

Donated materials in assisted reproductive technologies: an ethico-legal analysis of art legislations worldwide

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Abstract

This paper provides an appraisal of countries that have legislations pertaining to assisted reproductive technologies (ART). In doing so, the paper highlights the emphasis on the protection of reproductive freedom of the couples seeking ART treatment. This belief is grounded primarily on the basic notion of liberalism that attaches primary importance to respect for individual freedom, which is the foundation of the notion of reproductive rights as understood by western standards today. The main aim of the appraisal is to see how these legislations address the drastic changes in familial relationships when ART involves the use of donated materials.

Keywords: *Reproductive techniques, Assisted, Plant gametes, Embryo, Ethics*

Introduction

Decisions regarding matters affecting family life such as whether or not to have children, with whom to have them and when and how to have them are considered as personal matters. This is so because such issues are intricately connected to human emotions and human nature. Therefore, these issues are considered as 'private matters' that only the individuals involved may decide on freely and without any undue interference. As such, governmental intrusion by the way of regulating or curbing this freedom through legislation has been met with some resistance. This belief is grounded primarily on the basic notion of liberalism which gives primary respect to individual freedom. This is the foundation of the notion of reproductive rights as understood by Western standards today.

Assisted reproductive technologies originated in the West. Therefore, it is mainly Western countries that have considered it as necessary to

legalise ART services. Countries enjoying ART legislations have tried to protect the right of infertile couples to reproduce while at the same time doing their best to protect the interests of children born as a result of ART procedures (1). This paper analyses ART legislations around the world. The main aim of this endeavor is to see how these legislations address the drastic changes occurring in familial relationships when ART involves the use of donated materials (2). This analysis is important to show that most of these legislations have attached primary importance to the reproductive autonomy of couples wishing to reproduce whilst sidelining other ethical principles such as beneficence, non-maleficence and justice, especially to the resulting child and the traditional concept of the family.

The paper is divided into three parts. The first will discuss legislations on ART from around the

world, whereby a classification of the legislation is made. This will lead to the second part where an analysis will be made to see how far these legislations will be effective in establishing new familial relationships, protecting the rights of the resulting child and affecting the rights of the community as a whole. Hereafter, the discussion proceeds to the third part of the chapter which leads to the above conclusion.

Art legislations around the world

The use of ART coupled of donated materials has indeed challenged many natural and traditional notions of motherhood, fatherhood and the concept of family as a whole. Many countries around the world have come to realise the pertinent need for regulating ART services. Most of these countries try their best to grapple with the respect to be given to individual reproductive rights on the one hand and, on the other hand, the need to protect the rights of the resulting child and how the use of ART affects the society as a whole.

Countries that have legalised ART services are mainly Western countries that give primary respect to the couples to decide freely what type of ART service to choose from, and whether or not to use donated materials should they be resorted to. The traditional concept of the family in the West has been altered in order to accommodate individual choices by allowing couples to use donated materials by use of ART in order to have children (3).

This change may be considered as ethical to Western writers and legislators. This is due to the Western ethical stand that it is a right to give primary respect to the choices made by the infertile couples. Respect for a person's autonomy has long been one of the most important ethical positions in many Western countries. Although the principles of beneficence, non-maleficence and justice are also considered as important ethical principles to be considered, nonetheless, many Western writers are of the opinion that, in the area of reproductive rights, primary respect must be given to individual autonomy.

Changes in the concept of the family

The traditional or classical understanding of the 'family' has always associated individuals within the bounds of marriage and any children resulting from them (4). Dickens, for example explains that the classical understanding of the family includes "associations of persons related genetically or by marriage and identified by their interaction and affinity" (5). He continues to explain that, historically, the family was "a genetic and marital line traceable back through earlier generations" (5). In the West, the institution of

marriage ensured that the resulting child was legitimate and this allowed the succession of power and wealth (4). The existence of an illegitimate child would threaten the "smooth operation of the system"; therefore, legal rules were created to exclude them from being able to benefit from the system (4).

According to Bainham, in the modern West, the change in perception was noticeable during the 1970s, when a decrease in marriage and increase in the birth of children out of wedlock had resulted in a shift in social and legal attention (4). Due to its common occurrence, this resulted in less social stigma attached to extra-marital sex, cohabitation and procreation than thirty years before (6, 7). Meanwhile, according to Barton et al., the recognition of these new familial forms is "influenced by a growing emphasis on the freedom of the individual, and the right to do as one pleases, so long as it harms no one else". This is reminiscent of the liberal teachings of Locke and Mills.

