

## REPRODUCTIVE HEALTH RIGHTS AND THE ISSUES OF ASSISTED REPRODUCTIVE TECHNOLOGY IN NIGERIA

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### Abstract

*With new knowledge on the possibilities for medical intervention in reproductive matters, an increasing number of people in Nigeria are taking advantage. However, as easy as it sounds, assisted reproduction with the use of Assisted Reproductive Technology (ART) is not a clear-cut procedure. It is fraught with challenges, social, legal and ethical. Despite these, there is yet no law regulating ART in the country. This paper therefore, aims to analyse the reproductive health rights discourse and the issues of assisted reproductive technology in Nigeria. Adopting a doctrinal research methodology, the article finds that the gap in law may better be described as giving room for opportunities to create a legal minefield. It recommends the need for a specific law with detailed provisions to meet these unavoidable challenges that abound.*

**KEYWORDS: Reproductive Health Rights, Assisted Reproductive Technology, Fertility, Reproductive Rights.**

### 1.0 Introduction

Fertility ‘is the human ability to impregnate and or conceive a baby through heterosexual intercourse’ which leads to a child being born.<sup>1</sup> Adults with sound reproductive health who engage regularly in unprotected sexual intercourse achieve pregnancy in a while; however, for those who by an act of nature or upon acquisition from the effects of unsafe abortion, sexually transmitted diseases like chlamydia or gonorrhoea, puerperal infection after previous delivery<sup>2</sup> or harmful traditional practices, are unable to bear a child either as a result of failure to become pregnant or to successfully carry a pregnancy to term or as a result of failure to bear a child from the inability to get pregnant or carry pregnancy even after a previous live birth, are described by the World Health Organization (WHO) as having primary or secondary infertility as the case may be;<sup>3</sup> and this according to the WHO is a public health issue.<sup>4</sup> Owing to the emotional relief or trauma that

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<sup>1</sup> A O A Yusuff, ‘Infertility Treatments and the Conceptual Dilemma of Involuntary Childlessness: Is there a Right to Reproduce?’ [2008/2009] (1) *The Journal of Public Law and Jurisprudence*; 65

<sup>2</sup> R J Cook and others, ‘Reproductive Health and Human Rights: Integrating Medicine, Ethics, and Law’ in J Harris and S Holm (eds), *Issues in Biomedical Ethics* (Oxford University Press 2003) 30.

<sup>3</sup> WHO, ‘Infertility Definitions and Terminology’ <<https://who.int/reproductivehealth/topics/infertility/definitions/en>> accessed 1 October 2024.

<sup>4</sup> WHO, ‘Sexual and Reproductive Health: Infertility is a Global Health Issue’ <<https://www.who.int/reproductivehealth/topics/infertility/perspective/en/>> accessed 1 October 2024.

come along with being fertile or infertile in a society where women bear the major burden psychologically and socially, and are often identified by their fertile status,<sup>5</sup> developments in medical science and technology to address the issue of infertility are a welcome development in Nigeria.

Assisted reproduction otherwise known as in vitro fertilization is by far the most common type of assisted reproductive technology (ART)<sup>6</sup> and it is practised in Nigeria. It involves couples or individuals suffering from primary or secondary infertility visiting an assisted reproduction clinic where series of laboratory tests and physical examinations and investigations would be carried out on them to ascertain the cause of infertility in order to determine treatment options including whether assisted reproduction is the only way forward to addressing the childless state.<sup>7</sup> Where it is determined that assisted reproduction is the only way forward, Yusuff describes the situation as involving treatment options that are ‘invasive and more expensive’ and filled with risks. According to him, ‘In vitro fertilization is quite expensive and is fraught with risks and imperfections and thus raises safety concerns both for the woman undergoing the procedure as well as the child born through the procedure’.<sup>8</sup>

Assisted reproduction in this case involves a process whereby ova and sperm are manually combined in a laboratory to achieve fertilization so that the embryo is placed back into the uterus to achieve pregnancy and birth.<sup>9</sup> It involves the following processes: ovarian stimulation wherein fertility medications are given to the woman to induce ovulation so that the chances for getting multiple eggs during a single monthly cycle are increased;<sup>10</sup> retrieval of eggs through minor

