

**CANONICAL IMPLICATIONS OF BIOMEDICAL
ADVANCEMENTS IN PROCREATION FOR CHRISTIAN
MARRIAGES IN NIGERIA**

Uchenna Cletus AMUH*¹

Abstract

This article explores the canonical implications of biomedical advancements in procreation for Christian marriages in Nigeria. It is a statement of fact that an average Nigerian youth go into marriage with the intention, among other intentions, to procreate offspring. There is increased concern and anxiety among couples whose marriages are yet to yield fruits of procreation due to the sterility of one or both of the parties. Some of these couples, especially those who can afford its high cost, make recourse to artificial method of fertilization. With rapid advancements in reproductive technologies, such as in vitro fertilization (IVF) and surrogacy, there is a need to specifically examine the intersections of canonical norms and the magisterium of the Church with the biomedical advancements in procreation. With the aid of descriptive and analytical methods, while providing an overview of the legal and theological considerations surrounding these biomedical advancements within the context of Christian marriages in Nigeria, the article argues that recourse to artificial fertilization method can lead to neglect of some matrimonial obligations relevant to its validity. This article seeks to contribute to the ongoing discourse on the implications of recourse to biomedical advancements in procreation in Christian marriage in Nigeria.

Keywords: Marriage, Biomedical, Procreation, Artificial fertilization, Surrogacy, Sterility.

¹*Lecturer, Department of Canon Law, Catholic Institute of West Africa, Port Harcourt, Nigeria, Email: uchenilyn@yahoo.com. Tel: 08036737881

1. Introduction

The rapid progress of biomedical technologies has provided new possibilities for couples struggling with infertility not only in Nigeria but also all over the world. In Nigeria, where establishing a marriage contract is synonymous with procreation, couples' disposition to take advantage of biomedical advancements in procreation have led to the need to inquire into the compatibility of such procedures to the canonical dispositions of Christian marriages. As artificial methods of fertilization become increasingly prevalent among couples in Nigeria due to increasing infertility rates especially in men, this article aims to explore the canonical implications of biomedical advancements in procreation for Christian marriages in Nigeria. By addressing these issues, the article seeks to contribute to a comprehensive understanding of the validity and legality of marriages of Nigerian Christian couples engaging in and/or seeking to utilize these advancements while remaining faithful to their matrimonial obligations.

2. Marriage and Procreation in Nigeria

In Nigeria marriage and procreation are seen as two sides of the same coin that cannot be separated. While there are instances of procreation outside marriage, marriage without procreation is viewed as failed. An overview of the cases/requests presented to the various Ecclesiastical Tribunals in Nigeria shows that a good number of "failed" marriages have their root cause on the inability to procreate children. Besides the social and existential difficulties posed by this reality, the cultural undertone assumes predominant relevance. Again, it is interesting to note that it is not just non-procreation; there is also the challenge of couples that procreate but a particular gender but who would wish to have a gender mix in their children. Hence, procreation is so important to most couples in Nigeria that they can go to any length to realize it.

There are varied causes of childlessness among Nigerian couples such as infertility resulting from non-staying together of married couples. There are ample instances of young couples living apart as they search for better lives. Instances of young married men leaving their wives in Nigeria while in search of greener pasture abroad abound. Fertilization

becomes more challenging for those couples that meet for a short period within or beyond 12 calendar months. Thus, some noticeable increase of infertility in both Nigeria men and women has become not just a worrisome situation but also a threat to the stability of many marriages in Nigeria.

The global high rate of infertility has been particularly identified to be more in men due to sperm DNA fragmentation (SDF).² Biological, environmental and lifestyle factors have been implicated as triggers of sperm DNA fragmentation. It has been reported that higher DNA fragmentation results in decreased fertilization rates, poorer embryo development and an increased miscarriage rate (MR).³ There are biological factors like varicocele, cancer, diabetes, male accessory gland infection, advanced paternal age; environmental factors like air pollution, pesticides or industrial chemicals; and poor lifestyle like smoking, alcoholism, obesity.⁴

Sequel to the above, married couples faced with infertility challenges or desirous of gender selection are readily willing to make recourse to any available biomedical advancements in procreation to realize their dreams of having children and/or a particular gender in their marriage.

² Esteves SC, Santi D, Simoni M. An update on clinical and surgical interventions to reduce sperm DNA fragmentation in infertile men. *Andrology*. 2020 Jan;8(1):53-81. doi: 10.1111/andr.12724. Epub 2019 Dec 9. PMID: 31692293.

