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Assisted Reproductive Technology (ART) within the Family Law Dynamics: Imperatives for a Legal Framework

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Abstract:

An indispensable panacea to a glowing flame of matrimonial love among couples is the issue of child bearing. In Africa, incidents of fertility and parenthood are highly valued with procreation usually considered the most important purpose of marriage. Sometimes, this expectation may not be achieved as a result of several factors, but, predominantly, it results from infertility which has been viewed as a major source of worry and concern in public health. In an attempt to address this worrisome problem among couples, Assisted Reproductive Technology (ART) has been invented and this has reportedly found to be a commendable antidote to infertility. Although, it was developed in the western countries, many Africans have embraced the practice. Thus, this paper undertook an examination of all relevant statutory provisions regulating matrimonial causes and related matters in addition to case laws and relevant literature on the subject in Nigeria. It was found that the evolution of ART has presented multitudinous ethical, legal, and social challenges as a result of absence of legal regulations and amongst other things to guide its operation in the country. In addition, government involvement in the regulation and monitoring of the practice is non-existing. Therefore, this paper examined socio-legal implications of ART's practice in Nigeria and its probable challenges. Besides, it considered a framework for legal regulation of the practice with a view to isolating the practice from susceptible abuses. In the overall, suggestions put forward in this paper are capable of affording both the policy makers and the legislature the wherewithal for evolving legal regulations. The study concluded that the practice as it stands currently is susceptible to abuses which are likely to undermine its objective.

Keywords: Assisted reproductive technology (ART), in vitro fertilization, surrogacy, artificial insemination,

1. Introduction

The issue of Infertility which is a core factor in difficulty in procreation among couples is ubiquitous in many countries with its effect more protuberant in Africa and Asia. In the studies carried out by Omokanye *et al*¹ whilst basing their findings on the Report of Fadare and Adeniyi,² the burden of infertility in Nigeria and Ghana recorded the prevalence of 30.3% and 11.8%, respectively. These values appear higher when compared with results from studies carried out in more developed nations; studies conducted in Scotland and the USA found the prevalence of 9.1% and 10%, respectively.³ Thus, the overarching burden of childlessness with its concomitant consequences across the nations paved way for landmark scientific researches of 1976 which led to the birth of Louise Brown.⁴ Sequel to this research, abundance of breakthrough in both clinical medicine and basic science came to the limelight with numbers of infertile couples granted chances to have a baby.⁵

Infertility is a disease of the reproductive system defined by the failure to achieve a clinical pregnancy after twelve (12) months or more of regular unprotected sexual intercourse.⁶ This is often associated with marital instability and many other psycho-social consequences, it has been an area of medicine in which doctors have limited means to help their patients.⁷ The challenges associated with infertility have necessitated different healthcare-seeking behaviours ranging from spiritual, traditional/alternative health care to orthodox medical types including biotechnological devices such as

¹ Omokanye L.O. et al (2018). Assisted Reproduction Technology in Nigeria: Challenges and the way forward. 3 African Journal for Infertility and Assisted Conception, 2-5.

² Fadare, J.O and Adeniyi, A.A. (2015). Ethical Issues in newer Assisted Reproductive Technologies: A view from Nigeria. Niger J Clin Pract 18 Suppl S1 pp.57-61.

³ Bhattacharya S. et al. (2009). The Epidemiology of infertility in the North East of Scotland 24 Hum Reprod 3096-107; Chandra, A and Stephen, E.H. (1998) 30 Impaired Fecundity in the United States: 1982- 1995. Fam Plann Perspect pp.34- 42.

⁴ Omokanye, L.O. et al (2017) Assisted Reproduction Technology: Perceptions among Infertile Couples in Ilorin, Nigeria. 6 Saudi J Health Sci. pp. 14- 8

⁵ Ibid.

⁶ Culled from (WHO-ICMART glossary1)<http://en.m.wikipedia.org>.

⁷ Ibid

assisted reproductive technology (ART). As a major source of worry and concern in public health, the practice of ART has come to assuage reportedly common infertility resulting in the loss of human potential and unrealized self in most of the Sub-Sahara African Countries.⁸

Therefore, the importance of child bearing cannot be overemphasized. Companionship and affection from children are always a source of comfort and self fulfilment in a matrimonial home. In some instances, certain cultural inhibitions and stigmatizations do arise against couples who may have difficulty in procreating. In fact, in Nigeria, particularly among the Yoruba (South-western Nigeria), a person who has no child is seen as a person who is living a worthless life. Such is the importance of reproduction to human beings, thus, any form of denial of this right is fought to the last pint of their blood.

