Legal Aspects of ART Practice in Israel

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INTRODUCTION

The advances in reproductive biology that have made it possible to produce human preembryos in vitro have been among the most significant scientific achievements of the past 25 years. For many couples who were previously considered sterile, the emergence of these new techniques to alleviate infertility has offered new opportunities to conceive. Moreover, although there is a wide variation in standards, patient selection criteria, and treatment protocols, assisted reproduction technology (ART) has become a routine tool in the treatment of infertile couples. After the initial enthusiasm, however, in many countries, society realized that, concomitant with the great advances, limitations had to be established on this new technology of human reproduction (1). Alongside the scientific achievement, a public debate has been held in many countries concerning questions such as the setting up of regulation or legislation, the right to ART treatment, the cost of assisted conception, resource availability, who should control the quality of ART practice and how, and whether donation of genetic material should be practiced.

The development of new methods of ART, including micromanipulation, preimplantation diagnosis, genetic manipulation, therapeutic cloning, and stem cell research, continues to provide major breakthroughs not only in the treatment of infertile couples but also in future medical practice. Since we are deal-

ing with a field that is continuously developing, there is an ongoing debate in society, especially among the members of the medical profession, as to the necessity of judicial regulations and public control concerning ART practice. At this time, many countries, even in the Western hemisphere, do not, as yet, have an established legislation pertaining to the various aspects of the practice of in vitro fertilization (IVF) and embryo transfer (ET), sperm, oocyte and embryo donation, freezing of embryos, and other aspects of fertility research. We assume that this is because of the fact that the law tends to lag behind social changes and scientific achievements. Regulations through process of law come from two sources: statutes and judge-made law. Statutes are decided upon by legislatures, while judge-made laws develop either where the courts are called to interpret and apply the written law, or where such law does not exist by analogy or otherwise.

In a number of countries, ART is practiced according to regulation, which have been laid down by professional bodies. In some parts of the world such bodies are appointed by government (Ministry of Health and/or Social Security) or by medical associations.

In other countries scientific centers impose their own ethical standards, often through standing committees that act on a case-by-case basis. Some practicing groups decide by their own standards.

Nevertheless, in global pluralistic society it cannot be expected that any single set of principles will be completely acceptable to everyone, and even those countries belonging to the same political entity have adopted different attitudes.

In spite of the cooperation of the scientific centers, it is quite evident that a world consensus on legislation or regulations cannot be achieved, since the whole area of infertility treatment by ART touches

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fundamental issues of life, family, and society structures that are influenced by religion and tradition, which differ vastly among the ethnic groups that constitute the global population.

Israel is a pronatalist society whose Jewish-Israeli population will try anything in order to have a child. This attitude of Israeli population has made it into one of the leading countries in the world in the research and development of New Reproductive Technologies. The geographically small country's population of 6.5 millions, Jews, Moslems, and Christians, currently holds the highest number of fertility clinics per capita in the world, and Israel's National Health Insurance funds IVF treatments for up to two live births for childless couples and for women who want to become single mothers.

In Israel, special legal problems arise because of the exclusive jurisdiction in matters of personal status that is vested in the rabbinical courts (2). Although Israeli law is secular, legislated by the Knesset (the Parliament of Israel), matters of personal status are governed by Judaic law and enforced by special rabbinical courts. Matters concerning marriage, divorce, paternity, legitimacy, bastardies, and cases of Jewish identity are therefore adjudicated according to Judaic law by these rabbinical courts. Cases concerning the other religious denominations living in Israel are governed by their respective communal laws and are referred to the appropriate communal courts. The Jewish attitude towards reproduction can be learned from the fact that the first commandment of God to Adam was being fruitful and multiply. Judaism allows the practice of all techniques of assisted reproduction when the oocyte and sperm originate from the wife and husband, respectively; therefore from the Judaic point of view, the two Chief Rabbis of Israel—one Ashkenazi (European) and the other Sephardim (Oriental)-supported IVF-ET.

The attitude toward reproductive practice is different among the different divisions of Christianity (3). The practice of ART is not acceptable by the Vatican; it regards IVF and ET as absolutely opposed to moral law. However it may be practice by Protestant, Anglican, and other denomination's. According to the Roman Catholic doctrine the primary purpose of marriage is procreation. The Christian tradition views the embryo as a human being since conception. According to Islam, the procedure of IVF and ET is acceptable, however, it can be performed only if it involves the husband and the wife (3).

