Perspective

Ewha Med J 2024;47(4):e47
https://doi.org/10.12771/emj.2024.e47
eISSN 2234-2591

Gender and healthcare issues related to the Protected Birth Act in Korea

Jiah Jeong

Department of Women-Gender Studies, Chungnam National University, Daejeon, Korea

Received Jun 15, 2024
Accepted Jul 16, 2024

Corresponding author
Jiah Jeong
Department of Women-Gender Studies, Chungnam National University, 99 Daehak-ro, Yuseonggu, Daejeon 34134, Korea
E-mail: jiah.jeong@gmail.com

Keywords
Induced abortion; Infanticide; Pregnant women; Vulnerable populations; Republic of Korea

* This is an English-translated secondary publication of an article in Korean published in *Women's Health Nursing* 2024;30(2):101-106, https://doi.org/10.4069/whn.2024.06.14, with the approval of the editor and the author. The articles are identical. Either citation can be used when citing this article.

This paper discusses the implications of South Korea's birth notification system and Protected Birth Act, which is set to take effect on July 19, 2024. The legislation aims to prevent infanticide and child abandonment by mandating birth reporting and allowing anonymous births for women in crisis. However, concerns have been raised about the Act's effectiveness in protecting both women and children, particularly regarding issues of disability and migrant families. This paper focuses on gender and healthcare issues, highlighting how the Act perpetuates discrimination against out-of-wedlock pregnancies and upholds normal family ideologies. It notes the absence of critical discussions on women's autonomy, safe pregnancy termination, and paternal responsibility. The importance of healthcare providers understanding and preparing for the Act's implementation is emphasized. The paper calls for strengthening social safety nets to improve healthcare access for vulnerable populations and eliminate discrimination against non-traditional families. Additionally, it addresses the need for comprehensive support systems for crisis pregnancies, including financial assistance, psychological support, parenting education, housing solutions, and expanded healthcare services. This paper acknowledges the Act's significance in providing a systematic state-level approach to protecting pregnant women in crisis, replacing the previous reliance on private organizations. Nonetheless, it also emphasizes the importance of continually reviewing and supplementing the system to address potential rights infringements and ensure its effectiveness. In conclusion, this paper advocates for ongoing discussions on gender and healthcare issues, and for future amendments to the law that reflect real-world circumstances and provide genuine protection for crisis pregnancies and infants.

Introduction: background of the Protected Birth Act in Korea

On March 23, 2023, the Constitutional Court of Korea unanimously declared that Article 46, Paragraph 2 of the "Act on the Registration of Family Relations," which required that "the mother must report the birth of a child born out of wedlock," was unconstitutional (Case 2021 Hon MA975) [1]. This ruling followed a constitutional complaint filed in August 2021 by Mr. A and others who, having fathered children with married women, found themselves unable to register the births of their children born out of wedlock.

The Constitutional Court explained that children born to a married woman and a man who is not

her husband encounter challenges in accessing social insurance and security benefits, engaging in transactions that require identification, and are more susceptible to abuse, abandonment, and criminal targeting. The Court highlighted that this situation infringes upon the plaintiffs' "right to birth registration immediately after birth," a right essential for safeguarding children's protection, facilitating their personal development, and promoting healthy growth under parental care.

Additionally, after extensive societal debate, the National Assembly passed an amendment to the criminal act abolishing the crime of infanticide on July 18, 2023. This amendment, effective from February 9, 2024, replaces the previous maximum sentence of 10 years specifically for infanticide with the application of general homicide and abandonment laws to cases involving infants. This change aims to provide stronger protection for this vulnerable group [2].

These social demands and legal reforms necessitated amendments to the "Act on the Registration of Family Relations," extending the obligation to report births from only parents to include medical institutions where births occur. The urgency for these changes was further highlighted by incidents such as the discovery of two infant corpses in a refrigerator in Suwon, ongoing cases of infant abandonment and murder, and the "Social Parents" project, which revealed that 2,236 children went unregistered between 2015 and 2022.

Consequently, on June 30, 2023, the National Assembly overwhelmingly passed the birth notification system, with 266 votes in favor and one abstention from the 267 members present. There were concerns that this system might prompt an increase in out-of-hospital births among pregnant women who wish to keep their deliveries confidential. This led to discussions about the possibility of implementing a protected birth system, a concept referenced in the minority opinion of the Supreme Court case (2021 Hon Ma975). In response to public interest, the government considered the introduction of a protected birth system to operate concurrently with the medical institution's birth notification system. The primary goal of this system is to safeguard the lives and health of mothers and children by enabling pregnant women facing challenging circumstances to give birth in medical facilities without disclosing their identities [3].