More often, the quest of infertile couples to resolve the problem of infertility has resulted in the patronage of various treatment outlets with different treatment options. This had probably accounted for the Biblical story of Sarah who, in order to overcome her infertility challenge, encouraged Abraham to 'visit' her maid Hagar, who became pregnant giving birth to Ismail.⁹ There is an innate desire in almost every human being to biologically reproduce himself through the family institution. As is often seen from the religious perspective, reproduction is God's command to human beings.¹⁰

The value placed on reproduction in Nigeria has been tremendous as most people desire to produce a child "in their own image and likeness". Prior to the emergence of ART, child adoption has been the prevalent option for many childless couples. However, with the coming into play of this technology, couples can now procreate technologically. In the month of April, 2020, a remarkable success was recorded at the Lagos University Teaching Hospital where a 68-year-old woman in Nigeria was reported to have given birth to twins to her 77 years old husband after several failed attempts to procreate including three failed IVF attempts.¹¹ With this practice and amongst others, aspirations of a family may be attained through an exchange of reproductive goods and services, and not necessarily through traditional heterosexual relationships. This has altered the perception of parenthood in the country and brought about mixed feelings in the Nigerian jurisprudence in the face of lack of legal framework to regulate the practice.

Furthermore, with the breakthrough in scientific research to curb the spate of barrenness among couples, propensity of having some legal challenges is not inevitable. The issue about parenthood (in the case of a sperm/egg donor) comes to bear. Also, the question as to what right does the donor have regarding the child, becomes an important subject of discussion? From the child's perspective, can the child question how he or she was conceived? Commodification of gametes is not often considered a major ethical challenge as at present, but this is likely to surface in the future.

A critical question that addresses the rights and obligations of stakeholders involved in procreation is always germane to the discussion of ART in view of the dynamisms the practice has evolved in matrimonial homes. In addition, various laws on matrimonial causes have in the modern times been left behind as the roles of egg and sperm donors, surrogates as well as those of the legal or social parents after delivery of the baby have no specific legal directions. Also, the legitimacy of the use of ART in Nigeria is still uncertain. However, some of the methods of the practice are in use in Nigeria, but, absence of specific legislations or regulations has left doubts as to which of the methods are legal and which are not; also, propensity for abuses become imminent. In view of these factors and amongst other issues, this study aims at interrogating the issue of ART in the country amidst the dynamics in the family laws. Thus, imperatives to examine some of the inherent legal issues in the ART practice and the necessity of evolving a legal framework to guide its operation are critically germane to the emerging issue of ART in the country.

2. Conceptual Clarifications

2.1. Infertility

Infertility and childlessness have been a major problem among couples in developing countries. This is often termed inability to procreate and is frequently considered a personal tragedy and a curse for some couples, impacting on the entire family and even the society at large. In the view of Daar and Merali, the psychological consequences of childlessness are part of the most difficult conundrums on issue of infertility in most developing countries with the resultant effects of loss of human potential and unrealized self.¹² Thus, the result of this is seen in economic hardships, social stigma and blame, social isolation and alienation, guilt, fear, loss of social status, helplessness and in some cases, violence. This becomes more prominent in the developing countries where sometimes, families depend on the children for economic survival. Balen and Gerrits affirm that Childless women are frequently stigmatized, resulting in isolation, neglect, domestic violence and polygamy.¹³ Moreover, in the absence of social security systems, older people are economically, completely dependent on their children for not only economic survival but also for other reasons such as affection among others.