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<sup>5</sup> M Y Dost and K Monjezi, ‘Study of the Effects and Consequences of Infertility on Couples’ [2017] (1)(9) *Int J Clinical & Case*; 173 – 176; B Lunenfeld and A Van Steirteghem, ‘Infertility in the Third Millennium: Implications for the Individual, Family and Society: Condensed Meeting Report from the Bertarelli Foundation’s Second Global Conference’ [2004] (10)(4) *Human Reproduction Update*; 317 – 326; F E Okonofua and others, ‘The Social Meaning of Infertility in Southwest Nigeria’ [1997] (7) *Health Transit Rev*; 205 -220; D Orentlicher, ‘Discrimination Out of Dismissiveness: The Example of Infertility’ [2010] (85)(143) *Indiana Law Journal*; 143 – 186; F V Balen, *Coping With Infertility: Sexual and Reproductive Health* (New Delhi: New Age International Limited Publishers 2001) 329 – 336; A O Omosun and O Kofoworola, ‘Knowledge, Attitude and Practice Towards Child Adoption Amongst Women Attending Infertility Clinics in Lagos State, Nigeria’ [2011] (3)(1) *Afr J Prim Health Care and Fam Med*; 1 – 8; S J Dyer, ‘The Value of Children in African Countries – Insights from Studies on Infertility’ [2007] (28)(2) *Journal of Psychosomatic Obstetrics & Gynecology*; 69 – 77; A C Umezulike and E R Efetie, ‘The Psychological Trauma of Infertility in Nigeria’ [2004] (84)(2) *Inj J Gynaecol Obstet*; 178 – 180.

<sup>6</sup> Yusuff (n 1) 238.

<sup>7</sup> *ibid*, 239.

<sup>8</sup> Yusuff (n 1) 240.

<sup>9</sup> *ibid*, 239.

<sup>10</sup> American Pregnancy Association, ‘Promoting Reproductive and Pregnancy Wellness’ in Yusuff (n 1) 240.

surgery by sedating the woman with local anaesthesia to prevent or reduce any discomfort that may be felt during the retrieval process; obtaining sperm from the husband or partner or from a known or unknown donor and subsequently mixing it with ova from the woman undergoing the procedure or of a donor after which the embryo(s) is transferred into the uterus for implantation and pregnancy to take place.<sup>11</sup>

The technique is not a simple task; it is a high technology procedure that requires expertise because ovarian stimulation has risks of hyper stimulation wherein the ovaries swell and become painful leading to ovarian cysts, damage to the uterus, bladder or a blood vessel; ectopic pregnancy, spontaneous abortion and so on.<sup>12</sup> Other safety concerns include multiple pregnancies that are common with assisted reproduction and its attendant problems such as uncontrollable blood loss leading to death since multiple pregnancies have to be by way of caesarean section.<sup>13</sup> Although the government has a constitutional duty to protect the lives of its citizenry from impending harm, they are minded that since human beings are naturally inclined to procreate, an inclination that may be recognised as a reproductive right which promotes pleasure,<sup>14</sup> it becomes difficult to interfere with such a procreative right. Rather, what government may do is to allow it within well-defined rules in order to protect the life of the consumer/patient from the excesses that flow from patronising ART.

In Nigeria however, there is no law regulating assisted reproduction through ART. The practice here mainly centres round guidelines operative in various international jurisdictions around the world.<sup>15</sup> The ‘Bill for an Act for the Regulation of In-Vitro Fertilization’ and the ‘Bill for an Act to Provide for the Regulation and Supervision of Assisted Reproductive Technology and matters connected therewith’ proposed before the National Assembly in 2016 and 2017 respectively which was referred to the Committee on Health is yet to bring news since then on the status of the bills. However, it is not enough that a bill on the subject is before the house; the issue is how effective

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<sup>11</sup> *ibid.*

<sup>12</sup> MH Shapiro and RG Spece, *Cases, Materials and Problems in Bioethics and Law* (St Paul MN: West Publishing 1981) 513 – 514.

<sup>13</sup> PN Barri, ‘Multiple Pregnancies: A Plea for Informed Caution’ [2005] (2)(1) *Human Reproduction Update*; 1 - 2

<sup>14</sup> These rights include the right to marry and found a family.

