

DO MACHINES INVADE LIBERTIES? A LEGAL PERSPECTIVE ON THE ARTIFICIAL WOMB TECHNOLOGY IN THE LIGHT OF REPRODUCTIVE AUTONOMY

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ABSTRACT

The emerging reproductive technology; Artificial Womb (AWT) facilitates the development of the fetus outside body. The invent of technology has surfaced different notions on the fact that, such a development replaces the natural and unique instincts of women on motherhood. The positivity on AWT denotes an instance where women who deprived of the opportunities of procreation would highly be benefited. The scholars argue on the fact that, AWT has an indirect influence on the rights of women. The essay predominantly considers the facets of advanced technologies, benefits and simultaneously the violation of rights entitled to by women. The essay provides insights on the very perspectives provided by the European scholars on the rights entitled to by women namely the right to termination of pregnancy and the right not to become a biological parent. Further, it expounds the fact that, the right to termination of pregnancy encompasses only the right to kill the fetus or it has a wide purview to discuss. Women are entitled to the right to make autonomous decisions as to the physical and bodily integrity. The recognition of 'Artificial Womb' as an alternative to the termination of pregnancy does amount to the violation of right to privacy as expounded by the case *Roe v. Wade*.

Keywords: Artificial Womb, Rights, Right to privacy.

INTRODUCTION

Artificial Womb Technology (AWT) is a form of ectogenesis which facilitates the process of development of the fetus outside the body. In the perspective of the modern science & technology, AWT is a creation in lieu of the natural womb.ⁱ The predominant fact which signifies the AWT is that, the women are able to continue the pregnancy without necessitating the killing of the fetus.ⁱⁱ The scholars have elaborated on the advantages of AWT where it prioritizes the survival of the pre-term babies, allowing the opportunities for fetal surgery, & the opportunities for women in rescue themselves from the negative effects of pregnancy. However, this does not consider as the sole stance on AWT where the scholars are of the view that, as a technology, it negates the rights bestowed on women by the law.ⁱⁱⁱ Even though, the women are safeguarded from the negative effects of termination of pregnancy, removal of the fetus itself creates a risk. Further, it has been elaborated that, prioritizing of AWT has the very effect of lowering the status of women to the labourers & sex providers. Thus, it reveals a contravention of the autonomy entitled to by women.^{iv} The essay has two perspectives namely the background of AWT and the manner such a developing technology exerts on the rights of women.

RIGHT TO PROCREATION AS RECOGNIZED BY THE INTERNATIONAL LAW

The International Covenant on Civil and Political Rights (ICCPR) - Article 23 and the International Covenant on Economic and Social Rights (ICESR) – Article 16 forming the basis of the International Bill of Rights develop the foundation for the right to procreation. The international instruments have accepted that, the persons of marriageable age have the right to marry and found a family. The right to found a family predominantly includes the right of procreation.^v Simultaneously, the women are entitled to the reproductive autonomy. The term ‘reproductive autonomy’ is extended to different purviews namely the reproductive rights, reproductive choice, reproductive justice and the procreative liberty.^{vi} In the context of procreative liberty, the scholars have identified that, assisted reproductive technologies as

important as the sexual reproduction.^{vii} ‘Autonomy’ is considered as a right entitled to by women in the process of decision making in relation to the fertility and sexuality without subjecting to violence and coercion. The notion of choice plays a key role.^{viii}

PRO- LIFE V. PRO CHOICE

The proponents of the pro-life stance have asserted on the fact that, fetus is entitled to the right to life from the conception. In contrast to this, the pro-choice proponents signify the very right to termination of pregnancy while upholding the right to privacy. However, the legal context has identified the existence of certain misconceptions related to the term ‘termination of pregnancy’.

ARTIFICIAL WOMB AND THE ECTOGENESIS

In the perspective of scholars, the AWT is seen as a success achieved by the reproductive technologies in the world and views have been presented about it as a healthcare resource and also a reproductive choice.^{ix} Hammond Browning’s perspective on partial ectogenesis predominantly stands for the benefit of women, promotes fetal welfare and uterine experience.^x The technology is considered as of importance in the instances of dangerous pregnancies and also for the protection of fetuses. However, the technology is considered as a factor which negates the role of women in the society. The reason for such a perspective is that, the woman’s natural ability of reproduction & the motherhood is replaced by the emerging reproductive technologies.^{xi} The process of transferring a fetus from the natural womb to the artificial womb has the potential of redefining the concept of viability. In addition to this, Kendal’s argument specifies that, AWT must be utilized as a choice which enables women to reproduce with minimal physical risks and simultaneously, to evade social burdens of the pregnancy.^{xii}

ARTIFICIAL GESTATION AND THE RIGHTS OF WOMEN

Thus, it clearly specifies the very fact that, artificial wombs have the power to mandate that, all babies should be extracted & transferred to an artificial environment. If such an instance is made mandatory, it clearly makes a clear cut conflict between the women's reproductive rights & the prioritizing pro-life stance in the emerging reproductive technologies. The developing world has recognized the reproductive rights of women including the procreative freedom. In the event of unbundling the reproductive autonomy of women, the right to termination of pregnancy is elaborated as including the right not to become a biological parent & right not to procreate.^{xiii} The scholars are doubted on the fact whether AWT as an emerging reproductive technology has the power to subordinate the right of choice of women.