³ Lin MH, Kuo-Kuang Lee R, Li SH, Lu CH, Sun FJ, Hwu YM. Sperm chromatin structure assay parameters are not related to fertilization rates, embryo quality, and pregnancy rates in in vitro fertilization and intracytoplasmic sperm injection, but might be related to spontaneous abortion rates. *Fertil Steril*. 2008 Aug; 90(2):352-9. doi: 10.1016/j.fertnstert.2007.06.018. Epub 2007 Sep 27. PMID: 17904130.

⁴ Agarwal A, Majzoub A, Baskaran S, Panner Selvam MK, Cho CL, Henkel R, Finelli R, Leisegang K, Sengupta P, Barbarosie C, Parekh N, Alves MG, Ko E, Arafa M, Tadros N, Ramasamy R, Kavoussi P, Ambar R, Kuchakulla M, Robert KA, Iovine C, Durairajanayagam D, Jindal S, Shah R. Sperm DNA Fragmentation: A New Guideline for Clinicians. *World J Mens Health*. 2020 Oct;38(4):412-471. doi: 10.5534/wjmh.200128. Epub 2020 Aug 6. PMID: 32777871; PMCID: PMC7502318.

Progressive Biomedical Advancements in Procreation

There has been a steady and progressive growth in biomedical sciences to boost human fertility after the successful first test tube baby, Louise Joy Brown, who was born on 25 July 1978.⁵ Since then, it is estimated that over eight million babies have been born by means of artificial insemination.⁶ It has been predicted that assisted reproductive technologies (ART) will keep about 400 million people alive by the year 2100,⁷ that is, 3% of the world population. Evolution and improvement of scientific research in human procreation has led to the discovery of various medical procedures to combat growing challenge in human fertility.⁸ Research evolution in artificial fertilization has led to a great improvement on the electronic observing system that applies barcodes to ensure the proper tracking of sperms, eggs and embryos to progress reproductive health.⁹

Artificial fertilization, which is common term for biomedical evolution in procreation, is a deliberate fusion of male and female gametes by means other than sexual intercourse in order to induce/attain conception. Either of these two basic procedures is applied to realize conception: *In vivo fertilization* or *in vitro fertilization*. *In vivo fertilization* (IVF)/*intra-corporeal fertilization* (ICF) occurs when an extracted male gamete (sperm) is guided to fertilize an induced female gamete (egg) to form a zygote inside the female reproductive system.

⁵ History.com Editors, World's first 'test tube' baby born, in *History*. <https://www.history.com/this-day-in-history/worlds-first-test-tube-baby-born> (Accessed on 1 November, 2023).

⁶ Singh K, Dewani D. Recent Advancements in In Vitro Fertilisation. *Cureus*. 2022 Oct 10; 14(10): e30116. doi: 10.7759/cureus.30116. PMID: 36381837; PMCID: PMC9644046.

⁷ M.M. Reigstad and R. Storeng (2019), 'Development of in vitro fertilization, a very important part of human reproductive medicine, in the last 40 years', in *International Womens Health Wellness*, 5.89 (2019): 2474-1353.

⁸ U.C. Amuh, *Marriage consent conditioned on effective procreation: Canonical implication*. Città Vaticana: Pontificia Università Lateranense, 2022, 87.

⁹ Natasha Spencer-Jolliffe, 'Fertility tech in 2023: At-home, personalisation and accessibility', in *Medical Device Network*, <https://www.medicaldevice-network.com/features/fertility-tech-in-2023-at-home-personalisation-and-accessibility/> (Accessed on 1 November 2023).

In vitro fertilization (IVF)/extra-corporeal (ECF) occurs when male and female gametes are fertilized in a test tube, outside the female reproductive system, to form a zygote. This second procedure involves a more complex process of harvesting eggs from the ovary, fertilizing them with sperm in a lab, and then transferring the embryos to the uterus¹⁰ or incubation tube. One cycle of this procedure, according to Dr. Ajayi, takes about two months.¹¹ The embryo transfer procedure, part of the biomedical advancements in procreation, is applicable to either of the two aforementioned artificial fertilization techniques.

Embryo transfer is the transfer of an already formed zygote (tubal or uterine) into either the female's reproductive system or the incubation tube.¹² A whole lot of objectives can be achieved under this procedure: Intending parents can determine the gender of their child/children; couples can realize their desire for twins; *Assisted hatching* which involves making a small hole in the outer layer of an embryo so that it can easily hatch and implant itself into the lining of the uterus; *In-vitro maturation (IVM)*, involves retrieving immature eggs from a woman's ovaries and maturing them in a lab dish before fertilizing them with sperm; *Embryo cryopreservation* is a way to preserve embryos for future use. In this case, the embryos are frozen and can be defrosted and then transferred to a woman's uterus or incubation tube. Frozen embryos can be safely preserved for 10 years or more. They are stored and monitored at hospital facilities or commercial reproductive medicine centers. *Pre-implantation genetic testing (PGT)*, which is the screening of an embryo with the aim of identifying and possibly eliminating any genetically defective embryos¹³ also takes place before the transfer of the embryo to a woman's womb or incubation tube. Thus,

¹⁰ Zamboni L, Meldrum DR, Buster JE. Extracorporeal fertilization and embryo transfer in the treatment of infertility. *Western Journal of Medicine* 1986 Feb; 144(2):195-204. PMID: 3953088; PMCID: PMC1306557.