<sup>15</sup> J O Fadare and A A Adeniyi, ‘Ethical Issues in Newer Assisted Reproductive Technologies: A View from Nigeria’ [2015] (18)(7) *Niger J Clin Pract*; 57 - 61

it will be when passed into law. In the meantime, irregularities in the practice of assisted reproduction in Nigeria abound. Although the National Health Act 2014 regulates the national health system and sets standards by which health services including reproductive services in the country may be rendered in both private and public health facilities,<sup>16</sup> it merely acknowledges that persons who engage in reproduction are prohibited from manipulating genetic material including any genetic material of human embryos;<sup>17</sup> something that is common with all jurisdictions that have regulations on ART. Thus, the NHA does not deal with the nitty gritty of assisted reproduction.

## **2.0 Regulating Assisted Reproductive Technology in Nigeria**

Assisted reproductive technology in Nigeria requires regulation to consider issues likely to give rise to conflict. These include reproductive rights and reproductive health right claims as between the couples themselves or between the couples and the physician/practitioner, the embryo and the society at large. This is particularly important because reproductive or ownership rights claims entail that the individual is entitled to certain rights rooted in the right to privacy to make personal reproductive decisions. However, as a result of several interests involved, it is necessary to determine who has what rights and how they may be determined. On the side of the couples, the issue is who may make claims over stored/frozen/cryopreserved embryos since the embryo is a product of gametes from two separate individuals and sometimes, a third i.e. a donor. Rights between the patient and the physician will also have to be determined because the physician is guided by the Physician's Oath to act in a certain manner; the issue then becomes how his/her obligations can be balanced with the patient's right to reproductive autonomy in ART matters? The use of embryo in ART involves the manipulation of gametes; interest here is between the right to human life and the right to procreation. In relation to the individual and the society, the issue is; will the private individual's right be seen to be enjoyed on a self-centred basis, without consideration to the legitimate interests of the community as a whole?

### **2.1 Reproductive Autonomy and Paternalism in Assisted Reproductive Technology**

Contemporary medical ethics insists that individuals have control over their own bodies and make

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<sup>16</sup> Preamble to the NHA; NHA 2014, s1(1)(a).

<sup>17</sup> NHA 2014, S. 50(1)(a).

decisions in relation thereto.<sup>18</sup> The rationale behind this is that acknowledging the individuals autonomy promotes the patient from being just a mere recipient of treatment to being a partner; therefore, discrediting medical paternalism (a policy exercisable on the part of a person in authority for instance a doctor to limit the freedom, liberty or autonomy of the patient from pursuing their interest with the intention that the act of the paternalist will promote the good of that other) which is considered old fashioned medical practice; so that now, it is only acceptable where the patient is incapable of making decisions for oneself in which case the physician may intervene where the disabling condition is permanent or is expected to last for a long period of time before the patient is able to make personal decisions.<sup>19</sup> Principal subjects of this kind therefore would likely include children, those who are psychiatrically ill as well as the unconscious.<sup>20</sup>

Since women participating in ART do not fall within the above mentioned category, they are considered entitled to make their personal reproductive decisions in such reproductive matters. Ideally, this is a legally recognised right, that belongs to the individual. That is, the right to ‘decide freely and responsibly on the number and spacing of children ...’<sup>21</sup> which is a right basic to a woman’s empowerment as decided during the 1995 UN Fourth World Conference on Women which took place in Beijing<sup>22</sup> and reiterated as the added Plan of Action- ‘Reinforcing Decisional Autonomy and Incorporating Sexual Rights’.<sup>23</sup> However, in the case of ART, since there are risks involved, ranging from those that are minor to those that are fatal, even though reproductive autonomy may be exercised, it is unlikely that it should be absolute. Indeed, modern utilitarianism requires that moral goals such as these are achieved through rules; the practitioner having an insurmountable duty to preserve life is compelled to act in accordance with ethically appropriate conduct;<sup>24</sup> that which is sworn by all, ‘to consecrate life to the service of humanity, to practise the profession with conscience and dignity, to acknowledge the health of the patient as first consideration and to maintain the utmost respect for human life even from the moment of

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<sup>18</sup> J K Mason and others, *Law and Medical Ethics* (6<sup>th</sup> edn, UK: Butterworths Lexisnexis 2002) 8.

<sup>19</sup> *ibid.*

<sup>20</sup> *ibid.*, 10.

<sup>21</sup> CEDAW 1979, Article 16(1)(e).