The treatment of infertility by the method of IVF was introduced in Israel in 1982 under the supervision

of the Supreme "Helsinki" Committee for Experiments on Human Beings, which approved two IVF units, one at Hadassah Hebrew University Hospital, Ein Kerem in Jerusalem and the other at Sheba Hospital, Tel-Aviv. (Personal license to J.G. Schenker at Hadassah Hospital and S. Mashies, Sheba Hospital). Subsequently, the Director-General of the Ministry of Health appointed a medical committee, which determined the standards for accrediting additional units (4).

At present, matter relating to ART practice so far has been regulated in secondary legislation enacted by the minister of Health and its administrative directives by the Director-General of the Ministry of Health (except the primary legislation by the Knesset, the surrogacy, and cloning laws) (5). The Supreme Court of Israel State (6) declared that there is a doubt as to the legal validity of these administrative directives relating to medical fertilization, which have so far been regulated in secondary legislation enacted by the Minister of Health and not by legislation by Knesset, the Israeli Parliament.

SPERM DONATION

Artificial insemination has been regulated to a certain extent by the Public Health (Sperm Bank) Regulations, 1979 (7) (after sperm bank services and artificial insemination were declared to be "controlled services" under the Commodities and Services Control Law, 1957). The sperm bank regulations provide that administration of a sperm bank requires the accreditation of the Director-General of the Ministry of Health (8). A 1989 amendment provides that donor sperm may be used only if it is obtained from a sperm bank. The purpose of the amendment was to ensure that donor sperm is examined to prevent contamination with infectious diseases, such as AIDS. In the main, however, the rules regarding artificial insemination have been set down in an administrative directive issued by the Director-General of the Ministry of Health. These rules were most recently updated on November 13, 1992 in circular 34/92, entitled "Rules as to the Administration of Sperm Banks and Guidelines for Performing Artificial Insemination." The guidelines for performing artificial insemination include, inter alia, provisions relating to spousal consent, confidentiality, consultations as to a couple's "suitability," and other provisions relating to legal aspects which appear, prima facie, to exceed the authority of the Director-General.

THE REGULATIONS

1. Every sperm bank has to be registered and approved by the Ministry of Health. To get the approval it has to be an integral part of a hospital. A hospital can apply for approval of a sperm bank only if it has at least two specialist physicians who are capable of running a sperm bank. The hospital's director should forward the application to the Ministry of Health.
2. The sperm bank director should be a physician who is certified by the board in one of the following fields: gynecology, pathology, urology, endocrinology, or hematology.
3. In every sperm bank there will be three files:
 - (i) A Donor file which will include demographic information about the donor and a numerical code for the donor, his appearance, health status (history and physical examination), and his laboratory test results. It will contain a personal signed statement in which he agrees to keep the procedure confidential and that he has no responsibility and no claim on the child who will be born from the procedure.
This form will be signed by the physician as a witness and will be kept in a safe under the responsibility of the sperm bank director. This requirement that the donor should keep the procedure confidential is unique to the Israeli regulations.
 - (ii) Couple file which will include demographic and physical information about the couple and a signed statement by the couple that they will be fully responsible for the child and that they have no claims on the donor. The physician will sign this form as well. This file will include a complete record of all the sperm codes that have been used during the treatment period. It is optional to indicate the spermatozoa that were responsible for the pregnancy.
 - (iii) A sperm file which will include information about the quality and characteristic of the spermatozoa by mentioning the donor's code and not his name.
4. Indications: Artificial insemination by donor (AID) would be performed on a married

