
POSTHUMOUS REPRODUCTION: LEGAL RIGHTS, ETHICAL TENSIONS AND SOCIAL IMPLICATIONS IN A GLOBAL CONTEXT

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ABSTRACT

Posthumous reproduction, the conception of a child after a parent's death through assisted reproductive technology, raises complex legal, ethical, and cultural challenges worldwide. This paper analyses comparative legal frameworks across the UK, USA, Israel, Belgium, India, and Europe, highlighting tensions between autonomy, consent, child welfare, and inheritance rights. Jurisdictions vary from prohibitionist (France, Germany) to permissive (Israel, Belgium). India's evolving jurisprudence illustrates judicial pragmatism amid legislative gaps. Ethical debates around explicit, presumed, and inferred consent underscore evolving notions of parenthood, dignity, and societal values. The study advocates for harmonised global standards balancing compassion, autonomy, and responsibility.

Keywords: Posthumous Reproduction, Assisted Reproductive Technology, Consent, Autonomy, Inheritance, Child Welfare, Comparative Law.

Introduction

Posthumous reproduction refers to the conception and birth of a child after the death of one or both genetic parents through the use of cryopreserved or retrieved gametes (sperm or eggs) and assisted reproductive technology (ART). This practice raises profound questions at the intersection of reproductive autonomy, bodily integrity, inheritance rights, and child welfare. Unlike traditional posthumous birth—where a pregnant person gives birth after their partner's death—posthumous assisted reproduction involves the intentional retrieval, storage, and use of genetic material specifically for conception after death.

The technological capacity for posthumous reproduction emerged with advances in gamete cryopreservation in the late twentieth century, with the first recorded case occurring in 1977. The practice can be classified into two categories: **planned posthumous reproduction**, where individuals cryopreserve gametes before death (such as cancer patients or military personnel) with explicit consent for posthumous use; and **unplanned posthumous reproduction**, involving perimortem or postmortem gamete retrieval following unexpected death, often without prior written consent.

Regulatory responses worldwide remain fragmented and inconsistent, reflecting divergent cultural values, religious traditions, and philosophical perspectives on death, reproduction, and parenthood. Australia's Infertility Act 1984 (Victoria) represented the world's first comprehensive ART legislation, followed by the United Kingdom's Human Fertilisation and Embryology Act 1990 and various European frameworks. Several European nations including France, Germany, and Sweden have enacted legislation ranging from outright prohibition to conditional permission.

This paper examines how different legal systems navigate the fundamental tensions between the reproductive autonomy of the deceased, the rights of surviving family members, the welfare of posthumously conceived children, legal certainty in inheritance matters, and broader societal values about the appropriate boundaries of reproductive technology

Legal Frameworks: A Comparative Analysis

Several European nations have adopted prohibitionist approaches to posthumous reproduction. France, Germany, Sweden, and Canada categorically ban posthumous gamete retrieval and use,

reflecting concerns about consent, human dignity, and the welfare of children born without one or both parents. These jurisdictions prioritise the principle that reproduction should occur only with the full, informed consent of all parties and that the deceased's bodily integrity must be respected absolutely.

United Kingdom

The United Kingdom operates under a conditional acceptance model established by the Human Fertilisation and Embryology Act 1990 (as amended).¹ The legislation requires explicit written consent from the gamete provider for both storage and posthumous use of reproductive material. The landmark case of *R v Human Fertilisation and Embryology Authority, ex parte Blood (1997)*² established that whilst gamete retrieval without consent violated statutory requirements, the principle of freedom of movement within the European Union allowed Mrs Blood to export her deceased husband's sperm to Belgium for treatment. This case highlighted the difficulties created by strict consent requirements and sparked ongoing debate about presumed consent models.

More recently, the UK courts have shown flexibility in interpreting consent requirements. In *Jennings v Human Fertilisation and Embryology Authority (2022)*,³ the court permitted a husband to use embryos created with his deceased wife's eggs for surrogacy, despite the absence of written consent specifically for posthumous surrogacy, as the couple had been undergoing fertility treatment when she died. However, in *Re G v Human Fertilisation & Embryology Authority (2024)*,⁴ the President of the Family Division ruled that a mother could not use her deceased daughter's frozen eggs because explicit written consent was absent, whilst simultaneously confirming that relatives could theoretically use deceased persons' gametes for surrogacy if proper written consent existed.

Israel & Belgium

Israel represents the most permissive regulatory environment for posthumous reproduction. Under the Attorney General Guidelines issued in 2003, courts presume consent for posthumous sperm retrieval and use when requested by the deceased's female partner, based on the premise

¹ Louisa Ghevaert Associates, 'Posthumous Conception Law: Should I Consider This?' (2024).