¹¹ Francis Ugwu, 'Infertility: Men responsible for 60 per cent causes – Expert bares it all', in *Daily Post Nigeria*, 17 May 2023.

¹² D. Vaccaro, 'Procreazione assistita', in *Dizionario di bioetica*, a cura di S. Leone e S. Privitera, Aci-reale-Bologna 1994, 752.

¹³ Olufemi Ariyo (2023), 'How fertility changes as tech advances', in *The Cable*, 7 March 2023. <https://www.thecable.ng/how-fertility-changes-as-tech-advances>.

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scientists use this method to identify and eliminate embryos that will not implant due to defective DNAs.

Within *embryo transfer* is the *Intracytoplasmic Sperm Injection* (ICSI), which was introduced in 1992 to improve male fertility. It is a medically assisted fertilization technique that overrides the fertility challenge resulting from low sperm count.¹⁴ It involves the magnification of the spermatozoa by approximately $\times 200 - \times 400$ and injecting it into an egg.¹⁵ The fertilized egg that had become an embryo is transferred into the woman's womb. The success rate of ICSI is said to range from 85% to 90%, depending on expertise.¹⁶ One cycle of ICSI takes between four weeks and six weeks to complete. However, there are clinical concerns, as observed some embryologists, such as damage to gametes and offspring health status. Some studies suggest that the procedure interferes with gametogenesis and embryo development.¹⁷

¹⁴ S. C. Esteves, M. Roque, G. Bedoschi, T. Haahr, and P. Humaidan, 'Intracytoplasmic sperm injection for male infertility and consequences for offspring,' in *Nature Reviews Urology*, vol. 15, no. 9, (2018), 535–562; D. Meschede, B. Lemcke, J. R. Exeler et al., 'Chromosome abnormalities in 447 couples undergoing intracytoplasmic sperm injection--prevalence, types, sex distribution and reproductive relevance,' in *Human Reproduction*, vol. 13, no. 3, (1998), 576–582.

¹⁵ Duran-Retamal, M, Morris, G, Achilli, C, et al. 'Live birth and miscarriage rate following intracytoplasmic morphologically selected sperm injection vs intracytoplasmic sperm injection: An updated systematic review and meta-analysis', in *Acta Obstet Gynecol Scand*. 2020 <https://doi.org/10.1111/aogs.13703> (Accessed on 2 November 2023); Palermo G, Joris H, Devroey P, Van Steirteghem AC. 'Pregnancies after intracytoplasmic injection of single spermatozoon into an oocyte', in *Lancet* 1992.

¹⁶ Jiqun Xu, Yi Yu, Mingyue Xue, Xiangyang Lv, 'Intracytoplasmic Sperm Injection Improves Normal Fertilization Rate and Clinical Pregnancy Rate in Male Infertility', in *Contrast Media & Molecular Imaging*, 2022, Article ID 1522636. <https://doi.org/10.1155/2022/1522636> (Accessed on 2 November 2023).

¹⁷ S. Nariyoshi, K. Nakano, G. Sukegawa, T. Sho, and Y. Tsuji, 'Ultrasonographically determined size of seminiferous tubules predicts sperm retrieval by microdissection testicular sperm extraction in men with nonobstructive azoospermia,' in *Fertility and Sterility*, vol. 113, no. 1, (2020), 97–104; S. Berntsen, B. Nøhr, M. L. Grøndahl et al., 'In vitro fertilisation (IVF) versus intracytoplasmic sperm injection (ICSI) in patients without severe male factor infertility: study protocol for the randomised, controlled, multicentre trial INVICSI,' in *Bmj Open*, vol. 11, no. 6, (2021) Article ID e051058; Jiqun Xu, Yi Yu, Mingyue Xue, Xiangyang Lv, 'Intracytoplasmic Sperm Injection Improves Normal Fertilization Rate and Clinical Pregnancy Rate in Male Infertility', in

The worrisome medical concerns together with failed fertilization¹⁸ in ICSI led to the introduction of *Intracytoplasmic Morphologically Selected Sperm Injection* (IMSSI).¹⁹ It involves the use of real-time differential interference contrast microscopy at high magnifications from $\times 6000$ to $\times 13\ 000$ of unstained spermatozoa.²⁰ The high magnification enables the embryologist to clearly study the character of the sperm cells that make it to the egg cell as he/she observes the head, the tail and the movements of the sperm cells. It was discovered that sperms with specific enzymes richer than others make it to the egg cell. This discovery led to the introduction of the procedure called *Physiological Intracytoplasmic Sperm Injection* (PICSI). It is a scientific technique used to isolate better quality sperm before it is injected into an embryo, which will later be transferred into a woman's womb or incubation tube.