<sup>22</sup> FWCW Beijing 1995, para 95.

<sup>23</sup> WHO, ‘Gender and Reproductive Rights’ <<https://web.archive.org/web/20090726150133/http://www.who.int/reproductive-health/gender/index.html>> accessed 17 October, 2024.

<sup>24</sup> Mason (n 18) 6 – 7.

conception'.<sup>25</sup> The physician/practitioner therefore has a duty to preserve life- the life of the patient which he must comply with.

The sacrosanct nature of the right to life except under circumstances as prescribed by law cannot be contested. That is to say, in the absence of a court order, except in defence of a person or property or to effect a lawful arrest, no one shall be deprived of his right to life.<sup>26</sup> A practitioner in assisted reproduction has a duty to always bear in mind that he/she has an obligation to preserve that human life.<sup>27</sup> However, in the absence of a regulatory law, chances are that the practitioner may prioritise his personal interests for instance, the success story over the right to life of the consumer. Thus, embryos implanted in the uterus have every likelihood of multiplying severally; in the absence of a law therefore, the life of the woman in whose uterus the embryos are placed is endangered.

## **2.2 Ownership Rights over Frozen Embryos**

When embryos are artificially created for purposes of ART, some are used immediately or within a short period of time while the rest can be frozen and stored to be used in future- a process called cryopreservation.<sup>28</sup> The rationale behind cryopreservation is that stored embryo should be kept for future use in order to avoid the painful process of ova stimulation, the cost and so on;<sup>29</sup> but then again, other challenges abound. Sometimes, couples who cryopreserve their embryo end up in a divorce. The issue becomes one of a right to parenthood or non-parenthood when the parties both disagree that their cryopreserved embryos should be implanted in the uterus of the woman to make a baby or babies, thereby claiming ownership rights over the frozen embryo(s).

On this issue, standard practice is that the joint consent of the owners of the embryo are often required for any implantation to take place and this requirement is always often upheld. This was the decision of the court in *Evans v United Kingdom*<sup>30</sup> where the applicant who had earlier created

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<sup>25</sup> Extract from the 'Physicians Oath' being the Declaration of Geneva (Physicians' Oath Declaration) adopted by the General Assembly of the World Medical Association at Geneva, Switzerland, In September 1948 and amended by the 22<sup>nd</sup> World Medical Assembly at Sydney, Australia in August 1994 and now absorbed into the Code of Medical Ethics in Nigeria.

<sup>26</sup> CFRN 1999, s33(1) and (2).

<sup>27</sup> Code of Medical Ethics (CME) 2004, Rule 8(B), para 1.

<sup>28</sup> B M Dickens, 'Ethical and Legal Issues in Reproductive Health: The Use and Disposal of Stored Embryos' [2016] (134)(1) *International Journal of Gynecology and Obstetrics*; 114 - 117

<sup>29</sup> M McBrien and B Hale, *Assisted Reproductive Technology: A Lawyer's Guide to Emerging Law and Science* (3<sup>rd</sup> edn, USA: American Bar Association 2018) 98.

<sup>30</sup> [2008] 46 EHRR 728.

embryos with her husband suffered a medical condition that compelled her to remove her ovaries. Subsequently, she and her partner separated after which she decided to implant some of the earlier created embryos in her uterus but her then partner refused to give consent for the use of the embryos nor that they should be preserved any further. The court inferred from its early ruling in *Vo v France*<sup>31</sup> that embryos are not entitled to the right to life and therefore upheld ‘the partner’s legislated right not to become a parent with the applicant over her prospect to have her own genetic child’.

Nigeria has no legislation in this area, so by implication, whether excess embryos may be cryopreserved for future use, discarded or even preserved for research is left at the discretion of the owner(s) or the physician and his/her team. When faced with such challenges, the courts often adopt principles of their own but which must comply with two basic models- the ‘contractual model’ and the ‘balancing approach model’.<sup>32</sup> The first model- the contractual model seeks to find an answer to whether there is a law that required the parties to specify in advance how the stored embryos may be used. If any such law exists, then the agreement reached by the parties will be enforced. Notably, agreements of this kind have clauses that allow either of the parties to withdraw their consent in event of a breakdown of the relationship or where death occurs. In the latter case, it is for the surviving party to make decisions concerning what will happen to the cryopreserved embryos. This is an issue of ‘posthumous reproduction;’<sup>33</sup> one that is not also given cognizance in Nigeria.