RIGHT TO TERMINATION OF PREGNANCY & THE FETUS

The traditional perception in this regard is that, termination of pregnancy is only the termination of fetus or killing of the fetus. However, the right to termination of pregnancy is not just the right entitled to by a woman to kill the fetus. This has created anomalies as to the fact whether there exists any right for a woman to get assured the fact that, fetus is not survived even with the support of any apparatus. The right not to become a mother, is sprung from the right to privacy as expounded in *Roe v. Wade*. Depriving a woman of the right to privacy and choice has a detrimental outcome.^{xiv} The maternity or an additional offspring to the family in some circumstances causes a distressful life to the women.^{xv} The distress creates a psychological harm. The women are compelled to shoulder the physical and mental health issues which are arisen by the child care. The unwanted pregnancy leads to the social stigma.^{xvi}

CONCLUSION

There is a conflict between the pro-life & pro-choice stances. Thus, there exists a collision between the right of a fetus to live & woman's reproductive autonomy. The medical technology in the world is developing and the modern trend is the bloom of emerging reproductive

technologies. AWT is of prominent concern. AWT's function of facilitating the fetus to survive ex utero has created issues in relation to the women's right to reproductive autonomy. It doesn't create anomalies only in relation to the termination of the fetus but also on the right not to procreate, not to become a biological parent.

ENDNOTES

ⁱ Elizabeth Chloe Romanis, Challenging the 'born alive' threshold: Fetal surgery, artificial wombs, and the English approach to legal personhood, 28 *Medical Law Review* 93-123 (2019), <https://academic.oup.com/medlaw/article/28/1/93/5510054>.

ⁱⁱ Julia Dalzell, The Impact of Artificial Womb Technology on Abortion Jurisprudence, 25 *William & Mary Journal of Race, Gender, and Social Justice* 327-351 (2019), <https://scholarship.law.wm.edu/wmjowl/vol25/iss2/4>.

ⁱⁱⁱ *Id.* at.331.

^{iv} *Id.* at.339.

^v Carter J. Dillard, Rethinking the Procreative Right, 10 *Yale Human Rights and Development Law Journal* 1-63 (2007) <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1059&context=yhrdlj>.

^{vi} Johnston J, Zacharias RL. The Future of Reproductive Autonomy, 47 *Hastings Cent Report*. (2017) <https://pubmed.ncbi.nlm.nih.gov/29171894/>.

^{vii} *Id.* at.s9.

^{viii} Shalev Carmel, Rights to Sexual and Reproductive Health: The ICPD and the Convention on the Elimination of All Forms of Discrimination against Women, 4 *Health and Human Rights* 38-66 (2000).

^{ix} Elizabeth Chloe Romanis, Artificial Womb Technology and the Choice to Gestate Ex Utero: Is Partial Ectogenesis the Business of the Criminal Law?, 28 *Medical Law Review* 342-374 (2020) <https://academic.oup.com/medlaw/article/28/2/342/5680368>.

^x *Id.* at 354.

^{xi} Johnston J, Zacharias RL. The Future of Reproductive Autonomy, 47 *Hastings Cent Report*. (2017) <https://pubmed.ncbi.nlm.nih.gov/29171894/>.

^{xii} Elizabeth Chloe Romanis, Artificial Womb Technology and the Choice to Gestate Ex Utero: Is Partial Ectogenesis the Business of the Criminal Law?, 28 *Medical Law Review* 342-374 (2020) <https://academic.oup.com/medlaw/article/28/2/342/5680368>.

^{xiii} Julia Dalzell, The Impact of Artificial Womb Technology on Abortion Jurisprudence, 25 *William & Mary Journal of Race, Gender, and Social Justice* 327-351 (2019), <https://scholarship.law.wm.edu/wmjowl/vol25/iss2/4>.

^{xiv} *Roe v. Wade*, 410 U.S. 113 (1973)

^{xv} Julia Dalzell, The Impact of Artificial Womb Technology on Abortion Jurisprudence, 25 *William & Mary Journal of Race, Gender, and Social Justice* 327-351 (2019), <https://scholarship.law.wm.edu/wmjowl/vol25/iss2/4>.

^{xvi} *Id.*at.347