In all, progressive biomedical advancements in procreation requires deliberate stimulation and/or manipulation, with the intent to extract reproductive cell (gamete) of both/either of the married couples aimed at fertilization (Homologous fertilization), of the reproductive cell/system of a third party (heterologous fertilization) or surrogacy. All these beg the question on the significance of marriage as a partnership of life *ordered by its nature to the procreation of offspring* (cf. can.

Contrast Media & Molecular Imaging, 2022, Article ID 1522636. <https://doi.org/10.1155/2022/1522636> (Accessed on 2 July 2023).

¹⁸ Antinori, Monica, et al. 'Intracytoplasmic morphologically selected sperm injection: a prospective randomized trial.' *Reproductive biomedicine online* 16.6 (2008): 835-841 (Accessed on 18 July 2023).

¹⁹ Duran-Retamal, M, Morris, G, Achilli, C, et al. 'Live birth and miscarriage rate following intracytoplasmic morphologically selected sperm injection vs intracytoplasmic sperm injection: An updated systematic review and meta-analysis', in *Acta Obstet Gynecol Scand.* 2020 <https://doi.org/10.1111/aogs.13703> (Accessed on 2 November 2023).

²⁰ Duran-Retamal, M, Morris, G, Achilli, C, et al. 'Live birth and miscarriage rate following intracytoplasmic morphologically selected sperm injection vs intracytoplasmic sperm injection: An updated systematic review and meta-analysis', in *Acta Obstet Gynecol Scand.* 2020 <https://doi.org/10.1111/aogs.13703> (Accessed on 2 November 2023).

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1055, §1) and the place of the *conjugal act performed in human fashion suitable for procreation by which spouses become one flesh* (cf. can. 1061, §1).

Procreation in Christian Marriage

Christian marriage, unlike natural or any other form of marriage, is essentially constitutive of three distinct but firmly related basic ends: good of spouses, procreation and education of offspring. The good of spouses manifested in sexual relationships between couples results in procreation of offspring, which the spouses have the marital obligation to educate. While procreataion can occur outside marriage, married love is by nature ordered to procreation. Children are the supreme gift of marriage and greatly contribute to the good of the parents themselves.²¹ Marriage finds its crowning glory in procreation realized by natural conjugal acts. The canonical legislator aptly presents permissible conjugal acts as those actions that are of themselves suitable for generation of children²². Thus, procreation is one of the essential goals of marriage understood as a couple's surrender of themselves to each other in a partnership of the whole of life²³ and their capacity to perform the conjugal actions in a human mode²⁴. While acknowledging that not every conjugal act leads to procreation, it has to be noted that *bonum prolis* (good of children) should not be considered the exclusive property of marriage. Marriage would not be invalid in a circumstance that procreation is not realized due to sterility of one or both parties. What matters in such marriage is the simple openness of the couples to a fruitful marriage.²⁵ The validity of such marriage is measured by the couple's readiness to give and

²¹ *Gaudium et Spes*, in *AAS*, 58 (1966), n. 50.

²² *CIC 1917*, can. 1081 §2, *CIC 1983*, can. 1061, §1.

²³ Cfr. O. Giacchi, *Il consenso nel matrimonio canonico*, Milano, 1973, 350-356; A. Stankiewicz, *La prole come finalità del matrimonio*, 20.

²⁴ U.C. Amuh, *Marriage consent conditioned on effective procreation*, 19.

²⁵ Cfr. C. Burke, *Procreativity and the conjugal self-gift*, in *Studia canonica*, XXIV (1990), 48.

accept themselves in masculinity and femininity proper to them.²⁶ St. Bonaventure maintains, in the fourth volume of his *Sententia*, that the inability to procreate does not result in divorce.²⁷ What invalidates marriage is the exclusion of procreation by rejection of marital intercourse or deliberate application of contraceptives.