As a result, on October 6, 2023, the National Assembly passed the "Special Act on Support for Crisis Pregnancy and Protected Birth and Child Protection." The act received 133 votes in favor, with 64 abstentions from the 230 members present. The birth notification and protected birth systems are set to be implemented on July 19, 2024.

Key points of the birth notification system and protected birth system

The birth notification system was established based on findings from the National Statistical Office's population trend survey, which indicated that 99.8% of births in 2021 took place in medical institutions. Key details include: [4,5]

- Reporting Process: Heads of medical institutions are required to report birth information to the Health Insurance Review and Assessment Service (HIRA) within 14 days following the birth. Subsequently, local officials verify the parental birth registration and take the necessary actions.
- Reporting Details: The report must include the mother's name, national ID number, infant's gender, number of infants, and date/time of birth.
- Reporting Method: Medical institutions utilize HIRA's computerized system for reporting. HIRA, in turn, informs local officials via a shared administrative information center.
- Peremptory notice: Local officials notify the responsible party if the birth is not registered within 1 month.

- Official Registration: Local officials may officially register a birth following court confirmation if the registration occurs more than 7 days after notification or if the responsible party cannot be identified.

The protected birth system is designed to prevent out-of-hospital births and child abandonment, thereby safeguarding the lives and health of women and children. Key features of the system include: [4,5]

- Counselling: A counseling system has been established to offer comprehensive support and information to pregnant women in crisis. A regional counseling institutions help pregnant women in crisis to receive counseling, information provision, and service linkage at a local network at any time to help them raise children directly after giving birth. It stipulated that not only social security benefits, support for occupation and housing, and support for medical expenses under various laws, but also legal support. And a central counseling agency is responsible for developing counseling contents and procedures.

- Protected Birth Process: When applying for a protected birth, a pseudonym and management number are generated, and pregnant women can use this pseudonym and management number to perform prenatal checkups and childbirth at a medical institution. In this case, the entire medical expenses are supported.

- Child Protection: After the child is born as a protected child, a pregnant woman must have a meditation period to directly raise the child for at least seven days, and can deliver the child to a local government after this period. The head of a local government who has received the child shall take protective measures under the Child Welfare Act without delay and undergo protection procedures such as adoption. A mother who applied for a protected birth may withdraw the protected birth until the child is approved for adoption under the Special Act On Domestic Adoption.

- Record Management: Counseling and birth records are permanently preserved. Specific procedures are in place for disclosing these records to the child or their legal representatives once they reach adulthood.

This system aims to support pregnant women who are experiencing economic, psychological, or physical difficulties. It aims to ensure safe childbirth and secure environments for children while delineating the responsibilities of national and local governments in achieving these objectives.

Protected birth system and gender issues

Many countries acknowledge the importance of social safety nets for crisis pregnancies and are actively working on national initiatives to address this issue. Germany, France, and the United States each offer guarantees for the "right to anonymous birth" through different approaches. Specifically, Germany implemented the Confidential Birth Law (*Vertrauliche Geburt*) in 2013, which has been operational since 2014. This legislation offers legal protection to pregnant women in crisis and establishes "pregnancy conflict counseling centers" (Pro Familia Berlin) to assist them.

In Germany, the government assigns a child's surname anonymously at birth. At the age of 16, the child is granted access to their birth certificate, which includes information about the birth mother, thus upholding the child's right to know their parents. Counseling centers offer detailed information about the confidential birth system and related support policies through anonymous consultations, available on websites and via 24-hour national hotlines. Their primary goal is to

support the pregnant woman's autonomy, including the option of terminating the pregnancy. Adoption or a confidential birth is considered only when parenting is deemed unfeasible.

Germany has a "child's primary care physician system" that allows children to receive regular check-ups and treatment for various illnesses, with most medical expenses covered. Similarly, France's anonymous birth system (*L'accouchement sous X*) and the United States' Safe Haven laws both preserve the anonymity of the birth mother's information, though they are implemented differently [6–10].

The protection of pregnant women in crisis is a topic of global discussion. In response, the Korean government has established a "Task Force for Implementing Birth Notification and Protected Birth Systems." This task force is a collaborative effort involving the government, local authorities, court administration, and relevant agencies (National Health Insurance Service, Health Insurance Review & Assessment Service, Korea Social Security information Service, National Center for the Rights of the Child). They are working together to prepare for the implementation of these systems, which is scheduled for July 19, 2024 [5].

However, several concerns have been raised about the protected birth system in Korea. Critics argue that it inadequately protects both women and children, and they advocate for additional legislation to address issues related to children with disabilities and immigrant women and children [11–14].

