expensive and time-consuming. But it has allowed many couples to have children that otherwise would not have been conceived. The most common application of A.R.T. is multiple fetuses. But this is a problem that can be prevented or minimized in several different ways.

II. II. Types of Assisted Reproductive Therapies: Overview of current Technologies:

There are numerous types of A.R.T. procedures, some used to initiate pregnancy, and others more specifically used to increase likelihood of pregnancy. There are three primary means of initiating pregnancy: Artificial Insemination (AI), prescription fertility-enhancing drugs, and In-Vitro Fertilization (IVF).

II. II. I. Artificial Insemination (AI):

Artificial Insemination refers to several different procedures, all of which involve inserting sperm into a woman's body, the differences referring to whether the sperm is placed in her vagina, uterus, cervix or fallopian tubes. AI can also be combined with hormonal drugs to stimulate production of multiple eggs to increase likelihood that one of them will be fertilized.

The Scottish Trial Court in Machlennan v. MacLennam[4], where the issue was concerning adultery and artificial insemination by donor, held that it did not amount to adultery.

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2 www.livestrong.com/article/37744-side-effects-reproductive -technologies/last retrieved on 1.11.2011

3 www.medicinnet.com page 6

4 58 SLT 12 (236)

II. II. II. Fertility-Enhancing Drugs:

Fertility drugs can be oral or injectable. The most common fertility drug used is clomophene citrate, which is taken orally to help women who are not ovaluating or who ovaluate irreregularly to produce one or more follicles in one cycle.

II. II. III. In Vitro Fertilization:

In vitro fertilization (IVF) means fertilization outside the body. IVF is the most effective A.R.T. It is often used when a woman's Fallopian tubes are blocked or when a man produces too few sperm. Doctor treats the woman with a drug that causes the ovaries to produce multiple eggs. Once mature, the eggs are removed from the woman. They are put in a dish in the lab along with the man's sperm for fertilization. After 3 to 5 days, healthy embryos are implanted in the woman's uterus.

II. II. IV. Zygote Intrafallopian Transfer (ZIPT):

Zygote intrafallopian transfer (ZIFT) or Tubal Embryo Transfer is similar to IVF. Fertilization occurs in the laboratory. Then the very young embryo is transferred to the Fallopian tube instead of uterus.

II. II. V. Gamete Intrafallopian Transfer (GIFT):

Gamete intrafallopian transfer (GIFT) involves transferring eggs and sperm into the woman's fallopian tube. So fertilization occurs in the woman body.

II. II. VI. Intra-Cytoplasmic Sperm Injection (ICSI):

Intra- cytoplasmic sperm injection (ICSI) is often used for couples in which there are serious problems with the sperm. Sometimes it is also used for older couples or those with failed IVF attempts. In ICSI, a single sperm is injected into a mature egg. Ten the embryo is transferred to the uterus. The child will not be genetically related to either parent.

A.R.T. Procedures sometimes involve the use of donor eggs (eggs from another woman), donor sperm or previously frozen embryos. Donor eggs are sometimes used when the woman or man has a genetic disease that can be passed on to the baby. An infertile woman or couple may also use donor embryos. There are embryos that were either created by couples in infertility treatment or were created from donor sperm and donor eggs. The donated embryo is transferred to the uterus. The child will not be genetically related to either parent[5].

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5 Available at http://www.medicinenet.com page 7 last retrieved on 01.11.11

II. II. VII. Surrogacy:

Women with no eggs or unhealthy eggs might also want to consider surrogacy. A surrogate is a woman who agrees to become pregnant using the man's sperm and her own egg. The child will be genetically related to the surrogate and the male partner. After birth, the surrogate will give up the baby for adoption by the parents.

II. II. VIII. Gestational Carrier:

Women with ovaries but no uterus may be able to use a gestational carrier. This may also be an option for women who shouldn't become pregnant because of a serious health problem. In this case, a woman uses her own egg. It is fertilized by the man's sperm and the embryo is placed inside the carrier's uterus. The carrier will not be related to the baby and gives him or her to the parents at birth.

II. III. Risk Involved in A.R.T.:

Recent research by the Centers for Disease Control showed that A.R.T. babies are two to four times more likely to have certain kinds of birth defects. These may include heart and digestive system problems, and cleft (divided into two pieces) lips or palate. Researchers do not know why this happens. The birth defect may not be due to the technology. Other factors, like the age of the parents, may be involved. More research is needed. The risk is relatively low, but parents should consider this when making the decision to use A.R.T.[6].