The acceptance of these new family forms had necessitated a change in the family law and the law related to the parent and child relationship in many Western countries. Previously, marriage provided the legal framework for legal responsibilities towards each other and any resulting children. In the absence of marriage, the state had to resolve the issue of responsibility based on the contractual model for the couples (3). Nevertheless, with regards to the children, the state still looked at the existence of genetic ties in order to establish the responsibilities of the parents (7). The availability of ART procedures has created an even greater change in the understanding of the concept of the family. Now, with the availability of ART and the ability to use donated gametes and embryos, even the existence of genetic ties no longer sufficiently establishes responsibility toward the resulting child (3).

The creation of new familial forms is one of the main concerns of countries that have allowed the use of ART with donated materials. Countries that have legalised ART services have concentrated on five important aspects of legislation. The first is the establishment of a monitoring body to issue licences for ART centres and ensure professional treatments for the public. Safety requirements are also given primary importance to ensure that the procedures offered to the public are safe for human application. Second, prohibitions on certain types of procedures could either result in criminal prosecutions in some countries or the cancellation of the licence in other ones. The third are the provisions which allow access to ART treatments whereby certain countries are seen to attach importance to the couples being married and infertile, whilst other countries allow infertile heterosexual couples in a stable relationship to have similar access to these treatments. The fourth

is the creation of new definitions for the legal concept of “father” and “mother” as well as the legal relationship that flows from the creation of these new definitions. Finally, the fifth aspect is the legal and moral status of the human embryo and the treatment that must be accorded to these embryos which relates directly to the concept of human dignity.

Most countries that have specific legislations on ART have established ethics committees that are responsible for collecting public opinions and conducting meetings attended by the experts in the field of ART as well as religious and non-governmental organisations (NGOs). The reports issued by these ethics committees then made the basis for legislations. Therefore, the legislations reflected the national policy of a certain country, each being unique in the sense that it reflected the historical influences and social as well as religious sensitivities of the people of that country.

An analysis of the legislations from various parts of the world shows that only a fraction of the countries around the world, of about ten percent, have specific legislation on ART whilst only six percent have some kind of regulation and the remaining eighty four percent of countries around the world still do not have any legislations pertaining to ART. The majority of these countries are developed Western countries that have been practicing ART for more than three decades.

Classifications of Legislations

Countries that have legislations on ART may be classified into four different categories, according to the level of permissibility of ART procedures and the types of persons that may have access to it. The first category may be called countries with liberal legislations. The ART legislations under this category give full respect to ‘the right to reproduce’ of infertile couples. These countries include Australia (8, 9), Canada (9-11), Denmark (9, 12), the Netherlands (9, 13), New Zealand (9, 14), Portugal (14, 15), South Africa (16), Spain (17) and the United Kingdom (9, 18).

Countries having ART legislations that fall under this first category try to balance the primary respect given to the right of individuals to reproduce with the responsibilities owed to the child. This is done by recognising the new types of familial relationships that have been formed as a result of ART procedures using donated gametes, embryos and even surrogacy.

The second category of legislation involves countries that may be considered as the moderate regulators. These countries include Australia (8), France (9), Hong Kong (19), Iceland (12), Israel (9, 20) and Sweden (12). Under this category, these countries are seen to be quite permissive in certain areas whilst prohibiting other procedures. The

states of Queensland and Victoria in Australia, France, Iceland and Sweden for example have strictly prohibited any form of surrogacy. On the other hand, other countries such as Hong Kong and Israel, while permitting non-commercial surrogacy, set the condition that such services may only be made available to married couples and using the gametes of these couples only (19,20). Hong Kong also allows information on the identities of donors to be released to the resulting children as soon as they reach the age of sixteen (19). Meanwhile, Israel is very strict with regards to the conditions concerning the use of donated sperm but surprisingly allows single women to opt for ART as a way of having children (9). Israel also allows non-commercial surrogacy but with specific directions that only the couple’s gametes are used to be implanted in a single woman who is not a relative of either of the couple and who must be of the same religion as the couple (9). It is clear that in these countries, reproductive rights of individuals are to be given due respect. However, at the same time, these countries try to balance this respect with the need to respect the cultural and religious sensitivities prevalent in each of their societies.