⁸ Gerrits, T (1997) 'Social and Cultural Aspects of Infertility in Mozambique Patient Edu Coms' 31. 39-48 cited in: Papreen, N. et al (2000) 'Living with Infertility Experience among Urban Slum Population in Bangladesh' *Reproductive Health Matters*. vol. 8, pp. 33-44, available <<http://www.ncbi.nlm.nih.gov>> accessed 20/01/2020

⁹ Genesis chapter 16, verses 1-2

¹⁰ Genesis Chapter 1 verses 28

¹¹ Mrs Margaret Adenuga was reported to have given birth to twins after almost 50 years attempt to so do have failed. <<http://metro.co.uk/2020/04/24/woman-68-gives-birth-twins-46-years-trying-children-12605114/amp/>> accessed on 10/06/2020

¹² Daar A.S. and Merali, Z, "Infertility and Social Suffering: The Case of ART in Developing Countries" cited in: Vayena, E. Rowe, P.J and Griffin, P.D (eds) (2002) "Current Practices and Controversies in Assisted Reproduction". Geneva, Switzerland: world Health Organization. p. 391 available <www.researchgate.net> accessed 12/02/2020

¹³ Balen F.V. and T. Gerrits (2011) "Quality of Infertility Care in Poor Resource Area and the Introduction of New Reproductive Technologies" available <<http://www.ncbi.nlm.nih.gov>> accessed 12/02/2020

2.2. Artificial Insemination (AI)

It is the oldest form of the ART, the most popular and the simplest.¹⁴ This method has been in use to introduce pregnancy in animals for centuries.¹⁵ The process involves obtaining semen from a donor, placing the semen in a syringe¹⁶ and then depositing the semen into the vagina, cervical canal or uterus of a woman.¹⁷ This procedure could be by the husband (AIH) or by a third party (DI, Donor Insemination)

2.3. In-Vitro Fertilization (IVF)

This process begins by harvesting egg from a woman, semen is combined with an egg in a petri dish and placed in an incubator, once the semen fertilizes the egg, the several pre-zygotes that develop are implanted in the female's uterus in the hope that one will eventually develop into a foetus. In its report, the Warnock Committee¹⁸ explained the process of in vitro fertilization (IVF) as a system where a ripe human egg is extracted from the ovary, shortly before it would have been released naturally; next, the egg is mixed with the semen of the husband or partner, so that fertilization can occur and then the fertilized egg, once it has started to divide, is then transferred back to the mother's uterus. As a procedure, it came into reckoning during the birth of the first baby conceived through In vitro Fertilization in England in 1978. The process has gained widespread popularity and it relies on science and laboratory other than Artificial Insemination.

Another aspect of this technique is the In vitro Fertilization cryopreservation which gained popularity recently and it involves the process of cooling and dehydrating an embryo to allow it to be stored for a long period of time.¹⁹ This becomes prominent as it allows a woman to use possibly all of her retrieved and fertilized eggs. Cryopreservation eliminates the need to implant woman's entire resulting embryo's at once which sometimes results in multiple pregnancies.²⁰

2.4. Surrogacy

In this process, a female surrogate becomes artificially inseminated with the sperm of a male donor²¹ whilst in some cases, the surrogate herself provides the egg, this is known as biological surrogacy. It can however be called gestational surrogate when it is implanted with a fertilized egg harvested from another female donor. This procedure is often recommended for couples that are unable to conceive as a result of adopting any of the ART methods earlier discussed. This is perhaps the most socially complicated and controversial assisted reproductive technology.

It can be performed with no professional intervention, most times it is performed in secrecy, making it difficult to establish the extent to which it has been practised.²² It might involve assisted reproductive treatment such as IVF using the surrogate mother's own egg, a donor's egg, intended mother's egg, intended father's sperm or donor's sperm.

3. Socio-Ethical Issues in Assisted Reproductive Technology

Notwithstanding the gains from ART, some social and ethical issues are thrown up by its practice. The perception of the public, sometimes, is tailored towards viewing ART as a macro ethical rather than a micro ethical level - gamete and embryo transfer as surrogacy in terms of social policy rather than overcoming childlessness. Also, some of the issues raised from IVF technology were based on fears and assumptions that the physical or psychological development of children born as a result of this technology may be impaired by the way in which they had been conceived. Colpin and Soenen²³ carried out a study on parents-child relationship and the child's psychosocial development after IVF comparing 31 IVF families and 31 families with naturally conceived child when children were age 2 years and age 9 years. In this study, it was discovered that no significant differences were found between IVF and natural control parents reports of child behavior, parenting behavior and most parenting goals.²⁴ Teachers rating of the child's behavior did not differ between the IVF and the control groups.²⁵ Consequently, it was discovered that parenting and children psychological development do not differ significantly between IVF families and control families. The implication of this is that the children born out of ART cannot be physically or psychologically impaired with the way they are born.