² *R v. Human Fertilisation and Embryology Authority, ex parte Blood*, [1997] 2 All ER 687

³ *Jennings v. Human Fertilisation and Embryology Authority* [2022] EWHC 1619.

⁴ *G v. Human Fertilisation and Embryology Authority* [2024] EWHC 2453.

that a man in a loving relationship would have consented to fathering his partner's child. This approach reflects Israel's pro-natalist culture, influenced by Jewish religious traditions that emphasise procreation and genetic continuity.⁵ Israeli courts have even permitted parents to retrieve sperm from deceased sons to create biological grandchildren through surrogacy, a practice that remains highly controversial elsewhere. Belgium similarly permits posthumous reproduction without requiring written consent, allowing wishes to be inferred from the deceased's prior behaviour and statements.⁶ This pragmatic approach recognises that most deaths at reproductive age occur suddenly and unexpectedly, making advance planning unlikely.

USA

The United States lacks federal legislation on posthumous reproduction, resulting in significant variation amongst states. The Uniform Parentage Act (2002) provides a model requiring the deceased to have 'consented in a record that if assisted reproduction were to occur after death, the deceased individual would be the parent of the child'.⁷ However, states have adopted this provision inconsistently.

The landmark United States Supreme Court case *Astrue v Capato*⁸ (2012) addressed whether posthumously conceived children qualify for Social Security survivor benefits. Karen Capato used her deceased husband Robert's frozen sperm to conceive twins eighteen months after his death. The Supreme Court unanimously held that eligibility for benefits depends on state intestacy law, whether the child could inherit from the deceased parent under state law. Since Florida law prohibited inheritance by posthumously conceived children, the twins were denied benefits. This decision emphasised that Social Security benefits were intended primarily for dependents the deceased actually supported during life, not for children conceived years after death.

Indian Position

Indian has not yet supported posthumous reproduction, and the issue has only recently come

⁵ Avishalom Westreich, 'Present-day posthumous reproduction and traditional levirate unions' (2018) 5(3) Journal of Law and the Biosciences.

⁶ Maddox De N, 'Consent and the Regulation of Posthumous Reproduction' (2017) 3.

⁷ Simana S., 'Creating life after death: should posthumous reproduction be legally permissible without the deceased's prior consent?' (2018) 5(2) Journal of Law and the Biosciences 329.

⁸ *Astrue v Capato* 566 US 541 (2012).

before the courts. In a landmark decision in October 2024, the Delhi High Court allowed the parents of a deceased unmarried man to obtain and use his frozen sperm for reproduction.⁹ The case, *Gurvinder Singh & Harbir Kaur v. Sir Ganga Ram Hospital*, involved a 30-year-old cancer patient who, before starting chemotherapy, had deposited a semen sample for cryopreservation (anticipating fertility loss). He died shortly thereafter, without a spouse or children. His parents sought release of the stored sperm so they could fulfil his wish of having a child (via a surrogate mother). Indian authorities had no clear rule: the hospital initially refused, pointing out that under the new Assisted Reproductive Technology (Regulation) Act 2021 (ART Act) there were guidelines only for release of gametes to a spouse, with “no policy in place” for an unmarried deceased person’s gametes. The Delhi High Court, however, found “no prohibition” in Indian law against posthumous reproduction in such circumstances, especially given that the son had explicitly consented to sperm freezing for the purpose of having children. The court treated the preserved semen sample as part of the man’s property/estate, to which his parents as Class-I heirs were entitled under the Hindu Succession Act. Justice Singh reasoned that by preserving his sperm the young man had implicitly indicated a wish to have progeny – “from the consent given for semen sample preservation, the deceased son’s last wish can also be discerned”. Thus, the court concluded the parents could step into his shoes to carry out that wish, noting that it is not unusual in Indian society for grandparents to raise grandchildren in the absence of the parents. This ruling effectively recognized an implied consent doctrine: the general consent for fertility preservation was taken to include consent to posthumous use, even though the man did not explicitly authorize “posthumous reproduction”. The court also highlighted that no Indian law forbade such use, and it directed the government to consider framing guidelines for posthumous reproduction to provide clarity going forward.