Civil society organizations, women's bar associations [13], and parliamentary forums have consistently raised criticisms concerning the rights of women and children [14]. These critiques contend that the law effectively encourages unmarried mothers to give birth in secrecy and does not tackle the underlying issues that result in the abandonment of parental responsibilities. Furthermore, it is argued that the law significantly violates a child's right to know their identity, as the disclosure of birth certificates necessitates consent from both biological parents.

Unlike Korea's protected birth system, Germany's system, which was implemented in 2014, strikes a balance between anonymous birth and a child's right to know their parents. It recommends confidential birth only as a last resort, thereby minimizing potential negative consequences. This approach necessitates a discussion on the "normal family discourse," a critical social agenda in Korea [12].

Germany has completely eliminated legal distinctions between children born inside and outside of marriage, effectively reducing discrimination and prejudice. In contrast, Korea's protected birth system inherently views pregnant women in crisis as belonging to "abnormal" families outside of marriage, and assumes that unmarried mothers are individuals who "want to give birth in secret and abandon child-rearing."

In Korea, where Confucian culture emphasizing chastity is deeply rooted, unmarried mothers frequently face stigmatization as immature, immoral, and lacking in self-control. They become targets of social criticism, associated with the prevailing "normal family ideology," which leads to discrimination and prejudice. The "Framework Act on Healthy Homes" mirrors this cultural stance by assuming that a "normal family"—one formed through legal marriage—is the default, thereby recognizing and protecting only such family structures.

The law fails to address the myriad reasons why individuals might abandon child-rearing, nor does it include protective measures for these issues. This oversight should have been addressed during the legislative process, which is a significant concern. Given that the law was enacted to protect pregnant women in crisis, potentially exposed to the risks associated with out-of-hospital births due to the birth notification system, it should incorporate mechanisms that safeguard women's agency and subjectivity. Although it purports to offer physical, economic,

and psychological support through counseling from pregnancy to childbirth, it does not provide concrete measures that ensure women's rights to make decisions regarding pregnancy termination and reproduction.

Following the Constitutional Court's decision on April 11, 2019, which declared the criminalization of abortion unconstitutional, the abortion law became ineffective starting January 1, 2021, due to the absence of alternative legislation. Currently, without national alternative legislation, there are no safeguards in place for safe pregnancy termination in medical settings. Therefore, illegal drugs such as abortion pills are being distributed online, potentially increasing the number of pregnant women in crisis.

A study by Kim [15] involving 602 women aged 19–44 who had undergone pregnancy termination in the past five years revealed that the majority of those who would be protected by the protected birth system had the following characteristics: 52.7% were in their 20s or younger, 51.3% were unmarried, and 50.7% identified as lower class.

Lastly, the "Crisis Pregnancy and Protected Birth Support and Child Protection Special Act" continues to obscure the role of fathers, assigning the responsibility for post-birth care exclusively to the woman who gave birth. Although women experiencing crisis pregnancies can access support through various laws (National Basic Living Security Act, Single-Parent Family Support Act, National Health Insurance Act, Mother And Child Health Act etc.), this assistance is generic and fails to address their specific needs. Korean society remains entrenched in the practice of faulting women who do not assume responsibility for childcare.

In addition, Article 7 (2) stipulates that it supports the implementation of child support expenses in accordance with the "Act On Enforcing and Supporting Child Support Payment", but it is also obvious that the implementation of child support expenses is not effective. The 2021 Single-Parent Family Survey [16], released by the Ministry of Gender Equality and Family, reveals that 72.1% of respondents reported they had never received legally mandated child support. This finding underscores a significant societal issue: the absence of stringent consequences for failing to pay child support, despite its direct connection to constitutional rights to life and the pursuit of happiness. The lack of paternal responsibility in childbirth must no longer be ignored.

Protected birth system and healthcare issues

Healthcare professionals must accurately understand and prepare for the newly implemented birth notification and protected birth systems. This responsibility entails proper training on procedures and attitudes within medical settings, such as assigning electronic management numbers and pseudonyms to pregnant women in crisis who request protected births, ensuring that birth records remain confidential. Additionally, it involves issuing "Pregnant Woman Certificates" to enable anonymous medical treatment.

The law's target population comprises socially vulnerable individuals whom our society must protect. This system requires an approach that eradicates prejudice and discrimination against single parents and unmarried mothers, promoting diversity instead. Primary care providers, typically the initial contact for pregnant women in crisis, must maintain an impartial attitude and respect for the life of each pregnant woman. This ensures that these women do not feel their rights to self-determination and motherhood are being denied or disrespected.