- woman only if the other conventional methods of treatment had failed. An unmarried woman would be treated by AID only after an evaluation by a psychologist and a social worker.
5. AID will be performed only with frozen spermatozoa from a registered sperm bank. Since 1990 the regulations forbid the use of fresh semen for AID because of human immunodeficiency virus (HIV).
 6. AID can be practiced only by a gynecologist certified by the board, or a resident in gynecology. It is the responsibility of the physician to make sure that the woman is not pregnant at the time of the insemination.
 7. The couple should receive from the physician comprehensive information about the method being used. It has to be clear to the couple that there is no guarantee that the woman will conceive and that the possibilities of miscarriage, complication of pregnancy and malformation exist, as in any other natural pregnancy.
 8. Neither the woman nor the donor should know about each other.
 9. The donor can be either married or single and there is no age specification in the regulations. The issue of payment to the donor for his donation or his expenses is not mentioned. The minimal screening for the donor is semen analysis to eliminate infertile or subfertile donors, personal and family history especially orientated to detect hereditary diseases or sexually transferred diseases, and physical examination. Blood samples for syphilis, HIV, hepatitis B and C, and Tay-Sachs disease are also required. HIV should be negative at the time of the donation and 6 months later. The spermatozoa can be used only if the last sample is negative.
 10. It is recommended that not too many donations should be from the same donor, but no specific number of donations or pregnancies is mentioned.
 11. The attitude of society with regard to the child's right to be informed of his/her origin has until now been very different from the case of adopted children compared with AID children. In the case of adopted children, the aim is to achieve as much openness as possible. As far as AID children are concerned, society has assumed a completely

opposite attitude. The activity is protected by maximum secrecy and the aim is that as few people as possible, and preferably not the child, should be informed of how he/she was conceived. The Israeli system accepted this concept and according to the regulations, the AID child cannot obtain information to find out who his/her natural father is. The only instruction to the sperm bank is to keep the record for 7 years, like any other medical record. While anonymity and secrecy are the norm, it should be made clear that in a few countries, such as Sweden, it is not accepted that the donor should remain anonymous to the child.

12. It is the responsibility of the Ministry of Health to supervise the activities of the sperm banks. The supervision includes the facilities, the equipment, and the records.
13. In cases of expected infertility due to radiation or disease, spermatozoa will be kept in the bank for a period of 5 years unless the patient asks in writing to extend this period. The spermatozoa should be destroyed after this period or in the case of the patient's death.

The practice of AID is opposed by the different monotheistic religions. According to Jewish law it is forbidden to inseminate a married woman with spermatozoa other than her husband's. Therefore insemination in vitro of a married woman's oocyte by a donor's spermatozoa is forbidden. The main problem concerns incest, as the father of the child is an unknown sperm donor. With respect to children born as a result of donor insemination, even if the physician informs the couple of the identity of the sperm donor, there is still the fear that the same donor gave his spermatozoa for the insemination of other women who do not know his identity, and there is potential for incest, as is mentioned in the Bible "and the land became full of lewdness" (Leviticus 19:29). Referring to a man "who lay with many women and does not know their identity, or a woman who has lain with many men and does not know who is the father," the outcome of this might be a case of incest and the world would be filled with bastards. Some Jewish authorities have found the solution to this problem by using a non-Jewish donor, thereby preventing incest. With regard to the paternity of the child, whether artificial insemination was performed in vitro or in vivo, the man from whom the spermatozoa originated is considered

the father of the child, the reason for this being that the owner of the spermatozoa has no partner in his act of fatherhood or in the process of the egg's fertilization.

Through IVF, ET and AID, human conception is achieved through the fusion of gametes originating from at least one donor other than the spouses who are united in marriage; therefore according to the Roman Catholic Church and even other Christian churches, AID is forbidden. According to the Roman Catholic Church, AID is contrary to the unity of marriage, to the dignity of the spouses, to the vocation proper to parents and to the child's right to be conceived, and to be brought into the world in marriage and for marriage (according to the declaration of Pope Pius XII in 1949). In the same way that sperm donation is prohibited, oocyte donation and embryo donation are also forbidden.

Islamic law strictly condemns the practice of AID. If the husband's infertility is beyond cure, the infertility should be accepted; according to Islamic law, AID is considered adulterous. It enhances the chances of inadvertent brother-sister marriages in a community and it violates the legal system of inheritance. The procedure also entails the lie of registering the offspring of a man who is not the real father, and therefore leads to confusion of lines of genealogy, the purity of which is of prime importance to Islam. (In addition, as the Supreme Court already noted in CA 449/79 *Salameh v Salameh* 34 PD (2) 779, 784(6), there is doubt as to the legal validity of these administrative directives because they are not published officially, as is required of primary and secondary legislation.)