Hence, marital intercourse is essential not only in its significance to the mutual self-giving of the spouses; it also ratifies their marital intention to bestow on each other the gift of conjugal procreativity²⁸. As such, marriages between the aged and those who are incapable of procreation are valid in as much as they are capable of fulfilling matrimonial obligations, which includes conjugal copulation²⁹. Gratian presents it as a mutual disposition of the spouses towards each other in conjugal relationship which is both channeled to the purpose of procreation and good of the spouses.³⁰ Here, the juridic requirement consists in reciprocal rights and duties of the parties to the conjugal acts directed to procreation,³¹ that is, procreation in its principle.³²

The normative provision of the orderedness of marriage to procreation (cf. can. 1055) follows from the order of reciprocal donation of the couple.³³ Hence, the validity of a marriage where procreation is realized without reciprocal donation in sexuality or by means other than conjugal act is questioned. Married couple achieve perfect communion by proper and exclusive reciprocal gift of self to each other as they

²⁶ Cfr. H. Franceschi, *Il 'bonum proles' nello stato di vita matrimoniale e le conseguenze canoniche in caso di separazione o di nullità matrimoniale* in AA.VV., *Prole e matrimonio canonico*, Coll. *Studi Giuridici*, n. LXII, Città del Vaticano, 2003, 29-64.

²⁷ S. Bonaventura, *Sententiarum*, 31,1,3, in *S. Bonaventura opera Omnia*, vol. 4, Quaracchi, 1889, 721.

²⁸ S. Bonaventura, *Sententiarum*, 31,1,3, in *S. Bonaventura opera Omnia*, vol. 4, Quaracchi, 1889, 721.

²⁹ Alphonsus De Ligorio, *Theologia moralis*, lib. 6, tract. 6, c. 3, n. 1095, r. 2.

³⁰ Cfr. C. 32 q. 2 c. 4.

³¹ A. Stankiewicz, *La prole come finalità del matrimonio*, 21.

³² P.A. D' Avack, *Corso di diritto canonico. Il matrimonio*, I, Milano, 1961, 69.

³³ P.A. D' Avack, *Corso di diritto canonico*, 26.

collaborate with God to the procreation and education of new life³⁴.

In all, procreation in marriage is naturally expected to happen within the context of the couples' fulfillment of their matrimonial rights and obligation towards the good of spouses. No wonder Pope John Paul II asserts that the sacredness of procreation of human life is inscribed in the heart of love and of conjugal copulation³⁵. In other words, a procreation that follows the natural biological process of sexual intercourse between married couples in a human mode with the release and fusion of both male and female gametes inside the female reproductive system.

Do the above submissions imply that legitimate procreation cannot be realized by means other than conjugal sexual intercourse even when couples are faithful to their conjugal obligations? If it does occur, will such marriage be declared null and on what canonical grounds? To what extent would an artificial insemination procedure constitute an invalidating element of marriage?

3. Canonical Implications of the Application of Artificial Fertilization in Marriage

Before discussing the canonical status of marriages that make recourse to biomedical advancements in procreation, it is pertinent to differentiate between artificial insemination and assisted fertilization. Assisted fertilization is a medical curative intervention carried out in a couple who is afflicted with the challenge of procreation. The difference between assisted fertilization and artificial fertilization is that assisted fertilization concerns the treatment of the cause of the infertility without altering the natural sexual intercourse open to procreation³⁶ or manipulating the reproductive systems of either of the

³⁴ Paul VI, Encyclical Letter: *Humane vitae*, n. 8; John Paul II, Apostolic Exhortation: *Familiaris consortio*, n. 14.

³⁵ Cfr. John Paul II, Speech at the Wednesday general Audience 16 January 1980: *L'uomo-persona diventa dono nella libertà dell'amore*, in *Insegnamento di Giovanni Paolo II*, 1980, Città del Vaticano, 1980, 148.

³⁶ U.C. Amuh, *Marriage consent conditioned on effective procreation*, 87.

spouses. Assisted fertilization is morally and canonically admissible in marriage. It is morally admissible whether it is “instrumental or pharmacological, provided it does not break the existing connection between conjugal union and procreation as a simultaneous and immediate cooperation between the spouses (DoV II, 6)”.³⁷ The Instruction *Dignitas personae* expresses in very clear terms the liceity of this method³⁸. Navarrete, in line with the *Instruction*, affirms that the right/duty to procreate through copulation that is performed naturally is proper to the conjugal alliance, especially if necessary to make fertilization easier, and if aided by morally licit means that are not dangerous to life and not extraordinary to natural procedure³⁹.

Whereas artificial fertilization involves the deliberate manipulation and alteration of the natural connection between conjugal union and procreation. It raises some fundamental canonical questions regarding the couples’ disposition at the moment of exchange of consent: Did the spouses, at the moment of the institution of their marriage, freely and mutually exchange the power and right to their bodies as necessary indication of *intentio prolis* (intention to procreate)? Did the spouses, at the moment of exchange of consent, actually intend marriage in the strict sense of it? The reciprocal exchange of mutual right over their bodies determines the realization of two essential ends of marriage: good of spouses (conjugal copulation) and procreation. Was there the positive act of will by either/both of the parties, at the moment of exchange of consent, to make recourse to artificial technique of fertilization to the detriment of their conjugal union? If it is established that one or both of the spouses excluded, by a positive act of the will at the moment of exchange of consent, the intention to procreate through conjugal sexuality, the marriage will be invalidly contracted on the grounds of exclusion of good of spouses.