Therefore, parental responsibility of the child begotten from the procedure becomes a vital issue for consideration. Parenthood can be biological, social, legal and moral. While the idea of biological parent is undeniable, assisted reproductive technology seems to complicate it as a child can have genetic parents such as gamete providers or gestational parents and by virtue of their positions, they also have a contribution to producing the child. However, the

¹⁴ M. Shai, (1996) "Modern Reproductive Technology Legal Issues Concerning Cryopreservation and Posthumous Conception" *Journal Legal Medical* Vol.49, pp.547- 548.

¹⁵ Ibid

¹⁶ H.B. Robert and J.C. Merrick "Discussing Modern Changes in Reproduction Technologies and Attitudes" cited in S.O. Koyonda, (2001) "Assisted Reproductive Technologies in Nigeria: Placing the Law above Medical Technology". *The Comparative and International Law Journal of Southern Africa*. vol.34(2), pp.258-279

¹⁷ This process is usually repeated over a period of several days to contract the uncertain timing of a woman's ovulation.

¹⁸ Warnock Committee, Report of the Committee of Inquiry into Human Fertilization and Embryology, Cmnd 9314, 1985, London: HMSO (the Warnock Report)

¹⁹ Shai, M. op.cit. note 16 at p.14. The embryo is dehydrated and placed in liquid nitrogen where it is frozen at 196 degree Celsius.

²⁰ Ibid

²¹ Shai, M. op. cit. note 16 at p. 14

²² McHale, J.; Fox, M. and Murphy, J. (1997) *Health Care Law*, 2nd rev. edn. Sweet & Maxwell, London. P. 638.

²³ Colpin, H. and Soenen, S. (2002) "Parenting and Psychosocial Development of IVF children, a follow up study" *Human Reproduction*, vol. 17, pp. 1116-1123. <<https://www.ncbi.nlm.nih.gov>> accessed 06/09/2019

²⁴ Ibid.

²⁵ Ibid.

children born by gamete donor should be aware of the position of their birth. The Human Fertilization and Embryology Authority (HFEA) determines who a child's legal parents are.

In the US, a pregnant woman's husband is generally presumed to be her child's legal father; this has faced legal challenges from genetic fathers.²⁶ In the American case of *Johnson v. Calverts*,²⁷ Crispina and Mark Calvert were unable to conceive a child due to the fact that the former had hysterectomy. Her ovaries however, were intact and capable to produce viable oval, they drew up a contract with Anna Johnson who agreed to be a surrogate mother and would later relinquish the child to the Calverts. Calverts agreed to compensate Johnson \$10,000 in three installments paid before and part after the birth of the child. After successful in vitro fertilization and transfer of the embryo to Johnson womb, Anna required full payment of the sum; threatening that otherwise she would keep the baby. Three courts decided in favour of Calverts and the basis of the decision was different in different courts: two courts relied directly on genetic relatedness of the Calverts to the child and invoked the assumptions of other possible ways of determination of parenthood. The third and final court based its decision purely on the concept of "intent" of the parties, that is, what was the intent of them when they entered the contract

The issue of multi-foetal pregnancy reduction and disposal of surplus embryos in vitro raise questions of how local abortion law is worded and applied. The challenge is to consider multi-foetal pregnancy reduction not as abortion per se, which ends pregnancy, but as a means of preserving pregnancy against the danger of spontaneous abortion of all embryos or fetuses. Incompetence and unethical practices such as deceptively inseminating patients with their own or otherwise unapproved sperm are parts of the ethical issues which medical practitioners should be legally accountable to the patient

Furthermore, ART is an effective treatment in infertile couples. The level of risk for women using ART depends on the technology used. Women on alternative insemination using donor sperm that has been screened for sexually transmitted infections (STIs) face virtually no risk from the procedure, beyond common risks that any pregnant woman would face. IVF involves large amounts of physical and emotional energy, time, and money. Many couples dealing with infertility suffer stress and depression. A woman taking fertility medicines may be exposed to bloating, abdominal pain, mood swings, headaches, and other side effects.²⁸ Many IVF medicines must be given by injection; repeated injections may result in bruising.²⁹