IN VITRO FERTILIZATION (IVF) AND EMBRYO TRANSFER (ET)

1. Authorization of service
 - (a) Services of IVF and ET (assisted reproduction) should only be provided under license, authorized by the Director-General of the Ministry of Health to Department of Obstetrics and Gynecology in Hospitals in the State of Israel.
 - (b) The service will be authorized following review of the quality assurance (personnel, clinical and laboratory facilities, record keeping, etc.) and ethical awareness.

2. Conditions for IVF and ET practice
 - (a) Aspiration of oocytes and IVF can be performed only in women who are treated because of infertility and to whom this procedure may be of benefit.
 - (b) Oocytes can be retrieved only for subsequent fertilization and replacement.
 - (c) Participation in an IVF and ET program is not limited to married couples.
 - (d) A single woman has eligibility for treatment.
3. Sperm donation
 - (a) Sperm donation in an IVF program is allowed according to regulations on operation of sperm bank and artificial insemination of a woman published by the Ministry of Health in 1979.
 - (b) The donor must be anonymous.
 - (c) The donor has no rights or obligations with respect to the child born resulting from his sperm donation.
 - (d) The donor must undergo medical examination and must be examined for genetic and sexually transmitted diseases.
4. Oocyte donation: Oocyte donation is permitted under the following conditions:
 - (a) The donor of the oocyte must be a woman who participates in an IVF program and is willing to donate her spare oocytes.
 - (b) The donor of the oocyte must be anonymous.
 - (c) The donor has no rights or obligations with respect to the child Born resulting from her donation.
 - (d) The donor of the oocyte has to be screened for genetic and sexually transmitted diseases.
 - (e) Donation of oocytes is permitted also to a single woman.
 - (f) The mother of the child by law is the one who gives birth.
 - (g) On grounds of the welfare of the child it is recommended that the oocyte donor and the recipient will be of the same religion. The practice of donation of oocytes has restrictions by the different monotheistic religions. In Israel intermarriage between different religions occurs.

According to present legislation and the Jewish law, the legal mother is the one who gives birth (9). Jewish Law states that only

the offspring of a Jewish mother is regarded as a Jew, regardless of the father religion. The Jewish donor of oocyte should be a single woman. Donation of oocytes by non-Jewish woman is preferable.

Through IVF, embryo transfer and donation of oocytes, human conception is achieved through the fusion of gametes originating from at least one donor other than the spouses who are united in marriage; therefore according to the Roman Catholic Church and even other Christian churches, oocytes donation is forbidden (10).

Islam permits a man to marry not only a Muslim woman, but is also free to marry Jewish, Christian, and Sabian women. In Islam, the religion of offspring is linked to the one of the father. Oocyte donation is not permitted in Islam since it involves intervention of a third party other than the husband and wife. Islamic law limits to four the number of wives that a man could have simultaneously. According to Islam, donation of oocytes between wives may be permitted.

According to Druze religion (a minority group, 150,000 living in Israel) donation of oocytes between sisters may be permitted.

5. Preembryo donation: Pre-embryo donation is forbidden. (Including research)
6. Surrogate motherhood: The practice of surrogate motherhood is permitted by legislation.
7. Cryopreservation of gametes and preembryos
 - (a) Cryopreservation of sperm is permitted according to the regulations of Sperm Bank operation by the Ministry of Health, 1979.
 - (b) An oocyte obtained from an unmarried woman and cryopreserved can be donated to another woman after her death only if consent was given prior to her death.
 - (c) Cryopreservation of preembryos.
 - (i) Freezing of a preembryo formed in an IVF program is permitted.
 - (ii) Freezing and storage of preembryos should only be undertaken by services already authorized to conduct an IVF program.

- (iii) A preembryo should only be frozen and stored if the partner is participating in the IVF program agreed to the procedure by a written consent.
 - (vi) The period of preembryo storage is limited to 5 years. It may be prolonged for an additional 5 years by request of the couple, and only after agreement given by the Head of the program.
 - (v) Donation of stored preembryos is forbidden.
 - (vi) In case of an accident, e.g., the death of the husband, the embryo can be transferred to the wife only 1 year after the death of her ex-husband, following special recommendation of a social worker.
 - (vii) In the case of divorce, the preembryo can be transferred to the ex-wife only after consent given by her ex-husband.
 - (viii) In case the wife dies, the preembryo cannot be transferred to another woman (11).
8. Informed consent
- (a) A prospective couple or a patient for treatment of infertility by IVF should be provided with accurate and comprehensive information on the procedure itself, its medical complications and its success rate. Written consent should be obtained on an appropriate consent form before the treatment is begun.
 - (b) In the case of gamete donation in an IVF program informed consent should be obtained from the donor of sperm or oocyte and from the recipient couple, or single woman.