As for the second model- the balancing approach model, it was established in the case of *Davis v Davis*<sup>34</sup> where the Tennessee Supreme Court held that ordinarily, it is the party seeking to avoid non-parenthood that should prevail but this will be applicable where the other party has a reasonable possibility of still achieving parenthood through other means than the use of the particular embryos in question; but if no other means exist, then the argument may be won in favour of the party seeking to use the embryos to achieve pregnancy. It has been stated that the attitude that will be adopted by the courts will be one that is influenced by how that society sees

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<sup>31</sup> [2005] 40 EHRR 12.

<sup>32</sup> D E Purvis, ‘Expectant Fathers, Abortion and Embryos’ [2015] (43)(2) *Law Med Ethics*; 330 - 340

<sup>33</sup> *ibid.*

<sup>34</sup> 842 S.W.2d 588, 597 [Tenn. 1992].

human life and whether it is entitled to protection or not versus the owners of the embryos right to privacy.<sup>35</sup>

### **2.3 Transfer of Embryos**

Transfer of multiple embryos during a single treatment cycle gives room for multiple births.<sup>36</sup> The implications for multiple births are grave but are unavoidable in the course of ART. According to research, pregnancy rates associated with ART presently have dramatically increased unlike in the early period when it was introduced.<sup>37</sup> Thus, at that time, single embryos were the trend in which case, maternal and infant health risks decreased. Indeed, in recent times, it appears women want to have all at once the number of children they should have had over about a six to nine years span and, ART practitioners are complying with and actually transferring multiple embryos. Having regard to the above, it is observed that despite IVF commencing in Nigeria for more than thirty years, transfer of embryos in Nigeria are mainly dealt with by an Association of Fertility Health Guidelines.<sup>38</sup> As an association, fertility clinics are not compelled to become members and are therefore not bound to act in the expected manner. Consequently, the lives of consumers of ART services remains at risk without regulation on the subject.

### **2.4 Commercialization of Embryos**

Commercialization of embryos involves the sale and purchase of embryos. It could be done by prospective parents who embark on reproductive tourism to utilize ART services where their needs are unable to be met for certain reasons perhaps, as a result of the nature of the existing legislation in their originating country. It could also be done by overzealous practitioners in possession of excess fertilised embryos or scientists for research purposes. In the absence of a regulatory or prohibitory law in Nigeria addressing this issue, the tendency is high that persons may embark on the sale and procurement for financial gain. It is not impossible to imagine that in the absence of a law, embryos may be procured by interested persons operating a somewhat black market where embryos may be implanted in gestational carriers. While this latter statement is already a global

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<sup>35</sup> Dickens (n 28).

<sup>36</sup> P R Brezina, 'The Ethical, Legal and Social Issues Impacted by Modern Assisted Reproductive Technologies' (2012) *Obstet Gynecol Int*; <<https://doi.org/10.1155/2012/686253>> accessed 24 May 2021.

<sup>37</sup> *Ibid.*

<sup>38</sup> J O Fadare and A A Adeniyi, 'Ethical Issues in Newer Assisted Reproductive Technologies: A View from Nigeria' [2015] (18)(7) *Nigerian Journal of Clinical Practice*; 57 - 61

challenge in matters of surrogacy,<sup>39</sup> there is also a possibility that the marketers may up their game so that children born by gestational carriers are sold in baby factories. This in itself raises the possibilities for an emergence of not only exploitation of vulnerable women and girls but also of human trafficking. Indeed, trafficking is not new in Nigeria; in fact, it has metamorphosed into new dimensions including exploitation of labour as teenagers are engaged in the trend. Baby factories serve as avenues for human trafficking;<sup>40</sup> they are places for forced impregnation and child harvesting.<sup>41</sup>