III. Issues : Social, Ethical and Legal of A.R.T:

These new technologies have transformed the way we view reproduction[7]. The above discussion clearly makes it evident that the A.R.T has created viable but controversial options to procreation outside the normal and conventional means. Hence it creates issues relating to Family Law and law relating to succession. Also in the absence of legal regulations, questions also arise as to who all can use A.R.T i.e. to say that is it only for the infertile couples or can the clinically fertile couples also take resort to it? Also, it is not clear whether single men and women, similarly the gays and lesbians also opt for any of the above mentioned A.R.T. Also, one of the major apprehensions is whether any and every one can use A.R.T, is it not a challenge to the institution of marriage. If, we answer this in the assertive, then another apprehension is whether this A.R.T. will dismantle and breakdown the institution of Family? Also, does A.R.T.'s use fundamentally mean that it separates sex from reproduction? Also, what will

6 Ibid page 8

7 http://genetics and society.org, Assisted Reproductive Technologies: Overview and Perspective Using A Reproductive Justice Framework, written by Emily Galpern. Dec.2007; last retrieved on 01.11.2011 at 11.30 am

be the effect on the children born with the help of A.R.T in the case of single men and women, as they would be brought up by single parents? Will this have any psychological or physical effect on the children? Another important issue is whose child is it; i.e. the child born out of use of A.R.T. Does the right to have / not have children mean there is a right to choose the characteristics of a child? Do new reproductive and genetic technologies contribute to the devaluing of people with disabilities? Do they increase exploitation of young women, economically vulnerable women, and communities of colour? Do they increase commodification of women's reproductive capacity and reproductive tissues? Should we draw lines for how certain technologies can be used? (e.g, Pre-implantation genetic diagnosis[8] for medical and not social purposes)[9]. We do agree that A.R.T is a boon for the infertile couples as it gives them a chance to bear their genetic children. But at the same time it offers them a choice of designing their own child. Does this also mean that it gives an opportunity to man to play God? In this process, another important question that arises is does this contradict our PNDT Act which prohibits sex selection. More fundamental issue is any ban on the use of these techniques in infringing one's right to privacy and hence will this ban be unconstitutional?

A primary harm that researchers attribute to the use of new reproductive technologies is physical damage. Few long term studies have been undertaken of the kinds and rates of the physical diseases and abnormalities incurred by children born of the new reproductive technologies. Moreover, the evidence these investigations provide is conflicting. Australia is the only country that has kept statistics on the condition at birth and subsequent progress of children born of IVF since the inception of this technique in the late 1970s. Data from that country indicate that these children are two or three times more likely to suffer such serious diseases as spina bifida and transposition of the great vessels (heart abnormality). The Australian data also suggests that some drugs used to stimulate women's ovaries to produce multiple oocytes in preparation of IVF increase the risk of serious birth impediments in the resulting children. Other investigations and commentators support this finding[10].

8 Preimplantation genetic diagnosis (PGD) involves screening embryos created through in vitro fertilization for the presence or absence of certain genes. Such as de-selecting for a disability or selecting for a particular sex.

9 Some make the distinction that medical screening (for genes that show the presence of disease or medical conditions, e.g., Tay-Sachs, sickle cell anemia, spina bifida) is justifiable, but would not be for social traits such as eye color, skin tone, or intelligence. Others make the point the drawing lines between medical and social stems from the devaluation of the lives of people with disabilities, and that we would not make this distinction if people with disabilities were fully valued members of society.

10 Freeman Michael (ed) Children Medicine and the Law, Cohen Cynthia , " Give me Children or I shall Die!" New Reproductive Technologies and Harm to Children, pp26. ASHGATE DARTMOUH

Some resource group for women and Health after their research found that the women going through the process of IVF or IUI had affected their sexual life which had become a mechanical way of procreation under the medical 'gaze'[11].

The A.R.T. has changed the way we view Parenthood. It has changed the traditional concept of Parenthood. Now the child may have four parents at a time[12]. This issue needs legal attention. Similarly a child is legitimate if its parents were married at the time of his conception or at the time of his birth. However, A.R.T. is allowed to single parents as well. So the question arises whether we need to rethink about the definition of legitimate child.