Ethical Tensions and Competing Principles

Autonomy and Consent

The paramount ethical issue in posthumous reproduction concerns reproductive autonomy and consent. Traditional medical ethics requires informed consent for any medical procedure, but

⁹ Ghosh Sohini, ‘Delhi HC: Give dead man’s frozen sperms to his parents for surrogacy’ *The Indian Express* (New Delhi, 5 October 2024) <https://indianexpress.com/article/cities/delhi/delhi-hc-give-dead-mans-frozen-sperms-to-his-parents-for-surrogacy-9604291/> accessed 22 October 2025.

posthumous reproduction involves using genetic material from someone who can no longer consent or object.¹⁰ Three competing models have emerged:

Explicit consent

Most jurisdictions adopting permissive policies require written documentation authorising posthumous use of gametes.¹¹ The American Society for Reproductive Medicine (ASRM) Ethics Committee recommends that programmes should participate in posthumous reproduction only when written documentation from the deceased authorises the procedure.¹² This approach protects the deceased's reproductive autonomy and ensures that reproduction reflects their actual wishes.

However, critics argue that the explicit consent standard is impractical and potentially disrespectful of the deceased's presumed wishes. Most reproductive-age deaths occur suddenly and unexpectedly, precluding advance planning. Studies indicate that significantly more people support posthumous reproduction than oppose it, suggesting that requiring explicit written consent may violate the autonomy of those who would have consented but never formalised their wishes.

Presumed consent

The presumed consent model, advocated by some ethicists and adopted in Israel, operates from the premise that in loving relationships, individuals would want their partners to use their gametes posthumously. Proponents argue that gametes are a 'pure genetic resource' after death, providing a 'zero-cost rescue' to the surviving partner whilst imposing no burden on the deceased.¹³ This model prioritises the reproductive interests of the living over speculative concerns about the deceased's wishes.

¹⁰ Panagiotopoulou, N., & Karavolos, S. (2015). "Let Me Keep My Dead Husband's Sperm": Ethical Issues in Posthumous Reproduction. *The Journal of clinical ethics*, 26(2), 143–151.

¹¹ G. Pennings, G. de Wert, F. Shenfield, J. Cohen, P. Devroey, B. Tarlatzis, ESHRE Task Force on Ethics and Law including, ESHRE Task Force on Ethics and Law 11: Posthumous assisted reproduction, *Human Reproduction*, Volume 21, Issue 12, 1 December 2006, Pages 3050–3053, <https://doi.org/10.1093/humrep/del287>.

¹² Ethics Committee of the American Society for Reproductive Medicine (2018). Posthumous retrieval and use of gametes or embryos: an Ethics Committee opinion. *Fertility and sterility*, 110(1), 45–49. <https://doi.org/10.1016/j.fertnstert.2018.04.002>.

¹³ Tremellen, K., & Savulescu, J. (2016). Posthumous conception by presumed consent, A pragmatic position for a rare but ethically challenging dilemma, *Reproductive biomedicine & society online*, 3, 26–29. <https://doi.org/10.1016/j.rbms.2016.11.001>.

Inferred consent

An intermediate position permits posthumous reproduction when the deceased's wishes can be reasonably inferred from prior discussions, actions, or the nature of the relationship.¹⁴ This approach balances respect for autonomy with practical recognition that most people do not anticipate sudden death and formalise their reproductive wishes.

The Welfare of the Posthumously Conceived Child

A central ethical concern involves the interests and welfare of children born through posthumous reproduction. Critics argue that deliberately creating children who will never know one biological parent raises serious concerns about the child's best interests. Children conceived posthumously may face unique psychological challenges related to identity formation, grief for a parent they never knew, and social stigma.¹⁵

Research on single-parent families and donor-conceived individuals provides some insights, though the unique circumstances of posthumous conception create distinct considerations. Posthumously conceived children must navigate questions about their origins, understand the decision-making that occurred before their conception, and potentially process complicated grief for a deceased parent they never met.¹⁶ The absence of a biological parent affects attachment, security, and identity formation during adolescence, a critical period for developing autonomy and understanding genetic relatedness.

However, proponents counter that the 'non-identity problem' undermines arguments based purely on the child's interests.¹⁷ Since posthumously conceived children would not exist but for the decision to proceed with posthumous reproduction, it is philosophically problematic to claim that non-existence would be preferable to existence with certain disadvantages, unless the child's life would be so terrible that it would not be worth living. Given that posthumously conceived children can expect loving, planned families with adequate resources, this threshold

¹⁴ Kroon F. (2016). Presuming consent in the ethics of posthumous sperm procurement and conception. *Reproductive biomedicine & society online*, 1(2), 123–130. <https://doi.org/10.1016/j.rbms.2016.05.003>.

¹⁵ Fertility Associates, 'Fertility facts: Posthumous reproduction' (2025).

¹⁶ Ibid.