## 2.5 Pre Genetic Diagnosis

Pre Genetic Diagnosis (PGD) involves testing embryos for heritable genetic diseases that are known to exist in the family of either one or both owners of the gametes used in creating the embryo. Examples of such genetic diseases include sickle cell anaemia, genetic mutations that are predisposing to ovarian and breast cancer in women and so on. In ART, PGD is considered an attractive means for diagnosing any of such heritable genetic diseases or disorder in the embryo in order to prevent terminating pregnancy in future by the time the disease or disorder is detected.<sup>42</sup> The practice however, is considered to be controversial because it could also be engaged for non-medical reasons. For instance, to achieve designer babies.<sup>43</sup> One of such examples will be to create children with desirable traits in character and physique.<sup>44</sup> There have been arguments that parents ought to have the right to prenatal autonomy whereby they could decide their children's fate. One of such an idea is that given by George Annas, Chairman of the Department of Health Law, Bioethics and Human Rights in Harvard University.<sup>45</sup> In his opinion, PGD should be adopted to achieve designer babies 'as a consumer product that should be open to the market forces

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<sup>39</sup> C F Glynn, 'Surrogacy: Why the World Needs Rules for "Selling" Babies' *BBC News* (UK, 26 April 2019) <<https://www.bbc.com/news/health-47826356.amp>> accessed 17 October 2024.

<sup>40</sup> B O Alichie, 'Baby Dumping and Evolving Baby Factories in Nigeria: Their Implication for Child Right and Social Protection' <<https://www.ajol.info/index.php/jrhr/article/viewFile/119673/109133>> accessed 17 October 2024; K Ahaoma, 'Baby Factories: The New Face of Human Trafficking in Nigeria' <<http://newtelegraphonline.com/baby-factories-new-face-of-human-trafficking/Nigeria>> accessed 17 October 2024.

<sup>41</sup> U Moses, 'Baby Harvesting: A New Dimension to Human Trafficking in Nigeria' <<http://www.academia.edu>> accessed 17 May 2021.

<sup>42</sup> McBrien (n 29) 95.

<sup>43</sup> S Ly, 'Ethics of Designer Babies' *Embryo Project Encyclopaedia* (Arizona, 31 March 2011) <<http://embryo.asu/handle/10776/2088>> accessed 13 October 2024.

<sup>44</sup> *ibid.*

<sup>45</sup> *ibid.*

regulation’.<sup>46</sup>

Another example is for sex selection. Couples desirous of having a particular sex of offspring may adopt its use to achieve the purpose.<sup>47</sup> In 1996, a case of sex selection took place when Scott and Monique Collins approached doctors at the Genetics and IVF Institute in Fairfax, Virginia for assisted reproduction using IVF with intentions to conceive a girl since they already had two children who were boys.<sup>48</sup> The ways in which PGD may be used has made the international community wary as to its potential uses. Many countries therefore have legislated on the use of PGD in assisted reproduction cases. Nigeria however has no statute law on it. The only mention of it is in the Code of Medical Ethics where it states that the embryo must be screened ‘of family history or genetic diseases, HIV and other infectious diseases...’<sup>49</sup> In the absence of a regulatory law, it is possible that parents may exploit its use and engage in producing designer babies of their choice. Sex selection in particular, may be exploited in a society like Nigeria where in the East, there is preference for male children. A publication made by a well-known fertility clinic in Lagos, Nigeria- ‘the Bridge Clinic,’ confirms the practice of PGD in Nigeria. According to them:

*Having a healthy baby is something all parents hope for. But, what if you could go even further than that? What if you could help ensure the health of not only your child, but your grandchildren and many generations to follow?*<sup>50</sup>

Although such an intervention may legally be undertaken for preventive, diagnostic or for treatment purposes, there is need for the law in Nigeria to determine whether users will be allowed such prenatal autonomy and under what conditions; bearing in mind the dangers as well. Thus, if left unregulated, it may be abused so that the continued existence of a particular gender in a society that does not desire it will become threatened; or that where the genetic make-up of an individual considered to have exceptional traits is obtained in order to achieve similar traits in one’s offspring; for example, the eyes, voice, intelligence, strength, talent, behaviour and so on, it may endanger

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<sup>46</sup> *ibid.*

<sup>47</sup> J A Robertson, ‘Extending Preimplantation Genetic Diagnosis: The Ethical Debate: Ethical Issues in New Uses of Preimplantation Genetic Diagnosis’ [2003] (18)(3) *Human Reproduction*; 465 - 471

<sup>48</sup> Ly (n 43).

<sup>49</sup> CME 2004, Rule 23(B) para 1.