SURROGACY-LEGISLATION

In 1991 the Ministers of Health and of Justice in Israel nominated a public committee to inspect the social, ethical, religious and legal aspects of IVF (12). The committee was nominated to prepare a proposal for legislation, especially pertaining to the question of the surrogate mother.

According to the committee's recommendations, the Israeli parliament, the Knesset, passed the law

concerning surrogacy in March 1996 (13). The new surrogacy law in Israel is the first law concerning infertility, as previous legislation was based on legal regulations established by the Ministry of Health. The new law had to negotiate a compromise between the restrictions of the orthodox regulations and the liberal views of the secular Israelis. It is the only law besides that of the United Kingdom that allows state-controlled surrogacy (14).

THE SURROGACY LAW

The Approving Committee

Under the law in Israel a special committee, The Approving Committee, must authorize every single case of surrogacy. This is multidisciplinary, nominated by the Health Minister and includes seven members: (i) two physicians qualified in obstetrics and gynecology; (ii) one physician qualified in internal medicine; (iii) a clinical psychologist; (iv) a social worker; (v) a lawyer, as public representative; (vi) a clergyman, according to the religion of the parties involved.

The decisions of the Committee must be accepted by the majority of its members, and must be made in the presence of at least five of the members including the chairman.

Guidelines Set by the Approving Committee for Surrogacy

- (i) Full surrogacy is permitted only when the gametes are provided by both parties of the commissionaire couple (CC), who are married according to the law of the country. In special cases the Committee can authorize surrogacy with ovum donation.

Sperm donation is not allowed, since according to Judaism it would make the child "illegitimate."

- (ii) The parties for the agreement are adult Israeli citizens, in order to prevent abuse of women from underdeveloped countries and illegal commercialization of the procedure.
- (iii) The surrogate mother should be single or divorced; otherwise the child is "illegitimate" according to the Jewish religion. The Committee can authorize an agreement with a married woman in very extreme cases.
- (iv) The surrogate mother is anonymous and not a relative of one of the parents (i.e., mother,

daughter, granddaughter, sister, aunt, and cousin are excluded (adopted relatives are permitted), this avoids any potential pressure on relatives to become surrogate mothers and subsequent complications within the family.

- (v) Since the Israeli population consists of multiethnic and multireligious groups, including Jews, Muslims, Christians, and others, the attitude of the various religions was considered. According to Judaism, the religion of the child is determined by the religion of the mother. Therefore, the surrogate mother should be of the same religion of the CC, although if all the parties are not Jewish, the Committee may allow an interreligious agreement following consultation with the clergyman from the Committee. However, since Muslims and Christian do not allow surrogacy, they are unlikely to approve such an agreement.

Preconditions for Approving Surrogacy by the Approving Committee

- (i) A medical report stating that the mother of the CC is unable to become pregnant or carry a pregnancy to term, or that a pregnancy could be a major risk for her health, should be presented.
- (ii) A medical opinion must approve the suitability of both parties for the process. The surrogate mother should receive a general and gynecological check-up to rule out diseases that could be aggravated by pregnancy and delivery. A history of drug use, alcohol abuse or medications that could affect pregnancy should be obtained. The gynecological history should exclude medical conditions that may cause early and late abortions, early deliveries, and other complications of pregnancy. Tests for transmissible diseases including HIV, hepatitis B and C, and VDRL should be performed, together with analysis of blood group to prevent rhesus incompatibility. Ultrasound examination of the pelvis must exclude major malformations of the uterus and other pathologies of the uterus of the cervix.
- (iii) A psychological assessment of the parties involved must be provided, followed by a statement by a psychologist or a social worker that the CC had received a suitable professional consultation, in which other possibilities for parenthood were discussed.

