



The Law and Ethics of Reproduction: Experiences and Perspectives from Asia

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The unifying theme of the papers that make up this April 2024 issue of the Asian Bioethics Review is the law and ethics of reproduction. It is important to recall the global phenomenon that was triggered by the birth of Louise Brown in the UK in 1978, the first so-called test tube baby. The scientific triumph that led to the birth of this child gave rise to a whole biomedical industry surrounding artificial reproductive technologies (ART) and, in turn, heralded an entire sub-discipline of bioethics and law dedicated to examining the implications of such technologies. In this issue, we are extremely pleased to bring together a range of experiences and perspectives from Asia that examine multiple facets of modern reproductive law and ethics, from the vagaries of complex legal regulation to the role of professionals in counselling couples involved in ART and from the lived experiences of women who are breast-feeding and how this must be reimaged as an embodied social practice (rather than individual choice) to the contribution of religious perspectives and what these can offer at various junctures of the reproduction trajectory — from the earliest stages of intervention that ART can provide to the challenges of caring for newborns. Finally, it must be acknowledged that none of this would be possible without a robust social commitment to ethically sound research. The issue therefore ends with an examination of one of the latest developments that contribute to ART — genomics — and the challenges of setting up and conducting research in this field.

It is difficult to exaggerate the impact that the birth of Louise Brown had on the scientific, biomedical and legal domains beginning in the late 1970s. What now seems mundane in reproductive biomedicine and the quest to have a child was then truly revolutionary. And neither bioethics nor law was prepared. The apparent “miracle” of Dr Steptoe and his team led directly to the establishment of the Warnock Committee in the UK ([Warnock Committee](#)) to examine the legal and ethical implications and this, in turn, led to the passing of the Human Fertilisation and Embryology Act 1990, as amended. This wide-ranging legal framework operates in the UK to this day. Moreover, this legal model has served as the basis for regulation in many

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other countries, wholly or in part, largely because it does not shirk away from grappling with the real complexities and conundrums that arise from ARTs. Legislatures and courts around the world have inevitably been drawn into the moral maze.

Our first paper in the issue from Kashyap and Tripathi (<https://link.springer.com/article/10.1007/s41649-023-00253-6>) critically examines the latest regulatory iteration from India in the guise of the Assisted Reproductive Technology (Regulation) Act 2021. In much the same way that the Warnock Committee paved the way for the British legislation, the authors from India revisit the recommendations of the Parliamentary Standing Committee on Health and Family Welfare and argue that the final version of the 2021 Act does not do justice to core aspects of the recommendations. Accordingly, the law does injustice to the needs of India's 27 million infertile couples. At its heart, the article challenges a patriarchal and heteronormative framing of the idea of "family" in the Act and critiques the multiple ways in which the law ignores the realities of diverse family structures in India. The call is to amend the Act to reflect contemporary Indian society in all of its diverse facets.

No piece of legislation stands alone. Statutes require the courts to breathe life into them. This is particularly true in the context of laws attempting to deal with ARTs because science and technologies are ever-evolving and no law can anticipate all advances. Judicial involvement, creative interpretation and occasional activism are inevitable. Muraoka, Kokado and Kato offer insights from Japan in this regard in their examination of Japanese court cases dealing with male consent in ART procedures (<https://link.springer.com/article/10.1007/s41649-023-00274-1>). Through an analysis of the jurisprudence, the authors reveal three situations where issues of male consent have arisen in Japan because of the implementation of ARTs. The paper explores possible drivers and explanations for why such issues have arisen, and the authors advocate for wider social dialogue and engagement on the role of the male partner in ART, perhaps in due course also to be reflected in amendments to Japanese law.

In the opening paragraph of this editorial, the reproductive revolution was intentionally referred to as an industry. To be even more specific, this is a global industry representing billions of dollars annually and implicating countries across the world in the highly lucrative business of human reproduction. This is seen most starkly in the international domain of surrogacy, and Luo offers extremely important and novel insights into this practice in an examination of labour law issues arising from cross-border surrogacy (<https://link.springer.com/article/10.1007/s41649-023-00262-5>). The article provides a fascinating analysis of the informal surrogacy networks that exist in Asia (and which inevitably reach beyond) and it exposes the multiple ways in which these networks add to the vulnerabilities of women who act as surrogates. In stark contrast to more formal legal and regulation mechanisms that have been implemented to address the advent of ARTs, the article reveals the details of novel labour law strategies that have emerged organically from the phenomenon of global surrogacy practices. Using international comparative examples, the paper proposes a model to foster collaboration and to better protect surrogate mothers. The paper also makes the very valid point that surrogacy — and indeed ARTS more generally — is a truly global activity requiring not just local regulatory responses but genuine, committed and ethically grounded international collaboration and accountability.

The old adage that it takes a village to raise a child ought to be extended to ARTs: it takes a whole community of professionals to deliver on reproductive technologies for the persons seeking to have a child. Central to this community is the role of counselling which is necessary at multiple junctures in the reproductive journey. In the paper by Chin et al. (<https://link.springer.com/article/10.1007/s41649-023-00268-z>), the authors examine one of the unlooked-for, but inevitable consequences of ARTs: a surplus of unused frozen eggs held by fertility clinics around the world. The article describes why counselling is important with respect to this issue, notably because of the range of highly complex decisions that are involved. The contribution of the paper is nuanced and pragmatic: having shown how diverse motivations can lead to categorisations of different groups of donors, the authors propose a novel two-step protocol for systematic counselling towards a more robust and defensible ethical approach to egg donation.