<sup>50</sup>The Bridge Clinic, ‘Preimplantation Genetic Testing’ <<https://www.thebridgeclinic.com/patient-care/services/preimplantation-genetic-testing-pgd>> accessed 13 October 2024.

the society's general welfare and safety.

## 2.6 Germ – Line Gene Therapy

Germ – line gene therapy takes place on the reproductive cells of individuals and is performed in two ways:<sup>51</sup>

- a) As a way of pre-emptive treatment, genetic material is inserted into a pre-embryo so as to treat an already identified genetic defect.<sup>52</sup> This new inserted gene has capacities for repairing the defect in the embryo and these changes are made applicable in the oncoming descendants of the embryo.
- b) Also as a way of pre-emptive treatment, genetic material is inserted into the germ cells<sup>53</sup> of the individual patient that is the father or mother. The effect of this procedure is not on the individual but rather takes place on any children born afterwards. It is done either to eliminate certain undesirable characteristics or even to enhance some desirable traits.

Germ – line gene therapy is rather controversial in nature and has been perceived as such so that it has been proscribed by many countries.<sup>54</sup> Stock and Campbell<sup>55</sup> have however observed that:

*The real difficulty lies in distinguishing between eugenically-motivated, or enhancement, germ – line gene manipulation on the one hand and truly therapeutic intervention on the other. It should be necessary to forbid all work in this area only if it is felt that the demarcation line can never be held. Unfortunately, sciences bad record in keeping to a narrow, acceptable track lends some force to the arguments of those who would prevent such meddling altogether.*

This procedure is indeed a dangerous excitement that must be threaded with caution because of its ability to change future people by way of removing certain undesirable traits and also, enhancing same. The capacity to undergo such a procedure that has a life-long changing action on one's descendants as a whole is indeed arguable. It has been proscribed by several countries, but

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<sup>51</sup> Mason (n 18) 246 - 249.

<sup>52</sup> *ibid*, 246.

<sup>53</sup> These are any of the cells of an embryo which have the potentials of developing into an ova or a spermatozoa.

<sup>54</sup> In 1998, 11 European States adopted the attitude of Germany towards germ – line gene therapy by endorsing an outlawing of the procedure.

<sup>55</sup> Stock and Campbell, 'Engineering the Human Germline: An Exploration of the Science and Ethics of Altering Genes We Pass to Our Children' in Mason (n 18) 248.

the Council of Europe allows it for treatment purposes only.<sup>56</sup>

### **3.0 Conclusion**

The discourse on reproductive health rights and the issues of assisted reproductive technology is quite vast and complicated. On an increasingly daily basis, consumers of this service are left at risk of their reproductive health rights either as a result of the dangers of utilising ART or of the dangers of manipulating same to meet their perceived need. Either way, the need for an assisted reproductive technology law in Nigeria cannot be over emphasized. It is necessary to protect consumers, regulate affairs and promote efficient use of ART generally.

### **4.0 Recommendation**

There is need for a specific law to regulate on reproductive health rights and the issues of assisted reproduction and particularly, assisted reproductive technology in Nigeria. The law regulating reproductive autonomy and paternalism is required to emphasize that reproductive autonomy need not be absolute in ART matters. However, while the practitioner may exercise some form of paternalistic control, he/she is minded that they have professional duties that must not be contravened. Ownership rights are required to be regulated upon for several reasons including when a donor of gametes is involved; also, to address how cryopreserved embryos may be utilised or treated in event of divorce with a partner or death of same. Regulation on commercialization of embryos, pre-genetic testing, germ-line gene therapy is necessary to non-medical reasons such as designer babies, sex-selection and generally, prohibit criminal activities. The law is equally necessary to ensure the traditional misconception of women as wombs are not reinforced and importantly too, to emphasize the value and status of the embryo. On the issue of transfer of embryos, it is recommended that a regulatory board is further set up. The board is to be responsible for looking into the affairs of fertility clinics, ensuring they remain accountable for their actions. It is necessary that our society in attempting to meet with modern trends in the area of reproductive rights is not open to chaos that may consume its sanity, leaving all exposed and at the mercy of the ills of persons who are ever ready to take advantage, in this case, during the use of assisted reproductive technology.

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<sup>56</sup> Council of Europe Recommendation 934 on Genetic Engineering 1982; Recommendation 1100 on the Use of Human Embryos and Foetuses in Scientific Research 1989.