While medical law focuses on equipping healthcare professionals with an awareness of bioethics and ethical issues in medicine, it is also essential that they develop empathy, understanding, and unbiased thinking, all of which should be grounded in a keen social

awareness.

Benchmarking Germany's "child's primary care physician system" and Seoul's "Seoul Baby Health First Step Parenting Support Project" [17], which was implemented in 2018, could strengthen the medical community's support for women experiencing crisis pregnancies. The Seoul project mandates universal home visits by specialist nurses for all postpartum women and newborns within 4 weeks of childbirth. If health risk factors are identified, these visits can continue up to 25 times until the child reaches the age of 2.

Access to medical institutions is another crucial issue. The government offers financial support through the National Voucher card for prenatal and postnatal care, providing 1 million won (1.4 million for multiple pregnancies) per pregnancy. However, a survey conducted by the Korean Unwed Mothers Families Association [14] revealed that 41 out of 146 single mothers were either unaware of or did not use this card, highlighting the need for a social safety net that ensures pregnant women receive accurate medical information.

According to the 2021 National Health and Nutrition Examination Survey, the rate of Unmet Healthcare Needs Status (excluding dental care) was 6.7% [18]. Unmet medical needs stem from a variety of factors, including physical and economic issues such as accessibility to medical facilities and the cost of healthcare. Emotional factors also play a role, including patient knowledge, attitudes, anxiety or depression, fear of secondary victimization, and a lack of social support.

Although there are no specific data on the proportion of pregnant women in crisis with unmet medical needs, a survey by the Korean Unwed Mothers Families Association [14] suggests that this proportion may be significant. Many single mothers report avoiding medical care due to financial constraints, reluctance, or fear of visiting hospitals.

This result suggests that vulnerable populations, such as women experiencing crisis pregnancies, who are likely to face high rates of unmet medical needs, need a multidimensional approach to analysis and solutions extending beyond mere economic support and including a comprehensive social safety net.

Conclusion: prospects and proposals for the protected birth system

The protected birth system is significant because it represents a governmental initiative to systematically safeguard pregnant women in crisis situations and establish a social safety net that was previously administered by private organizations. This support is particularly vital in a society where unmarried mothers, especially teenagers, encounter instability, discrimination, and stigma associated with pregnancy and childbirth, frequently without support from their families or the broader community.

According to government announcements, non-profit or social welfare corporations with at least three years of experience in counseling unmarried mothers may be designated as crisis pregnancy counseling agencies. Additionally, the government has proposed amendments to the Enforcement Decree and Enforcement Regulations of the Crisis Pregnancy and Protected Birth Support Act. These amendments include the establishment of a 24-hour hotline for women experiencing a crisis pregnancy [5].

Now, we must listen to a range of concerns and voices related to the protected birth system and establish policies that effectively protect pregnant women in crisis, fetuses, and children, which is the fundamental purpose of the legislation. The system must be continually reviewed

and supplemented to address concerns such as potential infringement on women's and children's rights, ensuring that the enacted laws do not become mere academic exercises.

Despite criticisms that the protected birth system seems to be structured to prioritize protected births, it provides a safety mechanism for pregnant women in crisis who choose this as a last resort, ensuring a safe delivery in medical institutions. Additionally, it provides basic legal support for accessing social welfare services to address childcare and economic challenges that may arise during pregnancy, childbirth, and child-rearing.

However, pregnant women in crisis often avoid disclosing their situation publicly, which can result in them not benefiting from various government pregnancy support policies. Therefore, systematic registration and management of pregnant women in crisis should be accompanied by practical support. This support should address challenges in child-rearing, financial issues, psychological support, parenting education, housing, education costs, the expansion of care services, and health check-up services.

As we approach the implementation of the Protected Birth System, our goal is to enhance national accountability and strengthen social safety nets for women facing crisis pregnancies. This system should prevent the burden of childbirth from falling solely on women and should facilitate ongoing discussions on topics such as the ideology of the "normal family," the right to safely terminate a pregnancy, and the roles of both motherhood and fatherhood in caregiving. These discussions must also be reflected in the amendments to the law.

ORCID
Jiah Jeong: https://orcid.org/0009-0006-8386-9677

Authors' contributions
All work was done by Jiah Jeong.

Conflict of interest
No potential conflict of interest relevant to this article was reported.

Funding
Not applicable.

Data availability
Not applicable.

Acknowledgments
Not applicable.

Supplementary materials
Not applicable.