ART involves significant physical, financial, and emotional commitments on the part of the couple. Psychological stress is common, and some couples describe the experience as an emotional roller coaster.³⁰ The treatments are involved and costly. Patients have high expectations, yet failure is common in any given cycle. Couples may feel frustrated, angry, isolated, and resentful.³¹ At times, frustration can lead to depression and feelings of low self-esteem, especially in the immediate period following a failed ART attempt.³²

There is also a high possibility of birth defect in ART particularly where it involves a process of IVF. From medical researches so far, it seems that the possibility of defective birth in medically assisted reproductive system is very high compared to that of the normal births. This may not be considered as a serious problem, however, since life itself is a function of risk-bearing.³³ The fact that the host environment is sustained by means of medical intervention could change the biological and legal status of the child.

4. Parenthood under the Matrimonial Causes Act and the Child Rights Act

Traditionally, the concept of parenthood can be viewed both from biological and the social perspectives. The former poses no difficulty whilst in the latter; adoption process may vest the status of parenthood on the adoptive parents. However, ART as the highest breakthrough in the medical treatment of infertility has posed a difficulty in determining whether parties to the practice can be so categorised.

Although the Matrimonial Causes Act (MCA)³⁴ does not define a parent, it recognizes that parenthood is not necessarily limited to biology but could be by adoption. The MCA recognizes a "child of the marriage" as

- A child adopted since the marriage by the husband and wife or by either of them with the consent of the other;
- A child of the husband and wife born before the marriage, whether legitimated by the marriage or not; and
- A child of either the husband or the wife (including an illegitimate child of either of them and a child adopted by either of them) if, at the relevant time, the child was ordinarily a member of the household of the husband and wife.

As remarked by Egbokhare and Akintola,³⁵ the purport of this provision is that children of a marriage can only come through parents who are legally married, either through natural procreation or via adoption.³⁶ Whilst aligning with this submission, it may be safe to add that provided that the means of giving birth to the children do not suffer any legal inhibition, such products will qualify as children under the law. For couples who have children via ART, even in the

²⁶ Rosenman, A.S. (1995) "Babies Jessica, Richard and Emily: The Need for Legislative Reform of Adoption Laws" Chicago Kent Law Review, vol.70, pp.1851-1895

²⁷(1993) CAL 4th vol. 5 No 5023721

²⁸ Guvevich, R. "Fertility Challenges Treatment: Risk and Side Effect of Fertility Drugs" <<http://www.verywellfamily.com>>

²⁹Ibid.

³⁰ American Society for Reproductive Medicine (2015) Assisted Reproductive Technology; A Guide for Patients, p. 17

³¹ Ibid.

³² Ibid.

³³ Ibid

³⁴ Matrimonial Causes Act, Cap M7, Laws of the Federation of Nigeria, 2004

³⁵ Egbokhare OO and Akintola SO. Rethinking Parenthood within Assisted Reproductive Technology: The need for regulation in Nigeria. *Bioethics*.2020;34:578-584.< <https://doi.org/10.1111/bioe.12759>> accessed 12/06/2020

³⁶ Section 69, Matrimonial Causes Act.

absence of biological relationships to the children, their rights could still be recognized in law. Unfortunately, as it stands, such persons would have to formally adopt the child to “secure” their parental rights, as it is still unclear whether or not the courts would take side with the biological parents.³⁷

In another development, section 125 of the Child’s Rights Act, 2003 (CRA) provides for some types of parents other than biological or natural parents, and also describes parental responsibilities towards a child. The CRA recognizes adoptive and foster parents as legal parents of a child. Section 14 of the CRA stipulates that every child has a right to parental care, maintenance and protection, while Section 277 defines parental responsibility as “all the rights, duties, powers, responsibilities and authority which by law a parent or a guardian of a child has in relation to the child and his property”. The provisions of the CRA are to the effect that parental responsibilities may be carried out not only by biological parents, but also by adoptive and foster parents.