¹⁷ Ilioi, E. C., & Golombok, S. (2015). Psychological adjustment in adolescents conceived by assisted reproduction techniques: a systematic review. *Human reproduction update*, 21(1), 84–96. <https://doi.org/10.1093/humupd/dmu051>.

is rarely met.

The European Society of Human Reproduction and Embryology (ESHRE) Task Force concluded that posthumous reproduction is acceptable if written consent exists, extensive counselling is provided to the surviving partner, and a minimum waiting period of one year is imposed before treatment begins.¹⁸ This approach attempts to balance multiple interests whilst acknowledging the inconclusiveness of empirical data on the psychosocial development of posthumously conceived children.

Religious and Cultural Perspectives

Religious traditions diverge significantly on posthumous reproduction. Roman Catholicism rejects the practice on grounds that it separates reproduction from sexual intercourse and typically involves insemination of single women, violating Church teachings on procreation within marriage.¹⁹ Islamic jurisprudence generally prohibits posthumous reproduction because it occurs after the marital term has ended through death, though Shi'a scholars show more flexibility than Sunni authorities.²⁰

Jewish law permits posthumous procreation, consistent with the Biblical commandment to 'be fruitful and multiply' and cultural emphases on genetic continuity and family preservation.²¹ This theological perspective helps explain Israel's permissive approach to posthumous reproduction as consistent with deeply held religious values about the importance of having children and continuing family lines.

Social & Cultural Implications

Cultural & Religious Norms

Cultural and religious norms heavily influence how posthumous reproduction is perceived. In some cultures, producing offspring – even after death – can be seen as a way to attain a form of immortality or continuity for the deceased's lineage. For example, in Israel, there has been

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Farid, M. S., & Tasnim, S. (2022). Assisted Reproductive Technologies: Comparing Abrahamic Monotheistic Religions. *Asian bioethics review*, 15(1), 53–67. <https://doi.org/10.1007/s41649-022-00224-3>.

²¹ Avishalom Westreich, Present-day posthumous reproduction and traditional levirate marriage: two types of interactions, *Journal of Law and the Biosciences*, Volume 5, Issue 3, December 2018, Pages 759–785, <https://doi.org/10.1093/jlb/lisy026>.

notable support for posthumous sperm retrieval for fallen soldiers. Israeli military and fertility authorities have relatively accommodating policies whereby if a young man dies without children, his parents (with any existing partner's consent or if no partner exists) may request to retrieve sperm within hours of death, and that sperm can be stored. Guidelines in Israel currently limit actual use of such sperm to a female partner of the deceased (if he had one) and require court approval in other cases.²² But a number of cases in the 2000s and 2010s allowed parents to use their sons' sperm via surrogacy to create grandchildren.²³ This was driven by a cultural emphasis on "carrying on the family name" and the biblical injunction to be fruitful and multiply. Many rabbis in Israel supported these efforts, and Jewish law is often interpreted to permit posthumous reproduction. In fact, one source notes: "*Posthumous reproduction is supported by Jewish Law*", largely because Judaism values procreation and sees no issue as long as the gametes are from the married couple (some even analogize it to the ancient practice of levirate marriage, a way to continue a deceased brother's line).

By contrast, Christianity, particularly the Roman Catholic Church, is generally opposed to all forms of IVF and non-natural conception and thus would object to posthumous conception as well. The Vatican's position (as articulated in documents like *Donum Vitae* and *Dignitas Personae*) is that procreation should occur only through marital intercourse and that producing a child after a parent has died is contrary to the dignity of procreation and the marital bond. Most Protestant denominations have not taken a formal stance specifically on posthumous reproduction; they evaluate ART on principles like responsible parenthood and the welfare of the child. There is some implicit discomfort in Christian ethics with the idea, but also sympathy for surviving spouses. It remains a debated point in theological ethics rather than a clearly doctrinal one for many churches.

Islamic perspectives are generally negative towards posthumous reproduction. A prevalent view in Islamic jurisprudence is that the marital bond (and hence the permissibility of intercourse or reproduction between the couple) ends at the moment of death, and a woman must observe a mourning period (*iddat*) of about 4 months and 10 days after her husband's death during which no new pregnancy should be initiated. Using sperm after that period (or

²² Barlevy, D., Werren, S., & Ravitsky, V. (2020). Posthumous planning following fertility preservation: a study of adolescent cancer patients in Israel. *New Genetics and Society*, 39(3), 271–287. <https://doi.org/10.1080/14636778.2020.1726737>.