This right to procreate either as a married couple or as a single individual was broadened and was given constitutional protection in the latter American case of Esienstadt v. Baird[13]. In that case the Court stated *inter alia*[14] :

If the right of privacy means anything, it is the right of individual *married* or *single* to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.

At issue in Skinner v. Oklahoma[15] was the constitutionality of an Oklahoma statute that authorized the state Attorney General to sterlise thieves after third offence. Holding the State law unconstitutional, the court asserted that procreation is 'fundamental to the very existence and survival of the race'[16]. The Court further reasoned 'strict scrutiny should be applied when considering the constitutionality of a law that infringed upon this fundamental right'[17].

In Re Matter of Baby M[18], the New Jersey Supreme Court gave a subtle approval to one of the current reproductive procedures. In that case, while

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11 Sama team, 'Assisted Reproductive Technologies in India: Implications for women', Economic and Political Weekly, June 9, 2007 pp 2189

12 Two- commissioning Parents, Two- Donor Parents

13 405 US 438(1971)

14 Id at 454-5, emphasis added. See also, Casey v. Planned Parenthood, 505 US (1992) where Justices O.Connor, Kennedy and Souter stated, "our law affords constitutional protection to personal decisions relating to marriage, procreation, contraception, childbearing and education. These matters, involving the most intimate and personal choices of a person may make in a lifetime, choices central to personal dignity and autonomy are central to the liberty protected by the Fourteenth Amendment".

15 316 US 535 (1942)

16 Ibid at 541 noting that 'we are dealing here with legislation which involves one of the basic civil rights of man. Marriage and procreation are fundamental to the very existence and survival of the race'. It is however arguable whether the emergence of ART , marriage or the necessity to marry in order to procreate plays such a crucial role in human survival.

17 Id. At 542

18 (1988) 537 A 2d 1227

holding the surrogacy contract which resulted in the birth of the baby in the case as void and a violation of the New Jersey public policy; the court slightly broadened its spectrum of procreative liberty as well as simultaneously providing limits on any further expansion. In defining procreative liberty, the court explained "the right to procreate very simply is the right to have natural children whether through sexual intercourse or artificial insemination. It is no more than that"[19].

This recognition of one of the processes of A.R.T by the American Court poses an important legal issue before us. One is compelled to wonder that if the right to procreate involves the right to have 'natural children' according to the Court, then what makes the child delivered through IVF procedures where the gamete donors are genetic parents . or via surrogacy where the commissioning couple are genetic parents, less natural than an AI child?

This was answered in the case of Lifchez v. Hartigan[20], where a federal District Court held that the constitutionally protected right to make procreative decisions includes the right of an infertile couple to use certain A.R.Ts. The Court opined as under[21]:

It takes no great leap of logic to see that within the cluster of constitutionally protected choices that includes the right to have access to contraceptives, there must be included within that cluster the right to submit to medical procedure that may bring about rather than prevent pregnancy.

IV. Legal Control of A.R.T — International Perspective:

IV. I. Canada:

According to the Canadian Law Reform Commission's working paper on access to A.R.T[22]:

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19 Id at 1253. If procreative liberty involves the right to have natural children the question that follows is whether a child born via IVF techniques is less natural or even unnatural than a child born via AI or through sexual intercourse.

20 735 F Supp 1361 (N.D. III 1990)

21 Id. at 1377. The use of this word suggests that the medical procedures that may bring about a pregnancy are not as exhaustive as indicated by the New Jersey Supreme Court in the Baby M case.

22 Medically Assisted Procreation (Working Paper No. 65) 1992. See, Golombok, Spencer and Rutter, Journal of Child Psychology and Psychiatry (1983) cited in Jean Mchale et al., supra note 20 at 664 showing that in that year 37 children aged between 5-17 , being brought up in 27 lesbian households, were compared with 38 children in 27 single parent families, being brought up by a heterosexual mother. Psychosexual and Psychiatric appraisals were based on interviews with the children, on interviews with the mothers and on questionnaire given to mothers and teachers. The groups did not differ in gender identity; all the children said they were glad to be the sex they were. The two groups did not differ in sex- role behaviour and there were no signs of differences in sexual orientation between the two groups. These negative findings suggest that anxieties about the effects of lesbian / gay parenthood may be unfounded.