The question of ambiguity about parenthood only arises with the introduction of third-party collaborators to the reproductive process. The parenthood question is two-fold: first, who are the legal parents of a child born via collaborative reproduction; second, what are the rights and duties (if any) of collaborating third parties. It is uncertain what agreement the donor entered into with the IVF clinic, but the question remains—under Nigerian law, will the donor be able to claim parental rights to any children that emerge as a result of his donation? ART has introduced a huge amount of uncertainty into Nigerian family law: the traditional rules governing assignment status have been altered, and it is unclear who the legal parents of a child born through ART are, particularly when there is a third-party collaborator. This poses a huge problem not just for the parents of the resulting child, but also for the child itself.

Notwithstanding, products of the practice are to be accorded with rights and privileges of children under the laws. So also, parental duties and powers ordinarily vested on the parents or guardians of a child are all the same. Regulating practice of ART with a view to streamlining the forms and accord each form a legal status will go a long way to solve the puzzle.

4.1. Challenges of ART in Nigeria

The lack of regulation and legislation exposes Nigerians using ART to the deceptions of some unscrupulous individuals, and this is a problem that could easily be cured by regulating the use of ART. Besides, the problem of unregulated sperm donation or banking may surface in Nigeria. The possibility of having multiple children fathered by a single sperm donor potentially increases the odds of accidental incest. A newspaper article of January 7, 2017 told the story of a 21-year-old University of Lagos undergraduate who was a regular sperm donor at a popular clinic for one year. He had read an article about a man in the U.K. rumoured to have fathered 800 children, and this caused him to fear that he himself may have fathered 500 children, and, worse, he worried about the prospect of his children getting married to each other in the future, and about him accidentally sleeping with his daughter.³⁸

Another serious issue is that of reproductive tourism. Impact of globalization attracts reproductive tourism, as individuals are free to travel abroad for treatments not offered, or perhaps not even legal, in their country of origin. There have been a number of high-profile cases of reproductive tourism involving patients traveling to other countries for treatment. For instance, in *Bloods’ case*³⁹, the woman was able to export sperm to be used for fertility treatment in Belgium as she was not able to use it lawfully in the United Kingdom. Reproductive Tourism may give rise to conflicts of laws issues, especially in the case of surrogacy where the surrogate is from one country and the commissioning parents are from another.

In addition, the fate of extra embryos stored up may be worrisome in the country in the future. For how long do the fertility clinics store them and at what conditions; keeping in mind that power supply is a problem in Nigeria? Studies from developed countries have shown that the viability of the frozen embryos reduces with longer storage time.⁴⁰ Do they get donated to someone else or are they to be destroyed? The views of the Catholic Church regarding the embryo and personhood present a strong argument against their destruction.⁴¹ The acceptability of third-party gamete is controversial, especially in the African setting. Bello *et al.* in a study conducted in Ibadan, Nigeria, found only 35.2% and 24.7% of women open to accepting donated eggs and sperm, respectively.⁴² Furthermore, the issue about parenthood (in the case of a sperm donor/egg donor) comes to bear what right does the donor have regarding the child? From the point of view of the child, is there a right to know about the means of his or her conception and biological parent? Commodification of gametes is not considered a major ethical challenge presently, but stakeholders are aware of this possibility in the future⁴³, also, its socio-legal implications in the absence of specific legal regulations.

4.2. Imperatives for a Legal Framework to regulate the Practice of ART in Nigeria

There is no known legal framework or legal guides to the practice of ART in Nigeria. Although, the practice of ART has not attracted much patronage in the country owing to its novelty, it is however expedient to have a law put in place to monitor and control all activities flowing from the technology. In United Kingdom, the Human Fertilization and

³⁷ Egbokhare OO and Akintola SO, note 37

³⁸ Osakwe, F. “ Sperm donor’s nightmare: ‘Have I fathered 500 children already?’” The Guardian Newspaper < <https://guardian.ng/saturday-magazine/cover/sperm-donors-nightmare-have-i-fathered-500-children-already/>> accessed on 03/11/2019

³⁹ Retrieved on 9th September, 2016, from www.lajollaivf.com/what-is-reproductive-tourism/

⁴⁰ Fadare JO, Adeniyi AA. Ethical issues in newer assisted reproductive technologies: A view from Nigeria. *Niger J Clin Pract* 2015;18 Suppl S1:57-61.

⁴¹ Omokanye LO, et al., op. cit. note 3 at p. 3

⁴² Bello FA, Akinajo OR, Olayemi O. (2014) In vitro fertilization, gamete donation and surrogacy: Perceptions of women attending an infertility clinic in Ibadan, Nigeria. *Afr J Reprod Health*, vol. 18, pp.127-33.