References

1. Park SY. Unconstitutionality of the Family Relationship Registration Act, which de facto does not allow birth registration of children born out of wedlock [Interent]. Seoul (KR): Law Times; c2023 [cited 2024 May 3]. Available from: https://www.lawtimes.co.kr/

news/186397?serial=186397
2. Ministry of Justice. Applying ordinary murder to "infanticide"...punishable by up to the death penalty [Internet]. Sejong (KR): Ministry of Culture, Sports and Tourism; c2023 [cited 2024 Apr 25]. Available from: https://www.korea.kr/news/policyNewsView.do?newsId=148917838
3. Ministry of Health and Welfare. "Crisis Pregnancy and Protected Birth Assistance and Child Protection Act" passed the House of Representatives in plenary session [Internet]. Sejong (KR): Ministry of Health and Welfare; c2023 [cited 2024 May 5]. Available from: https://www.mohw.go.kr/gallery.es?mid=a10606030000&bid=0003&act=view&list_no=378508
4. Ministry of Health and Welfare. Birth notification and crisis pregnancy support system to be implemented in July, field feedback sought to ensure smooth transition [Internet]. Sejong (KR): Ministry of Heallth and Welfare; c2024 [cited 2024 May 5]. Available from: https://www.mohw.go.kr/board.es?mid=a10503010100&bid=0027&act=view&list_no=1480244&tag=&nPage=1
5. Ministry of Health and Welfare. Government, local governments, and court administrators join forces to implement birth notification system, Protected Birth Bill on July 19 [Intenet]. Sejong (KR): Ministry of Heallth and Welfare; c2024 [cited 2024 May 5]. Available from: https://www.mohw.go.kr/board.es?mid=a10503010100&bid=0027&tag=&act=view&list_no=1480750&cg_code=
6. Kim MS. US legislation related to legal support for baby boxes. *Latest Foreign Legislat Inf* 2020;(116):0-6.
7. Lee JE. A study on anonymous childbirth in France. *J Contemp Eur Stud* 2015;33(1):171-202.
8. Jung JH, Lee J. Research on pregnancy conflict support policy: focusing on the German case. *Stud Life Cult* 2024;71:23-47. https://doi.org/10.17924/solc.2024.71.23
9. Han JS. German "confidential birth" service and its implication for Korean practice: focusing on contents and evaluation of German "confidential birth" service. *J Korea Contents Assoc* 2018;18(5):71-81. https://doi.org/10.5392/JKCA.2018.18.05.071
10. Hong S. A study on the Child Health Care Act and policy in Germany. *HUFS Law Rev* 2020;44(3):129-156.
11. Choi YK. A study about the rights of children at risk: with the right to be registered as a birth. *Soc Welf Law J* 2022;23(2):149-177.
12. Park SM. Major factors which should be considered in the stance of pro or anti anonymous birth camp. *Hum Rights Justice* 2023;512:198-216. https://doi.org/10.22999/hraj..512.202303.009
13. Korean Women Lawyers Association. The Protected Birth Bill: acceptable in its current form? In: Korean Women Lawyers Association, editor. Proceedings of the Korean Women Lawyers Association; 2023 Nov 1; Seoul. Seoul (KR): Korean Women Lawyers Association; 2023. p.19-87.
14. Kumsunine TV. Parliamentary debate on strengthening the maternity support system for crisis pregnancies [Video]. Korean Unwed Mothers Support Network; 2021 [cited 2024 May 5]. Available from: https://youtu.be/d5kGwAWMUo0
15. Kim D. Issue paper: access to termination of pregnancy care and policy challenges after the constitutional court's decision on the constitutionality of abortion. Seoul: Korean Women's Development Institute; 2021.
16. Bae HJ, Jung GW, Park MJ, Sun BY, Sung K. 2021 Survey of single parent families [Internet].

Sejong (KR): Ministry of Gender Equality and Family; c2021 [cited 2024 May 5]. Available from: https://www.mogef.go.kr/kor/skin/doc.html?fn=626a1fe9900c49639f7cc89cc2724385.pdf&rs=/rsfiles/202405/
17. Seoul Pregnancy and Childbirth Information Center. What is the Seoul baby health first step project? [Internet]. Seoul (KR): Seoul Pregnancy and Childbirth Information Center; c2024 [cited 2024 Apr 29]. Available from: https://seoul-agi.seoul.go.kr/health-first-step
18. Korea Disease Control and Prevention Agency. Chronic disease health statistics [Internet]. Cheongju (KR): Korea Disease Control and Prevention Agency; c2020 [cited 2024 May 1]. Available from: https://chs.kdca.go.kr/cdhs/biz/pblcVis/mai