Legislation governing access to medically assisted procreation technologies should respect the right to equality. Access should be limited only in terms of the cost and the scarcity of resources. Where limitation is necessary, selection should not be based on unlawful grounds for discrimination within the meaning of provincial legislation (family status, marital status, sexual orientation and so on).

Eligibility to participate in A.R.T. treatment according to the Ontario Law Reform Commission should 'be limited to stable single men and to stable single men and stable women in stable marital or non-marital unions'[23].

IV. II. United Kingdom:

The British Columbia Royal Commission [Ninth Report on Family and Children Law: Artificial Insemination (1985)] proposed that the guiding standard should be an applicant's ability to 'Nurture'. The Human Fertilisation and Embryology Act (HEFA), 1990 does not include single or unmarried women but however enjoins the physician during treatment to consider the well being of the child including the presence of a father. This provision goes contrary to the recommendation of the Warnock Committee[24] on access to A.R.T. According to the Committee ' it is in the interest of any child born as a result..... while we are initially aware of the need to protect these interests, we are not prepared to recommend that access to treatment should be based exclusively on the legal

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23 The Ontario law Reform Commission (Reform on Human Artificial and Related Matters (1985)) noting that "restricting access to ART to couples would appear to contravene human rights legislation applicable in the province .Moreover, any a prior exclusions based simply on membership in a particular group (such as married persons) would automatically eliminate from consideration single persons or unmarried couples who, by any standard , would make suitable parents". See, I. Kennedy & A. Grubb, Medical Law : Text With materials 759,(2nd ed.1994)

24 The Warnock Committee report (1984) CM 9314. In 1982 a committee was established to inquire into the technologies of in vitro Fertilisation (IVF) and embryology. This was in response both to concern at the speed with which these technologies were developing, and also to the 1978 birth of Louise Brown in 1978, the first baby to be born using this technology. The role of the committee was to develop principles for the regulation of IVF and embryology. The committee was chaired by the philosopher Mary Warnock, who would later become Baroness Warnock. The committee concluded that the human embryo should be protected, but that research on embryos and IVF would be permissible, given appropriate safeguards. The committee proposed the establishment of a regulatory authority with the remit of licensing the use in treatment, storage and research of human embryos outside the body. This body would later become the Human Fertilisation and Embryology Authority. The findings of the committee were published in what is now referred to as the Warnock Report in 1984. In many ways, the Warnock report formed the basis for the Human Fertilisation and Embryology Act.

status of marriage'. The Committee further recognized that 'the question of eligibility of treatment is a very difficult one, and we believe that hard and fast rules are not applicable in its solution'.... The Committee further stated that 'we recognize however that individual practitioners are on occasions going to decline to treat a particular patient and we recommend in cases where consultants decline to provide treatment they should always give full explanation of the reasons. On Lesbian and gay marriages the Committee stated, 'The various techniques for assisted reproduction offer not only a remedy for infertility, but also offer a fertile single woman or lesbian couple the chance of parenthood without involvement of a male partner. To judge from evidence, many believe that the interest of the child dictate that it should be born into a home where there is a loving, stable, heterosexual relationship and that therefore, the deliberate creation of a child for a woman who is not a partner in such a relationship is morally wrong. On the other side, some expressed the view that a single woman or lesbian couples have a right under the European Convention to have children even though those children may have no legal father[25]. It is further argued that it is already accepted that a single person, whether a man or a woman, can in certain circumstances provide a suitable environment for a child, since the existence of single adoptive parents is specifically provided in Children Act, 1975.

While discussing the ethical aspect of using these assisted reproductive techniques, the Warnock Committee opined that anonymity of the donor be maintained[26]. The Committee also emphasized upon the need to have written consent of the parties[27].

In England, Surrogacy arrangements are legal and the Surrogacy Arrangement Act, 1985 prohibits advertising and other commercial aspects of Surrogacy.

IV. III. United States of America:

In the United States of America also, like England, many States prohibit Commercial Surrogacy.

The Uniform Parentage Act, 1987 of the USA Federal statute which neither expressly precludes nor approves the use of AID by unmarried women.

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25 See Arts 8 & 12 of European Convention on Human Rights (1953), which guarantees a respect family life and the right to found a family.