³⁷ J.J. Puerto González, *La doctrina del humano modo*, 533.

³⁸ Congregatio pro Doctrina Fidei, Instruction: *Dignitas personae*, 13 (Translation from the official website www.vatican.va).

³⁹ Cfr. U. Navarrete, «Novae methodi technicae procreationis humanae et ius canonicum matrimoniale», in *Periodica LXXVII* (1988), 98.

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Furthermore, in the application of artificial method of fertilization, one would argue on the exclusion of procreation since the procreation recognized by the canonical legislator is that which results from the conjugal union of husband and wife and nothing more. Positively willing not to follow the natural matrimonial conjugal and biological procedure of procreation is indicative of exclusion of procreation. St. Thomas would argue that, “on the things pertaining to the will, the intention of the end is the same movement as the willing of the means”⁴⁰. He, thus, defines intention simply as “*in aliquid tendere*”⁴¹, that is, to intend to do something real and sensible. Therefore, marriage as it is instituted (*matrimonium in fieri*) and marriage as a state of life (*matrimonium in facto esse*) should, of necessity, not express a will contrary to natural and matrimonial conjugal method of fertilization. As such, intention to make recourse to artificial method of procreation is a deliberate intention, by positive act of the will at the moment of exchange of consent, to exclude good of spouses and/or procreation. Anyone who deliberately intends such invalidly contracts marriage.

Given the above canonical legislator’s position, one would ask: What would be the fate of a Christian marriage in which a couple who are faithful to their conjugal obligations and without any prior positive act of will to exclude it but whose only available option of fulfilling their desire for offspring is by artificial fertilization? Recourse to a heterologous artificial fertilization is contrary to the vow of total fidelity to one another in their marriage. Here, offspring, which should be a living reflection of their conjugal love, a permanent sign of conjugal unity and a living and inseparable synthesis of their roles as father and mother,⁴² would be “out-of-marriage” procreation. This could degrade the child’s dignity as a person since it is not a product of the marriage.

⁴⁰ Thomas Aquinas, *Summa Theologiae, I-II*, q. 12, a. 4.

⁴¹ Thomas Aquinas, *Summa Theologiae, I-II*, q. 12, a. 1; B. Mondin, *Dizionario enciclopedico del pensiero di san Tommaso d’Aquino*, Bologna, 1991, 334-336; H.D. Simonin, *La notion d’ ‘intentio’ dans l’oeuvre de S. Thomas d’Aquin*, in *Revue de Sciences Philosophiques et Theologiques* 19 (1930), 443-463.

⁴² John Paul II, *Familiaris Consortio*, n. 14

The fidelity of the spouses, within the unity of marriage, entails mutual respect for their right to become parents only through each other.⁴³

Similarly, homologous artificial fertilization is contrary to the very nature of marriage as it undermines the substance of the dimension of fatherhood or motherhood within the marital context. Strictly speaking, the child born as a result of artificial fertilization is not the fruit of marriage. Hervada would insist that such a child do not properly belong to the marriage because the child is not a marital child according to nature.⁴⁴ The canonical challenge of the application of today's biomedical advancement in procreation is the shift of emphasis from the respect for the fecundity of conjugal union to the fulfillment of the spouses' desire for children at all cost.⁴⁵

Consequently, some would argue that since procreation is one of the ends of marriage, couples possess the right to demand for offspring in their marriage through all necessary means. First of all, the object of matrimonial consent essentially centers on the mutual donation and acceptance of one another's sexual procreative capacity in conjugal union, open but not limited to procreation. By this, one can speak of the mutual giving of his/her procreative capacity to the other and not of the right to have children⁴⁶. The validity of marriage does not demand a concurrent and complete realization of all the ends of marriage. Canon law retains as valid the marriage of couple, which due to physical, biological, psychological or moral difficulties cannot procreate but can adequately exercise the act of conjugal union⁴⁷. As such, in a strict sense

⁴³ Congregation for the Doctrine of Faith, Instruction *De observantia ergo vitam humanam nascentem deque procreationis dignitate tuenda* (Donum Vitae), 22 february 1987, in AAS 80 (1988), 70-102.

⁴⁴ J. Hervada, *Escritos de Derecho Natural*, Pamplona 1993, 545.

⁴⁵ P.J. Viladrich, *Il consenso matrimoniale. Tecniche di qualificazione e di esegesi delle cause canoniche di nullità (cc. 1095-1107)*, Milano 2001, 369.

⁴⁶ Cfr. H. Franceschi, *Il 'bonum prolis'*, 33.