Religious perspectives have always featured largely in debates about how societies should respond to reproductive medicine. Artificial reproductive technologies invariably offer more choices to prospective parents but at the same time they call into question fundamental religious moral precepts about whether and how interventions in human reproductive processes are permissible. Equally, religions have a lot to contribute to debates about how “new” persons should be treated when the principle of the sanctity of life is called into question. Invariably, this debate is acutely focussed on neonates suffering from disease or disability and who become the subject of discussion about the withholding or withdrawal of care. The next two papers in this issue look at some of the ways in which religions can make such contributions.

The prospect of sex selection arising from ARTs is a particularly challenging topic. In their paper, Muhsin, Arab and Chin offer Islamic perspectives on sex selection in the context of preimplantation genetic testing (PGT) to prevent disease (<https://link.springer.com/article/10.1007/s41649-023-00258-1>). The nature of PGT is such that its deployment invariably generates information about the sex of IVF embryos. This in turn generates the following religious question: in which circumstances, if at all, would it be acceptable according to Islamic ethics and principles to allow sex selection? The authors seek to answer this question, acknowledging the highly controversial topic of non-medical sex selection; the norms of patriarchal cultures, which often have a strong preference for sons over daughters; and the risks to social equilibrium if “choice” arising from ART was given unfettered reign.

What can we learn from dialogue between different religious perspectives on highly controversial bioethics issues? This question sits at the heart of the article written by Dinicola who uses the example of end-of-life issues concerning neonates to explore the myriad potential lessons that arise (<https://link.springer.com/article/10.1007/s41649-023-00275-0>). The core focus of the paper is an examination of Hinduism and how it can inform decision-making — especially for parents — in situations where the life of a newborn child is in question. The article offers an analytical evaluation of the perspective of Hinduism and contrasts this with the Catholic tradition and how it might approach similar circumstances. The core contribution is to tease out ways in which inter-faith dialogue might be possible, drawing on parallels that exist between the two traditions. The article is an illustration of how

religious perspectives can provide a helpful starting point for discussion and normative framing of bioethical issues. This is far from suggesting that religions have the final word.

At the opposite end of the spectrum of human fertilisation and gestation, once birth has occurred, there are significant challenges to be faced by professionals and society alike in supporting women who have given birth and their neonates as well. The next two papers address some of those challenges.

In “Beyond Public Health and Private Choice: Breastfeeding, Embodiment and Public Health Ethics”, Subramani makes a strong argument in favour of acknowledging breastfeeding as an embodied social practice, rather than as a matter of individual choice or something to be dealt with through traditional public health ethics (<https://link.springer.com/article/10.1007/s41649-023-00259-0>). Using the example of breastfeeding interventions in India, and most notably the health promotion program called Mothers’ Absolute Affection, the author demonstrates how too often existing initiatives undermine women’s autonomy. As an alternative, a more encompassing approach is advocated — one focussed on embodiment, and which has the achievement of equity and justice as a core objective.

Neonatal care has advanced apace in tandem with developments in ART over the last 40 years. As medical interventions become increasingly possible at earlier stages of gestation, so too there are new bioethical issues raised about how to care for neonates born prematurely in extremely challenging circumstances. Alongside ethical arguments about the sanctity of life and a putative “right to life”, there is growing empirical evidence about the views and experiences of professionals who are at the coalface of desperately difficult decisions involving neonates. The article by Kim and Lee contributes to this evidence base, drawing on the experiences of neonatal intensive care nurses in Korea (<https://link.springer.com/article/10.1007/s41649-023-00277-y>). The research presents data from 97 nurses involved in the end-of-life care of high-risk babies. The evidence describes the range of factors influencing professional attitudes, including the notion of the right to life. The authors ultimately argue in favour of the value of clear guidelines for neonatal end-of-life care as well as mechanisms to share experiences of living and working in such an ethically charged environment.

Our final paper does not deal with the law and ethics of reproduction as such, but it is included here as an important reminder of the ethical responsibility that our bioethical community has, to consider a whole system approach to bioethics, that is, to consider the full gamut of issues that can arise from any novel interventions and biomedical developments. Thus, the consequences of ART do not begin and end with human reproduction and the birth of a child. The creation of a new human life and its introduction into our moral community requires us to consider what further obligations and responsibilities arise with respect to those new lives. Genomic medicine and research play a very significant role in the improvement of ARTs. Involvement in such research is vital, and this can — and does — include the involvement of embryos, fetuses, neonates, children and adults in the full range of capabilities and vulnerabilities. Thus, getting genomic research right is of crucial importance. The article by Jayasinghe et al. examines some of the challenges of this, drawing on public perspectives of research participation in Sri Lanka (<https://link.springer.com/>

[article/10.1007/s41649-023-00269-y](https://doi.org/10.1007/s41649-023-00269-y)). The article reports on a qualitative study of public attitudes towards consent and involvement in genomic research. In highlighting some of the real difficulties in securing valid and informed consent, the authors argue instead in favour of an approach that is grounded in *informed trust*. To close the circle on reproduction, the article is an important reminder that consent as an ethical paradigm or regulatory device is not a universal panacea. Manifestly, this is true if research is to proceed with groups or entities, such as embryos and fetuses, where meaningful consent is simply not possible.

As this collection of articles demonstrates very well, the law and ethics of reproduction reach into and across almost all areas of bioethics.

Reference

Department of Health and Social Security, Report of the committee of inquiry into human fertilisation and embryology, 1984 (Cmnd 9314, The Warnock Committee).

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