The third category of legislation concerns strict regulators. Countries that fall under this category include Austria (21, 22), Germany (9, 23-26) and Norway (12). These countries are seen to only allow the use of donated sperm in any of the ART procedures that may be offered. All three countries do not allow the use of donated eggs and donated embryos. The storage of embryos is not permitted. Instead, ART practitioners are only allowed to create enough embryos that are safe for transplantation to the womb in a single cycle. In Germany, for example, embryo cryopreservation is only allowed if the woman seeking treatment suffers from ovarian hyperstimulation or refuses to have the embryos transferred into her. Meanwhile, cryopreservation of gametes is only allowed for the gametes of the couples seeking treatment and may not be used for donation. Nevertheless, despite these restrictions, ART services are offered to married couples and heterosexual couples who are in a stable relationship. These countries are strict regulators due to historical, cultural and religious reasons.

The fourth and final category of legislation involves countries that are considered as very strict regulators. The countries that abide by this category of legislation are Italy (27, 28) and Turkey (9). Both countries only allow living infertile married couples to have access to ART services. However, Italy is seen to be stricter than Turkey with regard to the storage of embryos. While Turkey permits storage of embryos during the lifetime of the couples or during the subsistence of the marriage, Italy is seen to prohibit it altogether, permitting only the creation of embryos that are safe for

implantation. These two countries have legislated primarily based on the religious sensitivities of their people.

The above classification shows differing trends in legalising ART. Each country has a legislation that reflects the social, cultural and religious situations that are unique to that particular country. For the purposes of the present paper, when necessary, direct reference shall be made to the United Kingdom's Human Fertilisation and Embryology Act, 2008. This analysis illustrates the difficulties faced in resolving conflicts between the respect that is to be given to the right of individuals to reproduce and the responsibilities that come with reproducing.

Changes in the concept of parenthood

It is evident that in the West, the availability of ART and the choices it had provided for infertile couples was not the main reason for the changes in the traditional concept of the family. The change was in fact a gradual process that came in the wake of the Industrial Revolution and then the Sexual Revolution (3). Hence, at the time when ART was introduced to the Western world, the concept of the family and the family law had already transformed. This transformation in turn challenged the meanings of familial relationships. This is the main reason why many Western countries do not oppose the changes in the shift in moral and legal responsibility residing in the notion of parenthood and the changes in the familial status that is induced by the use of "collaborative" ART (4)

Ethical and Legal issues in Collaborative ART

The use of third party materials in ART treatments has created new meanings for the concept of motherhood and fatherhood. Aside from that, the use of third party materials brings about the issue of the rights of the resulting child to know his or her genetic identity. This goes back to the root of their existence. Aside from that, the issue also brings up questions as to whether or not this will affect their emotional and psychological development in the future.

New Definitions of "Motherhood"

The discussion begins with the change in the concept of "motherhood" and how the use of donated eggs causes drastic changes in the traditional meaning of motherhood. A "mother" is generally taken to be the woman who carries and gives birth to a child as a result of the fertilisation of her ovum by the sperm of her husband. Once born, she will also be the one to raise and nurture the child (29). According to Robertson, this situation would be the ideal concept of "mother-

hood" (4). However, since the availability of ART has made it possible to segregate the different stages of motherhood, he further contends that each stage is important in its own right.

A process that used to occur on one woman can now be made to happen on three different women. Blank has clearly made the following observations on the different "types" of mother as a result of certain ART procedures;

"The *genetic mother* is the woman who supplies the egg to be fertilised by in vitro fertilisation or the embryo for transfer. She might or might not be the *carrying mother* in whose womb the embryo implants and develops to term. Finally, the *nurturing mother* is the woman who cares for the baby once it is born."(29)

The above scenario shows the possibility of a child having up to three "mothers". This shows how the use of collaborative ART has led to the questioning of an issue that was once unquestionable. From the above, the issue of motherhood comes into question in three situations. The first situation is where the husband's sperm is used to fertilise a donated egg and the resulting embryo is transferred into the wife. The second situation is where the wife is given a donated embryo. The third situation is where a donated embryo is implanted in a surrogate but the child will be raised by the commissioning couple. The third situation will not be discussed here.

In the first and second situations, the commissioning wife will be the birth mother of the resulting child although she did not provide the genetic material. The issue that arises here is 'should motherhood be attributed to genetic constitution or to the act of giving birth?' This issue has not been fully settled even in countries that have legalised ART procedures. The confusion arisen in the definition of "motherhood" as a result of the use of donated eggs and embryos has led countries such as Austria, Germany, Italy, Norway and Turkey to prohibit both the use of donated eggs and donated embryos. Even in countries that do allow the use of donated eggs and donated embryos, there are differences in the way "motherhood" has been defined.