- (iv) The procedure will be performed in a certified IVF-ET department.
- (v) If the parties were selected through a paid mediator, the agreement with the mediator and his name should be presented to the Committee.

Expenses

One of the main objects of the Approving Committee is to prevent illegal commercialization of the procedure. The Committee supervises the agreement of expenses and can recommend monthly payments to the surrogate mother to cover actual expenses including medical expenses, insurance, legal consultation, loss of time and income, suffering, or any other reasonable compensation.

The Legal Position of the Newborn

According to international law, a mother is defined as the woman who gives birth. Thus, withdrawal of the surrogate mother can create a serious legal problem and, in fact, in order to avoid such problems, the Israeli law has set the following regulations:

- (i) The social worker, nominated by the Ministry of Welfare, is the only legal guardian until the legal procedure of adoption is complete.
- (ii) The CC and surrogate mother should notify the social worker of the birth place and estimated date of delivery at the end of the fifth month of pregnancy. Within 24 h of the delivery the CC or the surrogate mother should notify the social worker.
- (iii) Following delivery, the child will be under custody of the CC.
- (iv) The surrogate mother will transfer the child to the CC, in the presence of the social worker, as soon after birth as possible.
- (v) Within 7 days from delivery the CC will admit a request for adoption or, if this is lacking, the social worker will issue the request.
- (vi) The court will approve the adoption request, unless it would seem against the child's own good. Following adoption approval by the court, the CC will become the child's sole parents for all matters.

In extreme cases, where the child has a malformation at birth or becomes HIV positive during pregnancy, or in any other circumstances where the CC withdraws from the agreement, the surrogate mother

becomes the legal guardian of the newborn. In cases where the surrogate mother refuses to raise the child, he will be transferred to the welfare authorities of the state. Approval by the court, the CC will become the child's sole parents for all matters.

In extreme cases, where the child has a malformation at birth or becomes HIV positive, or in any other circumstances where the CC withdraws from the agreement, the surrogate mother becomes the legal guardian of the newborn. In cases where the surrogate mother refuses to raise the child, he will be transferred to the welfare authorities of the state.

Withdrawal of the Surrogate Mother from the Agreement

The court will approve withdrawal of the surrogate mother from the agreement only in cases where the social worker's report provides convincing evidence of a change in circumstances that justifies such and that the well being of the child would not be compromised. After the adoption act has been finalized the court cannot authorize withdrawal from the agreement. In cases where the court approves withdrawal it should nominate the surrogate mother as the legal mother and only guardian of the child. The court can also pass judgment upon the relationship between the child and one or both members of the CC. In the case that the court has granted custody to the surrogate mother it can pass judgment upon the repayment of expenses to the parties.

Legal Rights of the Surrogate Mother

The new law should not contradict the rights of the surrogate mother to medical treatments and will not prevent her from procuring or performing a medical procedure according to her free will, including interruption of pregnancy under the terms set by the law. Neither the CC nor any other body have the right to control the surrogate's way of life during pregnancy, including nutrition, drinking habits, sexual behavior, or use of drugs. The CC cannot intervene in the prenatal care received by the surrogate mother, nor can it force her to undergo invasive and noninvasive prenatal procedures, such as amniocentesis, against her will.

Enforcement of the Law

According to this law, establishment of a surrogacy agreement without the authorization of the Approv-

ing Committee is a criminal act that carries a punishment of 1 year in prison. Publication of details from the Committee's discussions that include information that could identify any of the parties involved is forbidden and carries a punishment of 1 year in prison. Deliverance or acceptance of a child without the presence of the social worker or without a court order will lead to a punishment of 1 year in prison.

LEGISLATION ON CLONING

Since 1999 (15), Israel has a law on prohibition of Genetic manipulations in Humans. The law sets a period of 5 years during which there will be no practice of certain genetic manipulations in humans, with the intent of examining the moral, legal, societal, and scientific aspects of these manipulations and their implications for human dignity.

The law stipulates that during the period it is in effect, no one will engage in any activity of manipulating human cells for the purpose of either

- 1) human cloning,
- 2) producing humans with germ line cells that have undergone a genetic change that is directed and permanent (germ line gene therapy). In the text of the law, cloning human being is defined as: producing a complete human that is absolutely identical in its genetic chromosomal make-up to another, human being or embryo, living or dead.