⁴⁷ Cfr. H. Stawniak, *Procreatio, impotentia generandi et coeundi problemi e prospettive* in J. Kowal and J. Llobell (eds.), *'Iustitia et iudicium': Studi di diritto matrimoniale e processuale canonico in onore di Antonio Stankiewicz*, vol. 1, Città del Vaticano, 2010, 221; P. Moneta, *Il bonum prolis e la sua esclusione*, 93.

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marriage can be defined as an intimate and stable union of two persons of different sexes, which finds its full justification in itself and its essential autonomy even when it is impossible to procreate⁴⁸. Marriage does not confer the right to have children to the spouses but only the right to the conjugal act suitable for procreation (*Donum Vitae*). The right to have children does not have foundation neither in structure of human biology nor in natural law⁴⁹.

More so, having been given some latitude by the legislator of the Latin Code to affix conditions to their marriage consent, one would argue that couples can have recourse to artificial fertilization as an alternative option when procreation by natural means fails. Here, the canonical question would be the validity of a marriage consent conditioned on recourse to artificial technique of fertilization if procreation is not realized. Conditioning one's consent on a future event, which is to make recourse to biomedical science if procreation fails invalidates the marriage not on the grounds of the recourse to artificial fertilization but on future condition (cf. can. 1102, §1).

Moreover, exclusion of the good of children, which is best used to describe the property of marriage and not its purpose,⁵⁰ can constitute an invalidating factor of marriage. Principles are yet to be sufficiently developed both in doctrine and canonical jurisprudence on exclusion of the good of children as a ground of nullity. However, at the moment of exchange of consent, good of children is identified with the donation/acceptance of the fertility capacity of one's masculinity/femininity and a true donation of marital paternity/maternity and filiation. The idea of the good of a child as an essential element of marital covenant starts right from the conception of the child. Pope John XXIII in his Encyclical Letter *pacem in Terris* reaffirms that "the rights of the human person derive directly from his dignity as a human person,

⁴⁸ Cfr. L. Vela Sanchez, *Sterilità*, in C. Salvador - V. De Paolis - G. Ghirlanda (eds.), *Nuovo dizionario di diritto canonico*, Milan, 1993, 1040.

⁴⁹ Cfr. D. Composta, *La famiglia nella tempesta*, Rome, 1987, 56.

⁵⁰ C. Burke in *Il 'bonum coniugum' e il 'bonum prolis': fini o proprietà del matrimonio?*, in *Apolinaris* 62 (1989), 568

and are therefore universal, inviolable and inalienable.”⁵¹ The child has the right to be conceived, carried in the womb, brought into the world, and educated within a family. Human nature is ontologically wired to share equal ontological dignity from conception to the grave. Artificial fertilization denies children this fundamental good, right and dignity.

Couples that conceive the natural way intend the good of their offspring as they respect the dignity of the human person, which includes the obligations to safeguard the filial identity of the offspring impossible to safeguard in most artificial fertilization methods. The parent/children relationship is understood in its true and integral content only through a conception realized by natural means. Sperm/egg preservation and donation contradicts the legislator’s position on affinity, consanguinity and filiation, which are necessary factors in the choice of a life partner. In this case, the will of a party who refuses to resort to artificial techniques of fertilization is rightly considered as “fully respectful of the good of children and of the Christian and natural model of marriage”.⁵² It is on this premise that every child has the right to natural methods of conception; right to be conceived by the fusion of the parents’ gametes by natural procedure; right to its own biological parents etc. It is through a secure and recognized reference to their own parents that the child can discover their own identity and mature in their human formation.⁵³

Artificial fertilization technique violates the rights and dignities of both the child and the couples. Through modern *in vitro/vivo fertilization* which although brings about procreation is not an act by which couples give themselves to each other, but one that entrusts the life and identity of embryo into the power of the scientist and establishes the domination of technology over the origin and destiny of the human person (cf. CCC,

⁵¹11 April 1963, paragraph 145, available at http://w2.vatican.va/content/john-xxiii/en/encyclicals/documents/hf_j-xxiii_enc_11041963_pacem.html [Accessed 27 October 2023]

⁵² P. Moneta, ‘Procreazione artificiale e diritto matrimoniale canonico’, in *Il diritto di famiglia e delle persone*, 1987, 1309.

⁵³ Pope John XXIII, Encyclical Letter *Pacem in Terris*.

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n. 2377).⁵⁴ The founding Charter of the United Nations signed in San Francisco on 26 June 1945 solemnly affirms that they were “determined to [...] to reaffirm their faith in fundamental rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small”.⁵⁵ Artificial fertilization violates the child’s ontological dignity, due to the mere fact of sharing human nature,⁵⁶ and the couples’ operative dignity, which is realized while performing their conjugal obligations as parents. The very nature of the marital relationship has intrinsic demands of justice that require respect for the fecundity of conjugal union.