Lee and Morgan admit that existing provisions pertaining to the definition of "mother" remains unclear (9). This is because, "*the question of genetic status and personal identity is a complex, intermeshing construct of psychological, philosophical, historical, cultural, ethical and legal matters*. In the United Kingdom, statutory provisions of the HFE Act, 1990 (revised in 2008), override the common law rules related to the presumption of parenthood based on the genetic link. Section 33(1) of the HFE Act, 1990 mentions;

“The woman who is carrying or has carried a child as a result of placing in her of an embryo or of sperm and eggs, and no other woman, is to be treated as the mother of the child.”

This shows that in the United Kingdom, the status of the mother would remain in the woman who gave birth to the child. Despite the liberal attitude toward legalising ART services, section 33 seems to show that importance is still placed on the biological relationship established between the mother and child during pregnancy.

The HFE Act, 2008, clearly gives recognition to the gestational mother whilst providing an exception in cases of surrogacy. On the surface, the Act does not seem to provide any new definition of mother, as section 33 still recognises the woman giving birth as the mother of a child. Nevertheless, underneath this surface lies the truth whereby the genetic mother remains in existence. This brings up issues as to the right of the resulting child to know of the existence of their hidden mothers. This will be discussed further in the paper. For now, there is a need to look at the new definitions of the notion of fatherhood.

Definitions of “Fatherhood”

The use of donated sperm has also resulted in confusion with respect to the notion of “fatherhood”. A ‘father’, in the case of ART involving donated sperm, does not only mean the man who has produced the sperm having fertilised the egg of the woman carrying the child to term wherein both will rear the child. Again, Blank was correct in pointing out that the responsibilities of production of the sperm and the rearing of the child can be placed on different males. There can now be three different types of fathers. There is the complete father, i.e. “the man who performs both singular roles” of producing the sperm and nurturing the child (29). Then, there is also the genetic father, who supplies the sperm. This second type of father only produces the sperm without having any intention of rearing the resulting child. The third type of father is the nurturing father, the man who cares for the child even in the absence of any biological ties with the child. Ironically, in many cases, it is the nurturing father that ART is said to provide assistance for. It is the nurturing father who is infertile.

In relation to use of donated sperm, in countries which do not have a specific legislation delineating the status of sperm donors and the relationship of the resulting children to couples who accept it as a treatment is based on court decisions and legislations. In the United States for example, Blank has pointed out that;

“Despite the widespread use of AID (artificial insemination by a donor) during the last three decades, legal questions abound. Because the children resulting from AID are not the complete biological offspring of the parents, the legitimacy of AID progeny has been frequently questioned, often in estate or divorce proceedings.” (29)

Most of the countries that have ART legislations allow the use of donated sperm as a method of treating infertility. Even in countries such as Austria, Germany and Norway where the use of donated eggs and embryos are banned, sperm donation and use is generally allowed. With regard to the legal mechanism used in settling the issue of who is to be regarded as the legal father of the resulting child, an example could be taken from the position in the United Kingdom. Section 35 of the Human Fertilisation and Embryology Act, 2008, mentions that if a child is carried by a woman as a result of an embryo transfer or artificial insemination by a donor, and at that time she was “*party to a marriage*”, then sub-section (1) (b) provides that, “...then, subject to section 38 (2) to (4), the other party to the marriage is to be treated as the father of the child unless it is shown that he did not consent to the placing in her of the embryo or the sperm and eggs or to her artificial insemination (as the case may be).”

There have been cases that illustrate the donor’s wish to identify his progeny and have a say in the bringing up of the child or at least visitation rights¹ Nevertheless, this case cannot be said to have set a precedent for situations where the donors are anonymous and insemination or IVF is carried out by a proper physician. This is the position that has been followed in legislation. In the United States, thirty states have passed statutes to clarify the status of the child, the status of the donor and the status of the husband of the woman receiving treatment² (26). Nevertheless, situations where known donors are used remain uncertain.

¹ See the case of *C.M v. C.C.* (1979). In this case C.C. had inseminated herself with the sperm of C.M. Upon the birth of the child C.M. sought visitation rights which were objected by C.C. The court held in favor of C.M. that since he was the natural father of the child, they granted him the privileges as well as responsibilities of being a father.