The law stipulates a punishment of 2 years in prison, sets the period of enforcement for 5 years and appoints the Minister of Health to execute the law. An Advisory Committee, namely the Helsinki High Committee appointed in the Public Health Ordinance of 1980 (Medical Research in Human Beings) will follow the developments in Medicine, Science, and Biotechnology in the field of Genetic Research in Humans. The Committee will submit a yearly report to the Minister of Health that will advise him and make recommendations to the Minister regarding the enforcement status for the present Law.

The law states that the Minister of Health will have the power, having determined that there is no prejudice to human dignity, and on the recommendation of the Advisory Committee and in the conditions that he will set, to authorize by directive the practice of some Genetic Manipulation that fall under the interdictions of the present law.

The law in Israel is, therefore, an example of a balanced legislation because it prohibits the

practice of human genetic manipulations while it avoids depriving Israeli patients from the right of benefiting from the advancement of Medicine and Science. This right, which is part of the U.N. Human Right Declaration of 1948, requires of course that the practice of new medical technologies should be safe and efficient, and approved by the Health Authorities on the basis of demonstrated scientific proofs regarding the safety and therapeutic efficacy. As stated above, animal experimentation on reproductive cloning shows that, as of today, the technique would be neither safe nor efficient and hence any attempt to use it in humans should be banned. Several major nations have now enacted statutory cloning bans, or such enactment is in process.

COMMENTS

Although there have been impressive scientific and technological advances in Israel in the field of the medical treatment of fertility problems, the matters related to ART have not yet been arranged in primary legislation (except, surrogacy and cloning) but arrangements have been set only by secondary legislation enacted by the Minister of Health and directives issued by the Director-General of the Health Ministry. The legal validity of the arrangements set forth in secondary legislation is questionable.

The matters of ART touch upon various aspects of human rights. The legislation and regulations of ART practice are based on the Basic Law of State of Israel, Human Dignity and Liberty. The Basic Law "Human Dignity and Liberty" was enacted to "protect human dignity and liberty in order to secure the values of Israel as a Jewish and democratic state" (16) and create the proper integration of these values (Paragraph 1 of the Basic Law). It contains numerous elements of rights and obligations related to the subject of our deliberations. Included within the Law is the right to privacy, which is protected in Paragraph 7(a) of the Basic Law. Paragraph 8 of the Basic Law states that the right to privacy shall not be restricted "except by a Law befitting the values of the state of Israel, enacted for a proper purpose and to an extent no greater than is necessary..." Any restriction of privacy requires, legislation enacted by the Knesset, which meets the balancing test of Paragraph 8 of the Basic Law. The right to privacy is a fundamental right of a progressive society and is intended to protect man's privacy. But this right does not require establishment of a public network of fertilization or genetic

engineering services for a couple wanting to use reproductive technology techniques. The right to privacy also does not obligate the state to permit innovative ART, which may harm the child-to-be or prejudice the fundamental principles of society or delicate fabric of society.

Therefore the public professional commission in the matter of ART practice recommended that legal regulation of medically assisted reproduction should be by legislation of the Knesset, the basic rights of the parents and the child-to-be being preserved in accord with the principles of the Basic Law "Human Dignity and Liberty."

The right to receive reproductive treatment shall be granted to every adult, except in those instances in which the use of treatment technology will likely bring about an injustice.

In no event shall a physician be required to provide reproductive treatment contrary to his religious or social conscience, or his medical judgment.

A Multidisciplinary Committee shall be established and empowered, inter alia, to deny provision of treatment in exceptional cases. The considerations that the Committee shall take into account when making a determination shall include medical data relating to a fear of severe harm to the woman patient or the child-to-be and/or social considerations of the tangible fear of severe harm to the well-being of the child-to-be and/or data indicating a fear of grave harm to society; the Committee shall not be authorized to prohibit natural births that do not require medical intervention.

As a rule, a child born from technological reproduction shall be considered, as regards his status and his rights like child born from sexual intercourse. To avoid the conflict between the secular and religious people and between the different religions' perspectives the legal control of ART in Israel was solved by secondary legislation enacted by the Minister of Health and directives issued by the Director-General of the Health Ministry.

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