

Shall I be Mother? The Regulation of Assisted Reproduction



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UK

Motherhood: macro choice?

The motherhood decision is crucial to personal wellbeing, economic status (and future economic potential) and is socially defining.

Do women mother out free choice, or socially constructed notions of idealised motherhood?

Return to mothering as the ideal under third wave feminism?

ART's: micro choice?

- Infertility – is use of ART's free choice or an illusory choice?
- Influenced by decision- making context
- Are women lured into infertility because of social and economic reality?
- I.e. 'Soft' pregnancy discrimination in workplace leads to delaying pregnancy.

Aims of paper

- To what extent do women have choice and autonomy to make their own decisions to access ART's?
- Examining UK regulation predominantly, but also comparing with Italian regulation.

Types of Regulation

- Most countries in Western Europe regulation since late 1980s
- Classified as 'permissive' or 'conservative'
- UK – permissive liberal regime regulated by Human Fertilisation and Embryology Act 1990 and amended 2008.
- Italy – opposite end of spectrum – extremely prohibitive. Law 40/2004

Resource availability

- There is no choice if ART's not available
- In UK NICE guidelines 3 cycles IVF for infertile women aged 23-39 under NHS (paid for by State)
- In reality – a postcode lottery – 90% patients pushed into private sector
- Costs – around £4,000 IVF cycle

Access to treatment: UK

- Left to clinics' discretion
- Under the welfare principle clinics must consider:
- S.13(5) “the welfare of any child who may be born as a result of the treatment (including the need of that child for supportive parenting) and of any other child who may be affected by the birth”



- Licensing body – HFEA defines supportive parenting in 8th code of practice:

“It is presumed that all parents will be supportive parents, in the absence of any reasonable cause for concern that any child who may be born, or any other child, may be at risk of significant harm or neglect. Centres may take into account..wider family and social networks...”

- Furthermore centres cannot discriminate on grounds of gender, race, disability, sexual orientation, religious belief or age.
- Welfare principle not really discussed in Parliament
- Does it impose additional 'tax' on the infertile which not imposed on the fertile – is it thus discriminatory? Much academic criticism.

Access to treatment: Italy

- Specifically defined by law:
- A.5(1) – adult different-sex couples who are married or living together, of potentially fertile age (not specified) and both alive (no posthumous reproduction)
- A.4(3) – no used of donated gametes/embryos

- Result: lesbian, single women and post-menopausal women excluded from ART (as are couples where one partner sterile)
- Patriarchal and religious heterosexual family thus upheld

Maternal age

- In UK determined by clinic's discretion
- Under NHS non-mandatory 39yr olds – some treat up to 42yr olds
- Very limited NHS access – need 3 years of unexplained infertility
- Private sector – up to 50yrs so far – different rules in different clinics

- Currently in UK controversy over whether a 59yr old should get IVF in UK.
- She has 2 yr old daughter born using donor eggs – treated in Russia – could not get treatment in the UK
- Arguments against older mothering:
- Maternal health, welfare of child, ‘unnatural’, ‘selfishness’ – all can be countered.
- UK – relatively permissive but clinicians decide.

Lesbian and solo mothers

- Under 1990 Act were excluded from treatment by clinician discretion:
- S.13(5) originally stated
- “the welfare of any child who may be born as a result of the treatment (including the need of that child for a father) and of any other child who may be affected by the birth”
- Discrimination permitted by law. Some clinics did treat, others did not and women found ways to get around the provision.

- ‘Need for father’ based on assumption that two parent heterosexual model best for children
- Disputed by research which shows that developmentally and emotionally children born to lesbian couples and single women are not disadvantaged (in fact, the opposite)
- Lesbian co-parents more involved than fathers

- Problems associated with single mothering not present when it is chosen rather than result of relationship breakdown
- Emotional trauma when father leaves and often mother left in poverty
- Doesn't happen if solo mother by choice using ART's.

2008 Changes

- Overall legislation in UK about equality and ending discrimination based on sexual orientation
- Untenable to keep the 'need for a father'
- Government recognised this
- Significant debate in Parliament
- Mp's voted to get rid of clause

- Parentage regime changed to include a parallel regime for same sex couples
- Legal mother is birth mother – if in civil union, her partner is automatically second legal parent.
- If not civil union, partner must agree to ‘female parenthood conditions’

Choice as to kind of child?

- PGD now regulated by law
- PGD permitted subject to serious physical disability/medical condition
- Important for physical and psychological wellbeing of mother - otherwise women have to undergo pre-natal testing and abortion

- No sex-selection for social reasons – family balancing – thus autonomy restricted
- Autonomy of ‘disabled’ potentially restricted as cannot prefer and embryo with abnormality or gamete donor with abnormality
- In response to deaf lesbian couple using sperm of deaf donor deliberately to get deaf child?

Italy

- A.13 – no eugenic selection of embryos
- A.14 - no freezing of embryos
- A.14 no more than 3 embryos to be created and these must be implanted
- Huge criticism – huge implications for women's health and meant PGD could not be used for non-implantation– so women use pre-natal testing and abortion.

- Incongruous situation - PGD could be used to establish embryo diseased but then would have to be implanted
- Upheld initially by courts
- But now Constitutional court has found provisions unconstitutional on grounds of the woman's health

- The 3 embryo limit quashed
- PGD can be performed and embryo found to be diseased cannot be transferred because prejudicial to health of mother

Some inroads into very restrictive legislation being made. Italians are highest users of fertility tourism now

Religion

- Italian law based on Catholic doctrine
- In UK pro-life activists made constant legal challenges to the 1990 Act
- The Church successful in getting free vote for MP's on 3 issues:
 - Need for father
 - Saviour siblings
 - Human admixed embryos

Conclusions

- Choice only important when it is the choice to do something we disagree with
- Women in UK have great deal of autonomy about ART usage as opposed to Italy
- But – wide availability of ART simply reinforces the social obligation to become a mother?