² These states include Alabama, Alaska, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Kansas, Louisiana, Maryland, Michigan, Minnesota, Montana, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Tennessee, Texas, Virginia, Washington, Wisconsin and Wyoming. All the statutes in these states legitimize AID

The position of the donor is much more precise in the United Kingdom and Australia. Section 38 of the UK HFE Act, 2008, and Section 60H of the Family Law Act, 1975, clearly establishes the recognition given to the husband or the partner of the woman receiving treatment as the legal father of the resulting child if the treatment takes place in a licensed centre and the husband consents to the procedure^{1,2} (30). This provision automatically excludes any donors, be it anonymous or known, from being able to seek any rights over the resulting child. Paragraph 3(1)(1) of Schedule 3 of the Human Fertilisation and Embryology Act, 2008, specifically states that consent must be made in writing and must be signed by the person giving it.

A more interesting change in the 2008 Act is the recognition given to same sex couples who wish to use ART in order to form a family. The Act has given recognition to same-sex couples as legal parents of children conceived through the use of donated sperm, eggs or embryos. These provisions enable, for example, the civil partner of a woman who carries a child via IVF to be recognised as the child's legal parent (17). These changes again show that the change in legislation reflects the situation of a particular society. The same changes could not be imported wholly into any other countries wishing to legalise the use of ART as there are many countries which still do frown upon same sex relationships.

children by providing that the sperm recipient and her husband are the legal parents if the husband consented to the procedure. Nevertheless, as of 1990, only eleven statutes recognize these children as legitimate if the recipient is married.

¹ This presumption may however be rebutted, but he must show that he had not consented to the ART procedure on his wife or partner to have taken place (S.28 (2)). Should the presumption be rebutted by him proving that he had indeed refused to give consent prior to the

procedure; the child will be declared as "legally fatherless".

² The position is somewhat different in Australia where although the husband can contend that he had not consented to the procedures, he could still be made the legal father of the said child under state law. See Status of Children Act 1974, Victoria, the Family Relationships Amendment Act 1984, South Australia, the Artificial Conception Act, 1984, New South Wales, amendment to the Status of Children Act 1974 which was amended in 1985, Tasmania, the Artificial Conception Act, Queensland and the Artificial Conception Act 1986, West Australia. Other countries that have similar legislations include Belgium, Bulgaria, Czechoslovakia, Greece, Hungary, New Zealand, Norway and Sweden. Countries that have regulations include Israel, Italy, Portugal and South Africa.

These approaches clearly uphold the tendency to trump the reproductive rights of infertile couples over and above other ethical principles. Aside from ignoring the principles of beneficence and non-maleficence, it also ignores the principle of justice. Legislations that allow the use of donated sperms create havoc to the concept of family and create an illusory relationship between the father and the child.

The difficulties in resolving these issues, when donated materials are used through legislation, would serve as a very strong reminder to the society and legislators, that not everything may be solved by the way of legislation. It also shows that respect must be given to not only the reproductive choices of infertile couples, but there is also a need to balance that with the principles of beneficence to the resulting child. This also is in line with the principle of non-maleficence where, in exercising their right to reproductive choice, must not cause harm to the resulting child or the society through the disintegration of the concept of the family.

Right to Genetic Information

Aside from the issue of donors wishing to acknowledge their progeny, another unsettled problem in the use of donated sperm is the right of privacy of the donor as opposed to the right of the resulting child to know his or her genetic parent. Generally, couples seeking ART treatments, especially those using donated gametes, wish to keep such information a secret. Roberts has rightly pointed this fact out when she observes;

"Medically assisted reproduction has traditionally been shrouded in secrecy. Concern has been with protecting the anonymity of the donor, in order to ensure a constant supply of gametes...The medical profession has concentrated on the patient (the prospective parents) and the donor, who enables treatment to take place. Insufficient attention has been given to the child. The use of donated gametes and embryos raises issues about the interests and needs of children by donation to be told about their genetic background. (30)"

The Warnock Committee, which had come with proposals leading to the HFE Act, felt that gamete donation should be allowed and encouraged in order to help infertile couples. That is why they had recommended that donors must not be burdened with any legal responsibilities or obligations towards the resulting children.

However, in ensuring that the social parent is recognised as the legal parent, the law tends to create an element of secrecy and dishonesty (31). It has been suggested that this denial of the truth that the child is actually the child of another, has the

potential of resulting in future psychological problems towards the child should he find out the truth about how he was conceived (31). At this point, legislation and even court decisions which try to legitimise children born as a result of donated gametes and embryos have actually focused more on the needs and wishes of those seeking ART treatment. Not enough thought has been given to the welfare of the resulting child. These laws clearly seek to recognise and promote the use of donated sperm as a form of valid and viable treatment for male infertility. These steps ensure the legitimacy of the child and allow the flow of responsibility to be shifted from the biological father to the nurturing father.