²³ Hashiloni-Dolev, Y., & Triger, Z. (2020). The invention of the extended family of choice: the rise and fall (to date) of posthumous grandparenthood in Israel. *New Genetics and Society*, 39(3), 250–270. <https://doi.org/10.1080/14636778.2019.1709429>.

after death in general) is seen by many Islamic scholars as akin to adultery or at least as falling outside the sanctioned methods of procreation. One scholarly article state plainly: *“From an Islamic perspective, posthumous assisted reproduction is unacceptable, even with previously frozen gametes or embryos.”*

Hindu and Buddhist views on posthumous reproduction are not monolithic. Hinduism strongly values progeny but also has traditional concepts around the soul’s journey after death and the importance of performing last rites (often by a son). One could interpret using frozen sperm to have a child as fulfilling a Hindu man’s potential desire for a son to perform his funeral rites, an interesting twist where it might be viewed favorably. However, Hindu ethics also emphasize the consent and intent (for example, the ancient texts speak of a form of posthumous procreation in the context of levirate-like practices when a man died childless, which was allowed to continue lineage). Modern Hindu-majority India, as seen, did not have a moral objection in the Delhi case; the focus was on practical and consent issues. Buddhist ethics would likely consider the suffering and attachments involved; there’s no clear teaching for this modern scenario, but generally Buddhism doesn’t have doctrinal prohibitions on ART, focusing more on compassion and intentions.

Social Norms

Posthumous reproduction creates novel family structures that challenge traditional definitions of parenthood and kinship. The 'single-mother ghost-father family', where a woman chooses to have a child using sperm from a deceased man, sometimes years after his death represents an emerging family form. Research on women who have chosen this path reveals complex motivations including desires to maintain connections to deceased partners, fulfil previously discussed reproductive plans, and create families that appear normatively nuclear whilst subverting traditional patriarchal structures.

When parents retrieve gametes from deceased adult children to create grandchildren, postmortem grandparenthood, additional ethical complexities arise.²⁴ Whilst professional societies generally oppose such requests absent written consent, courts have occasionally permitted them, motivated by compassion for bereaved parents.²⁵ These cases raise questions

²⁴ Yakovi Gan-Or, Nofar, Securing Posterity: The Right to Postmortem Grandparenthood and the Problem for Law (August 1, 2018). Columbia Journal of Gender and Law, 37(2) 109-168 (2019), Available at SSRN: <https://ssrn.com/abstract=3396612>.

²⁵ Campo-Engelstein L, Pfeiffer AD. The ethics of non-partner requests for posthumous assisted reproduction. J

about who has legitimate claims over reproductive material and whose interests should be prioritised.

Posthumous reproduction implicates gender equality concerns in multiple ways. Technologically, posthumous reproduction after male death is significantly easier than after female death, as sperm can be retrieved up to 48 hours post-mortem and remain viable after cryopreservation, whilst egg retrieval and embryo creation are more complex. This biological asymmetry means that widows have greater practical opportunities for posthumous reproduction than widowers, though some jurisdictions' laws fail to account for these differences.

Conclusion

Posthumous reproduction poses deep questions about the boundaries of life, death, and parenthood, challenging our most basic legal and ethical assumptions. Across countries, laws are trying to catch up. In the UK, strict consent is key: if you didn't say "yes" in advance, it's a "no." In the US and Australia, laws create middle ground, sometimes allowing posthumous children rights, but only if there's clear evidence of the deceased's wishes, and always within strict timeframes. In India, courts often step in to do what seems fair for families, but this flexibility can leave some issues unresolved for now. In many parts of Europe, especially where traditional morality holds sway, a ban on posthumous reproduction is still the norm.

Despite these differences, some themes unite most legal systems. Consent or intent from the deceased is paramount: nearly everywhere that allows posthumous reproduction, it does so only if the person wanted or would have accepted bringing a child into the world after their death. Concerns for the welfare of the child also guide these debates, as do efforts to prevent uncertainty in inheritance and family relationships.

Looking ahead, more countries will likely pass laws specifically on this issue, as new cases and social attitudes bring the matter into public focus. Judges and lawmakers must weigh complicated interests: the surviving family's wishes, the dignity of the deceased, the wellbeing of the future child, and the ethical values of society. There is no simple answer, but learning from other countries' successes and pitfalls is invaluable. Countries can adopt best practices,

like clear consent processes, thoughtful inheritance rules, and careful oversight, to handle this sensitive issue wisely.

Ultimately, posthumous reproduction isn't just a medical or legal question, it is an intensely human one at the intersection of love, loss, hope, and legacy. The law is slowly adapting, balancing respect for individual choices with care for future generations. As more societies face these questions, the challenge remains: how do we enable the gift of life after death with both compassion and responsibility.