⁴³ Omokanye LO, et al. note 3

Embryology Authority (HFEA) oversees and makes policy regarding ART.⁴⁴ Nigeria has not followed suite in this direction as lacunae in this measure despite the long duration of the practice, has become more worrisome among parties engaging in the practice. Most ART's centres in Nigeria and other developing countries makes use of the (HFEA) guidelines. This practice is however subject to contextual differences as reflected among the different countries.

In African continent as a whole, it is only South Africa that has reportedly put in place regulating law on this subject⁴⁵. Though, Nigeria has wanted to regulate the practice through legislation, but it has yet to be passed. Sometimes in 2017, there was a lead debate for an Act on the Nigerian Assisted Reproductive Technology at the National Assembly. This bill was sponsored by Senator Olanrewaju Tejuoso and the objectives of the bill were amongst others to:

- Provide Minimum Requirements Related To Staff And Physical Infrastructure For The Various Categories Of Assisted Reproductive Technology Clinics
- Ensure Permissible Assisted Reproductive Technology Procedures
- Regulate The Selection Of Patients For Assisted Reproductive Technology Procedures
- Encourage And Promote Training And Research In The Field Of Assisted Reproductive Technology
- Encourage The Establishment And Maintenance Of A National Database In Respect Of Infertility
- Provide Guidelines For Counselling And Providing Patients With All Necessary Information And Advice On Various Aspects Of Assisted Reproductive Technology Procedures.
- Provide Regulations In Respect Of Research On Human Embryos
- Provide The Criteria For Obtaining Information From Donors Of Gametes And Surrogate Mothers
- Provide Policies From Time To Time On Assisted Reproductive Technology⁴⁶

However, the National Assembly is yet to take action on this bill. And this delay is becoming more worrisome not only to parties in ART but also legal minds and scholars who consider the necessity for this legal regulator desirable at a time such as this. As much hope is being put in the faces of the hitherto presumed childless parents, precautionary legal measures must be taken to avert susceptible abuses or inherent challenges.

5. Conclusion and Recommendations

The place of ART in the modern family and matrimonial causes is enormous. It has emerged as one of the most widely adopted and successful medical technologies in the last century. Whilst giving hope to millions of couples suffering from infertility, the practice owing to the absence of specific legal framework, has enmeshed in socio-ethical and legal quagmires. With commendable steps taken by many countries to regulate some aspects of the practice, Nigeria has however remained silent on this. Thus, the dynamism of the society requires adapting the existing legislations to the emerging societal issues. Where this may be a bit difficult however, the necessity of a new legal regime to regulate and address some of the emerging issues become a sine qua non for orderliness in the society and equality of treatment among various parties in the system. Therefore, ART as a viable option to address childlessness among couples requires prompt and adequate legal regulations. To achieve this status, the following are necessary impetus:

- An Act to be passed by the current National Assembly of Nigeria to regulate the practice of ART in Nigeria;
- Adequate seminars, trainings and workshops for the Medical Practitioners specializing in the practice of ART;
- Establishment of a mandatory unit for ART at every tertiary health institutions across the country;
- Public enlightenment for members of the public for the purpose of understanding rights and liabilities of intending ART parties and
- Inter-jurisdictional sharing of ideas on ART among domestic judicial officers and counterparts in other countries

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- viii. Fadare J.O, Adeniyi AA. Ethical issues in newer assisted reproductive technologies: A view from Nigeria. *Niger J Clin Pract* 2015;18 Suppl S1.

⁴⁴ The body is established pursuant to the Human Fertilization and Embryology Act, 2008

⁴⁵ Assisted reproduction in South Africa is regulated by the National Health Act 61 of 2003 and the Regulations Relating to Artificial Fertilization of Persons, 2012 as well as the Children's Act 38 of 2005 and the regulations thereto.

⁴⁶ Lead Debate for an Act to Provide for a National Framework for the Regulation and Supervision of Assisted Reproductive Technology (ART) and Matters Connected Therewith, 2017. Federal Republic of Nigeria - National Assembly. <<https://www.nass.gov.ng>> accessed 12/06/2019

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