26 Warnock Committee Report, (1984), See Chp.III, 3.2 We recommend that as a good practice any third party donating gametes for infertility treatment should be unknown to the couple , before, during and after the treatment, and equally, the third party should not know the identity of the couple being helped.

27 Ibid supra note 13. 3.5 We recommend that in case of more specialized forms of infertility treatments the consent in writing of both partners be obtained , wherever possible, before treatment is begun as a matter of good practice.Any written consent should be obtained in a written consent form....

However, in some states in the USA, eg. Connecticut, Kansa and Oklahoma the use of AID is arguably limited to husbands and wives. However, Barbara Kritchevsky, in, 'the unmarried woman's Right to AID: A call for Expanded definition of Family' argues that statutes that do not mention 'unmarried women' do not prohibit them from AID.

Article 7 of The Uniform Parentage Act, 2000, discusses the parental status of the donor. It states that the donor is not a parent of the child conceived by means of assisted reproduction. Further, s. 703 of Article 7 of The Uniform Parentage Act, 2000, state that, 'if the husband provides sperm for, or consents to, assisted reproduction by his as provided in s. 704[28] he is the father of the resulting child.

V. A.R.T and Indian Law:

The Law Commission of India's Report No. 228 on Need for Legislation to regulate Assisted Reproduction Technology Clinics as well as rights and obligation of parties to a Surrogacy has stressed upon the need to have proper legislation.

The main problems associated with the practice of AID and A.R.T. are (i) the legal status of the children born; (ii) the rights of donors; (iii) the rights and obligations of the social father; (iv) the physicians' responsibility with regard to selection of the donor, limitation of the use of donor and liability to donor, recipients and any resulting child; (v) the licensing of sperm banks, centres and physicians allowed to perform AID; (vi) the keeping of records.

Let us examine and scrutinize the Draft Bill[29] on the touchstone of the above problems.

V. I. Legal Status of the Children Born:

This Bill has elaborately discussed this very important issue. The Bill has led to rest the controversy surrounding the legal status of children born out of A.R.T. S.35 of the Bill has legitimized these children as the children of the commissioning father and mother.

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28 S.704 of Uniform Parentage Act, 2000: Consent by a married woman to assisted reproduction must be in a record signed by the woman and her husband. This requirement does not apply to the donation of eggs by a married woman for assisted reproduction by another woman. (b) Failure of the husband to sign a consent required by subsection (a), before or after birth of the child, does not preclude a finding that the husband is the father of a child born to his wife if the wife and husband openly treated the child as their own.

29 Assisted Reproductive Technology (Regulation) Bill, 2010 (4) No assisted reproductive technology procedure shall be conducted on or in relation to any gamete of a donor under this Act unless such donor has obtained the consent in writing of his or her spouse, if there, to such procedure. (5) The identity of the recipient shall not be made known to the donor.

(1) A child born to a married couple through the use of assisted reproductive technology shall be presumed to be the legitimate child of the couple, having been born in wedlock and with the consent of both spouses, and shall have identical legal rights as a legitimate child born through sexual intercourse.

(2) A child born to an unmarried couple through the use of assisted reproductive technology, with the consent of both the parties, shall be the legitimate child of both parties.

(3) In the case of a single woman the child will be the legitimate child of the woman, and in the case of a single man the child will be the legitimate child of the man.

(4) In case a married or unmarried couple separates or gets divorced, as the case may be, after both parties consented to the assisted reproductive technology treatment but before the child is born, the child shall be the legitimate child of the couple.

(5) A child born to a woman artificially inseminated with the stored sperm of her dead husband shall be considered as the legitimate child of the couple.

(6) If a donated ovum contains ooplasm from another donor ovum, both the donors shall be medically tested for such diseases, sexually transmitted or otherwise, as may be prescribed, and all other communicable diseases which may endanger the health of the child, and the donor of both the ooplasm and the ovum shall relinquish all parental rights in relation to such child.

V. II. Rights of Donors:

S. 33[30] of the Bill has stated the rights and duties of the donors.

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30 S.33 **Rights and duties of donors –**

(1) Subject to the other provisions of this Act, all information about the donors shall be kept confidential and information about gamete donation shall not be disclosed to anyone other than the central database of the Department of Health Research, except with the consent of the person or persons to whom the information relates, or by an order of a court of competent jurisdiction.

