

**Abortion and Laws
Regarding Abortion**

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Introduction

Abortion refers to the termination of a pregnancy by removal or expulsion of the fetus or embryo. It is a medical procedure that can be secured either by taking abortion pills or through surgical methods. Miscarriage, also known as spontaneous abortion is also considered an abortion since it occurs without intervention. The topic surrounding abortion is often daunting and the decision to secure an abortion is often personal. One's decision to have an abortion can be influenced by various factors which include cultural, social and individual circumstances. Though abortion is one of the many contemporary issues in the society today, it is highly controversial due to the legal, moral and ethical implications. In addition to that, there are differing opinions on when life commences as well as the rights of a pregnant person and that of the fetus.

Laws Regarding Abortion

Laws Regarding Abortion differ significantly from states to states. The topic is ethically, emotionally and politically charged and the arguments based on abortion often reflect the beliefs and values held by people. From this perspective, there are few existing laws made to fit the purpose of a woman's request since abortion is easily accessible and universally affordable. Over the years, human rights activists have pushed for law reforms in order to achieve the right to safe abortion. The biggest challenge to achieve this is to build a critical mass of support and alliance with legal experts, health professionals and parliamentarians and women themselves to reform the law so that anyone who seeks abortion can secure it.

Human rights bodies have laid down clear guidelines on the need to decriminalize abortion so that women can access the services without fear of legal implications. Majority of countries which decriminalize abortion have provided for exceptions and instances when abortion can be considered legal. A good example is Kenya where the Kenyan constitution in **Article 26(IV)**

provides that, 'abortion is prohibited unless in the opinion of a trained health professional there is need for an emergency treatment, or the life or health of the mother is in danger.'

A handful of countries have completely banned abortion. On the other hand ,most countries people allow the procedure with or without restrictions taking into account the mental health status of the pregnant person.

Laws and treaty jurisprudence have provided that denying women access to safe abortion is infringement of their rights to privacy, health, dignity, inhumane and degrading treatment. **The international conference on Population and Development** supported the need for legal abortion that is safe and accessible. The conference was held in Cairo in 1994. At the conference it was held that unsafe abortions are a major risk to public health and provided for alternatives for abortion such as family planning methods. International and human rights bodies and courts have been seen to give attention to abortion and to understand its link to women's health and human rights. They have urged the states to remove restrictive abortion laws and implement the existing abortion laws.

Almost all African constitutions adhere to international human rights law endorsing the application of the right to life after birth. Only five **African Union** member states apprise abortion in their constitutions. Since Commonwealth countries and Anglophone African countries have common laws, most of the countries still conform to the abortion provisions very similar to those at issue in two landmark cases from England regarding implementation of abortion laws. **African Union member** states refer to these cases to interpret broadly the existing abortion laws. The case of **Rex v Bourne** (1938) was the first case to provide grounds on which abortion could be legally secured in England. The only exception to abortion at that time was mental and physical health as well as rape.

By the end of the nineteenth century, abortion was legally restricted in almost every country. The Imperial countries such as Europe, Britain, France Portugal, Spain and Italy were the most important sources of such laws. According to the **United Nations Population Division's**

Comprehensive research on abortion laws, the legal systems under which abortion is prohibited in fall into three main categories i.e. common law, civil law and Islamic law.

Initially, restrictions on abortion were imposed for three main reasons:

Abortion was highly risky as it claimed the lives of many women hence the law and public health intention was to protect women who nevertheless still sought abortion and risked their lives and health.

Abortion was considered highly immoral and sinful. The law was put in place to deter the transgression of immortality.

Abortion was restricted to protect the life of the fetus in some or all circumstances. **The Working Group on Discrimination against Women** stated that denying women and girls the right to make their own decisions that pertain their own body and reproductive functions is violation of their fundamental freedom and rights. Furthermore, the **Special Rapporteur** on the rights to health outlined that criminalizing abortion is infringement of women's dignity by restricting them from making their own personal decisions.

Attempts to decriminalize abortion have been slow and faced with challenges. Apart from statutes, there are many ways to liberalize access to abortion which also have a legal standing. They include:

National constitutions in atleast 20 countries. A perfect example is the Eighth Amendment to the constitution of Ireland in (1938).

Supreme court decisions such as in India (2016,2017) following the individual securing abortion beyond the 20 – week limit. The United States (1973,2016), Canada (1988) and Brazil in (2012).

Customary or religious laws such as the Islamic law that permit abortion up to 120 days in the United Arab Emirates but do not permit abortion completely in all other Islamic countries. In the United States following the case of **Roe v Wade**, which formed a precedent to be referred to in matters pertaining abortion, the court ruled that the constitution guarantees the right to choose whether to have an abortion but was only acceptable within the first trimester of the

pregnancy. Following this case, the United States became one of the first countries to deregulate abortion laws as well as several Western European countries. Over the recent years, many states have passed restrictive abortion laws and sometimes completely banning abortion.

In 1950, China liberalized its abortion laws and promoted the one child policy enacted in 1979 in effort to control the population. However, in 2016, China raised the long-standing limit to a two – child policy. In 2021 China increased the limit to three children per household. Poland's Constitutional Tribunal held that abortions due to fetal impairments are unconstitutional thus making the country's abortion laws one of the strictest in Europe. Masses took it to the streets to protest and the laws were adjusted to allow abortions in cases of incest, rape, and medical doctors however have been seen to be reluctant to perform abortions though legal since they can face up to three years in prison if there is evidence of performing the procedure without sufficient justification.

According to an article published by Al Jazeera, **Amnesty international** called upon the United States to protect abortion rights. Amnesty's Secretary General Agnes Collamard said, "We fervently call on the US authorities to protect the rights to legal abortion and failure to do so would be considered violations to right to life, health, privacy, bodily autonomy and dignity ". Collamard added. It is thus clear that many countries are putting effort into implementing legislations to allow safe legal abortions to protect the fundamental rights and freedoms of women.

There are many reasons as to why a woman may opt to secure an abortion and the reasons vary from one reason to another. As a student, trying to put myself in a position of a pregnant woman would mean that life would take a different turn. Pregnancy would interfere with school. It is very difficult to cope with the financial, mental and physical pressure needed to birth and raise a child. People often think that abortion is not justifiable but trying to imagine the how the life of a fourteen year old girl who has been defiled and has conceived makes one to realize that at times abortion is the only solution. In addition to that, the body of a fourteen

year old is not yet fully developed to accommodate pregnancy and can cause serious health complications.

Health practitioners often advocate for medical procedures over surgical procedures since they pose less health risks. There are two drugs i.e., mifepristone and milipristol which are highly effective when used in the correct dosage. Immorality and religion often form a blanket over this highly complex issue but at the end of the day, it one's personal decision and it is their right to choose whether or not they can secure an abortion. Pro – choice views are valid because a woman has total right to choose to have an abortion if she is not in the position to keep the pregnancy.

Conclusion

Considering all this, it is very evidential that abortions are very safe if secured under the right medical care. We are living in the twenty first century and it is high time we do away with abortion stigmatization. States ought to come up with clear policies regarding safe abortion services. In addition to that, they should come with measures to prevent unwanted pregnancies such as encouraging family planning services and making emergency contraceptive pills readily available in local stores and pharmacies. Even with that, majority of countries are pushing towards decriminalization of abortion and with time, restrictive abortion laws will no longer exist. As a famous scholar John Locke once said, "The end of law is not to abolish or restrain, but to preserve and enlarge." Restrictive abortion laws will soon come to an end with time.

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