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Justice and socio-cultural issues regarding infertility and ART in Latin America

Latin America is usually considered to be a homogeneous region. Actually, the countries of this region have cultural and sociological individualities which make them different. ART continues to generate challenges and great controversies. The challenges affect social norms, moral and ethical standards, as well as the legal systems of the different countries, generating individual, social and politico-legal differences.

Although Latin America is not a totally homogeneous region since its population differs in its origins (Africans, indigenous peoples, Europeans), natural resources, size, they have in common in recent years a great suppression of the middle class that has increased the gap between the social classes. Groups with fewer resources, in some countries, grow progressively larger.

The economical, political and social reality in these countries generate greater numbers of people who need treatment for infertility due to the lack of access to appropriate primary health resources. Unfortunately, people of the poor classes have no access to health services, and that produces an increase of sexually transmitted diseases (STD) and reproductive tract infection (RTI). A Brazilian study showed that 42% of women who consulted for infertility had tubal obstruction because of RTI.

The lack of or reduced access to contraception leads also to an increase in STD and RTI that produce infertility, and also leads to illegal abortions in poor conditions, usually followed by the death of these young women or tubal and lasting psychological damage. In Latin America there is markedly unequal access to fertility treatments and this problem of the lack of justice depends on the different current governments. The rights of the people can not be denied by government justification because of scarce resources. Even though it differs from country to country, religion has a great impact on reproductive issues both in individuals and in politico-legal measures.

For example, the IFFS 2004 Surveillance stated that embryo cryopreservation is permitted or used in all Latin American countries with the exception of El Salvador.

Nevertheless, an important number of IVF Centres in several countries, for moral and/or religious reasons, do not cryopreserve embryos. Generally, these centres don't include gamete donation and PGD, among other techniques, in ART practice. It is very hard to understand the unequal access of

infertile Latin American couples not only to fertility treatments but also to an adequate sexual education and implementation of contraception.

It is curious that the same groups that obstruct equal access to responsible procreation, are the same that are against ART. More curious is that they use the same arguments for both situations, denying the close relationship between them.

In 1993, in Argentina, the lawyer, Rabinovich, promoted a "precautionary action" to control everything relating to embryo cryopreservation. Based on, according to him, the Civil Code "where embryos are persons and whatever is done or not with them can not be decided by the parents, laboratories or doctors", it prevents all IVF Centres from cryopreserving embryos without authorization. He asked the law to guarantee "the physical and spiritual integrity of these absolute incapables" referring to the cryopreserved embryos.

A decade later he was designated by a judge as "special tutor of cryopreserved embryos and pronucleated oocytes". This situation produced an important reaction from all IVF Centres and prospective parents of those cryopreserved embryos as well as from the Argentinian Society of Human Reproduction, hindering the development of this law.

The guardianship of the embryos is linked to the roman "curaventrís", the curator ventris was a citizen elected to look after the health, life and interests of the child during gestation as well as the mother (Digesto 37, 9, 1).

Florencia Luna summarizes the above situation stating that "the embryo is sometimes more protected than women in Latin American countries". (WHO, Geneva, 2002).

Why are patients' rights in general and justice in particular so vulnerable, not only in Latin America, but in the rest of the world? At what point are the professionals aware of this situation and do they take part in a committed way to preserve the rights of patients?

We must emphasize the fact that no society can be considered modern (open minded and with changeable values) if there is no freedom of choice, freedom of reproduction and associated medical responsibility, supported by an independent government.

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