(2) Subject to the other provisions of this Act, the donor shall have the right to decide what information may be passed on and to whom, except in the case of an order of a court of competent jurisdiction.

(3) A donor shall relinquish all parental rights over the child which may be conceived from his or her gamete.

(4) No assisted reproductive technology procedure shall be conducted on or in relation to any gamete of a donor under this Act unless such donor has obtained the

V. III. Rights and Obligations of the Social Father:

As the Bill clearly states the legal status of the children born out of A.R.T, no need was felt to introduce the concept of social father.

V. IV. Physicians' Responsibility with Regard to Selection of the Donor, Limitation of the Use of Donor and Liability to Donor, Recipients and any Resulting Child

Chapter 4 of the Bill satisfactorily discusses these issues in detail.

V. V. Licensing of Sperm Banks, Centers and Physicians Allowed to Perform AID:

Chapter 3 of the Draft Bill has made elaborate provisions for this.

V. VI. Keeping of Records:

S. 28 of the Draft Bill has made provisions for the records to be maintained by the A.R.T. Bank.

We find that on studying the Bill, almost all questions are answered in the affirmative and adequate provisions have been made for it. However, the Bill suffers from certain loopholes.

There is a contradiction between two sections of the Draft Bill with respect to the Birth Certificate of the Surrogate child. As per S. 34 (10) The draft Bill, the Birth Certificate in respect of the baby born to surrogacy shall bear the names of genetic parents/ parents of the baby. Whereas S. 35(7) of the Bill provides that, the Birth Certificate shall contain the names of the couple who seek A.R.T. If the genetic parent of a child born through surrogacy is a donor, whose name should be written on the birth certificate? Whether the name of the donor or the name of the couple who sought such A.R.T? If the answer to this query is answered as 'yes', then this leads to further ethical and legal complexities, affecting even the marital relation arising out of the wedlock[31].

The complex legal, social and ethical issues discussed above need special attention which necessitates the creation of a special Surrogate court as recommended by the Law Commission report no. 228. This issue also has been overlooked by the Bill.

VI. Conclusion:

It is estimated that 15 per cent of couples around the world are infertile. This implies that infertility is one of the most highly prevalent medical problems. The magnitude of the infertility problem also has enormous social implications.

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consent in writing of his or her spouse, if there, to such procedure.

(5) The identity of the recipient shall not be made known to the donor.

31 Dr. M.Srinivas 'Assisted Reproductive Technology: Legal Issues'. Andhra Law Times, Vol CL, XVI 2010 (4) p.31

Besides the fact that every couple has the right to have a child, in India infertility widely carries with it a social stigma.

The growth in the A.R.T. methods is recognition of the fact that infertility as a medical condition is a huge impediment in the overall wellbeing of couples and cannot be overlooked especially in a patriarchal Society like India. In the Indian context, children are seen as old age insurance.

Most professional bodies and legislation in the various countries of Europe have recommended that A.R.T. should be restricted to heterosexual couples, legally married, or at least living in a stable relationship. Even in countries that have no national regulations, A.R.T. is only applied to married or co-habiting couples. However the Indian Draft Bill on A.R.T. allows A.R.T. to be undertaken by single person also.

With proper regulatory measures like restriction on sex selection and restriction on selection of race, color etc of the child and imposing proper duties on the doctors in this regard in the Draft Bill on A.R.T. in India, the doubt whether a customized or a designer child can be born using A.R.T. is settled in the negative.

A.R.T. touches fundamental issues of life, family and society structures that are influenced by religion and traditions. Undoubtedly, these techniques provide major breakthrough in the treatment of infertile couples. Assisted Reproductive Techniques, involves conflict of various interests and has inscrutable impact on the primary unit of society i.e Family. Non- intervention of law in this knotty issue will not be proper. Active legislative intervention is required to facilitate correct uses of new technologies i.e A.R.T. However, in view of the complicated and sensitive issues involved in A.R.T, proper legal regulations and guidelines are required in India which shall put to rest all the controversial issues surrounding the use of A.R.T. However, the matter of concern is to wait and watch when the Indian Draft Bill turns into Act with proper implementation lest this Act does not meet the fate of the PNDT Act.