Despite these attempts at resolving the issues concerning the status of the child and the husband, there remains "*lingering questions concerning the ...rights and responsibilities of sperm donors*" and "*have yet to be clarified in many jurisdictions.*" (29) This unsettled situation is reflected in the different ways in which the countries that have allowed use of donated sperm handle the issue of information.

Indeed, certain legislations do mention that consideration must also be given to the welfare of the resulting child¹ (9). Despite the existence of such provisions, what exactly amounts to the welfare of the child has not been specifically defined. The HFE Authority's Code of Practice provides some guidance on how the welfare of the child may be assessed. Among others, it recognises the "child's potential need to know about their origins and whether or not the prospective parents are prepared for the questions which may arise while the child is growing up" (HFEA Code of Practice, 2006). Previously, there is nothing in the HFE Act which makes it compulsory for the authority to supply information with regard to the identity of the donor to the resulting child (once they reach 18 years old). The 2005 Code of Practice only encourages parents to tell their children of the way they were conceived. However, as of April 2005, an amendment to Section 31(5) of the HFE Act enables any child who has reached the age of 18 to obtain identifying information on their genetic parent(s).

This move in giving recognition to the rights of the child to know of their genetic history is not new. Many countries that have legalised ART services are concerned with the issue of whether or

not the resulting child has the right to know that they were born as a result of ART using donated materials and/or surrogacy and also whether or not they have a right to know who their genetic parents were. Legislations in Australia, in all its states except Western Australia, allows identifying information of the donor to be released to a child upon reaching eighteen years of age. Other countries such as the Netherlands, Norway and Sweden (31) also have similar positions. Hong Kong has recently followed this trend by allowing information to be released when the child reaches sixteen.

Meanwhile countries such as Canada and Iceland have adopted the double track approach whereby identifying information will only be released to donors who have consented to it. There are countries which opt to maintain the position of secrecy. In countries such as Austria (which only allows donated sperms), Denmark, France, Germany (also allows donated sperm only), Israel, New Zealand, Portugal, South Africa and Spain have all ensured donor anonymity.

If looked from the ethical standpoint, legislations pertaining to ART treatments using donated gametes, embryos and surrogacy seek to fulfil the wishes of infertile couples to have children despite the social and legal changes to the traditional notion of the family. The provisions which shift the legal responsibility from the sperm and egg donors deny the truth that has been established genetically. It allows donors to reproduce without having any responsibility towards the child. While parental relationships may be shifted, the fact that a genetic link exists creates a false sense of security for the infertile couple and the resulting child. This in turn harms the children's right to information as well as harms them psychologically once they know the truth of their creation.

The practice also creates a very real danger of incest marriages. Legislations vary as to the number of families to whom a donor may donate. In the U.K. a man may donate his sperm to ten different families. Despite the fact that a register is kept it depends very much on whether or not these children are told of the fact that they were created with donated materials or surrogacy. It is also not yet known how many will seek for information on their genetic parents. There exists a huge possibility that they may never know that they were in fact created as a result of ART treatment services and thus finds no reason to seek information of their past. This also shows that legislations which seek to legalise use of donated materials fail to fulfil the ethical principles of beneficence and non-maleficence.

¹ Section 13(5) of the Human Fertilisation and Embryology Act, 1990 for example mentions, "A woman shall not be provided with any treatment services unless account has been taken of the welfare of any child who may be born as a result of the treatment (including the need of that child for a father), and of any other child who may be affected by the birth."

Conclusion

In view of the above, it could be concluded that many Western countries have chosen to discard the traditional model of family as a sign of respecting the individual right to reproduce. They do so because of their ultimate respect for individual liberty which is actually a result of occurrences which are unique to the social history of the West. By giving primary respect to individual reproductive rights and the principle of autonomy, other ethical principles such as beneficence, non-

maleficence and justice have largely been ignored. As Titus puts it;

“Those who seek to redefine marriage and the family claim that a variety of sexual relationships serve the sociological and psychological functions of the traditional family. Law, to these reformers, is only an instrument to bring about the desired social changes. No questions are asked whether any proposed change, violates any legal or moral order imposed on mankind by God or nature. (32)”

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