Procreation outside a conjugal relationship violates the unitive and indissoluble properties of marriage. It radically opposes the good of offspring and of the spouses by separating origin of life from sexuality realized through couples’ mutual gift of themselves. “Sexuality has its dimension of “mystery”, of something “sacred” in direct and necessary relation to the origin of life, to fatherhood and motherhood, thus separating two realities that should naturally be united.”⁵⁷ Conjugal union spouses devoid of total mutual gift of selves which is open to procreation is domination, an abuse, a deceit and use of the other party as a means to an end: sexual gratification.

Conversely, assisted procreation in which couples who desire offspring and religiously maintain their conjugal obligations with the mere reservation of resorting to practices of homologous assisted fertilization in case of necessity is not contrary to the tenets of ecclesiastical legislation. This is a case in which the gap between morality and law becomes evident.⁵⁸ While artificial procreation practices are generally

⁵⁴ Catechism of the Catholic Church

⁵⁵ Charter of the United Nations, 26 June 1945, Preamble, available at: <http://www.un.org/en/sections/un-charter/preamble/index.html> [Accessed 27 October 2023].

⁵⁶ Grégor Puppink, ‘The dignity (and indignity) of human life in international law’, in *Right to Life and Human Dignity. 70th Anniversary of the Universal Declaration of Human Rights*, Geneva, 2018, 29-45 in 33

⁵⁷ Pope Paul VI, Encyclical Letter, *Humane Vitae*, n. 12

⁵⁸ Giuseppe Dalla Torre, ‘L’esclusione della prole e la fecondità assistita’, 174

considered immoral, the willingness to potentially resort to them is not in itself insufficient for the validity of consent, as long as the *bonum prolis* (the good of children) is not questioned and the *bonum coniugum* (the good of spouses) is not affected by a positive act of will aimed at excluding any sexual cooperation. The provision of only potentially resorting to the artificial implantation of the partner's extracted semen does not imply, in itself, the absolute exclusion of the unitive aspect inherent in the *bonum coniugum*. The provision and even the realization of such a plan undoubtedly entail consequences and responsibilities that pertain, in this case, to the sphere of ethics, not to the juridical construction of the institution.⁵⁹ In general, it can be observed that assisted procreation undermines the validity of the bond in all cases where both parties, or even just one of them, express a negotiated will that deviates from the marital framework established by the canonical legislator.⁶⁰

4. Conclusion

In all, canon law generally agrees that the will to procreate by excluding the physical conjugality and adopting the artificial methods bring about the invalidating character to the validity of the marriage bond⁶¹. The action of a couple to reject procreation by natural means due to phobia or due to the fact of the husband living abroad while accepting to have children by homologous artificial fertilization is considered to be contrary to the substance of marriage.⁶² Magisterium teaches that the good of spouses, connected to the unitive nature of their intimate life and procreation, can only be mutable and interdependent: the pursuit of the former implies the pursuit of the latter and vice versa⁶³. Couples who with a positive act of will, at the moment of exchange of consent,

⁵⁹ S. Gherro, 'Considerazioni canonistiche in tema di fecondazione artificiale', in *Il diritto di famiglia e delle persone*, 1987, 314.

⁶⁰ S. Gherro, 'Considerazioni canonistiche in tema di fecondazione artificiale', 310.

⁶¹ Cfr. S. Gherro, *Considerazione canonistiche in tema di fecondazione artificiale*, in *Studi in memoria di Mario Petroncelli*, I, Napoli, 1989, 310.

⁶² Cfr. P. Moneta, *Procreazione artificiale e diritto matrimoniale canonico*, in *Diritto di Famiglia e delle Persone*, XVI (1987), 1309.

⁶³ Cfr. S. Gherro, *Considerazione canonistiche in tema di fecondazione artificiale*, 314.

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resolve to live separately and procreate by means other than the natural procedure invalidly contract marriage.

In conclusion, the canonical implications of biomedical advancements in procreation pose significant challenges for Christian marriages in Nigeria. The article majorly explored the canonical implications arising from biomedical advancements such as IVF and surrogacy on marriage and procreation. By considering canonical principles and engaging with various theological perspectives, this study has shed light on the complex canonical landscape that Christian couples could navigate when seeking to utilize these advancements. It is crucial for church leaders, especially those entrusted with preparing couples for marriage, and Christian couples to engage in open dialogue, provide pastoral guidance, and ensure a well-informed approach that aligns with both Christian teachings and the well being of individuals and families. By addressing these challenges responsibly, Christian marriages in Nigeria can navigate the intersection of biomedical advancements and procreation in marriage with wisdom and discernment.