

REVIEW

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Medico-Legal Aspects of Abortion: Updates of the Literature

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ABSTRACT

Background: Abortion is an increasingly important issue since it is discussed from multiple points of view including medical, social, religious, and legal aspects. Abortion is an old topic that is continuously discussed from various perspectives including medicine, laws, and society. Abortion is illegal in general terms, but it can be carried out under certain medical conditions for the interest of pregnant woman, if the pregnancy is threatening her life.. **Objective:** The aim of this article is updates of the literature about medico-legal aspects of the abortion. **Methods:** This is descriptive study about medico-legal aspects of the abortion based on searching this topic in the scientific literature deposited in on-line databases. **Results and Discussion:** . At global level, more and more women are opting to terminate their pregnancies for societal reasons. It is estimated that 50 million unborn babies are terminated every year across the globe, causing the lives of 200,000 pregnant women and the agony of millions more people. It is a difficult decision to conduct abortion. In this study, a comprehensive review of the literature was made to discuss abortion from medical, legal, and cultural points of view. In general, abortion was legally discussed because legal aspects involve the various perspectives. **Conclusion:** From religious points of view, abortion implies ending the life of the fetus. The right of life is to be kept. The international laws do not permit abortion and criminalize the parties involved in its existence unless it is recognized it is crucial to save the life of pregnant woman..

Keywords: abortion, legal, medical, religion, culture.

1. BACKGROUND

Induced Globally, more and more women are opting to terminate their pregnancies for societal reasons. It is estimated that 50 million unborn babies are terminated every year across the globe, causing the lives of 200,000 pregnant women and the agony of millions more people. Abortion in violation of the law can result in very serious problems. In many parts of the world, abortion is still practiced as a method of population control. The decision to terminate a pregnancy due to a medical condition is hardly common and accounts for just a small percentage of total abortions. In this study, the various perspectives on abortion, as well as its history, its development over the course of time, and the current legal situations, are discussed. The situation in Islamic countries as well as the impact of Islamic fatwas on abortion are the focal points of this discussion (1).

2. DEFINITION OF ABORTION

There is a startling variety of definitions used in the legal systems of many countries, as well as in medical practice. Expulsion of the conceptus prior to the 28th week of pregnancy is what Sir Stanley Clayton and John Newton designate as "abortion" in their pamphlet titled "A Pocket Obstetrics," which was published in 1972. This viewpoint is still upheld by British legal precedent (2). Abortion is defined by Ralph Benson in the "Handbook of Obstetrics and Gynecology" (3) as "the termination of pregnancy before the fetus is viable." When the fetus weighs slightly more than 600 grams, technically speaking, viability is achieved between the ages of 23 and 24 weeks. In the United States, the laws differ from state to state, but in general, an abortion can be performed on the patient at any time during the first trimester of pregnancy. During the second trimester, however, there are more limits placed on specific medically justified circumstances. Abortion is defined by the World Health Organization (WHO) as "the expulsion or extraction from its mother of a fetus or embryo weighing less than 500 grams." (4).

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Abortion, according to contemporary consensus in the medical community, is the process of delivering a conceptus prior to the fetus's viability, which is defined as 20 weeks of pregnancy or a fetus weighing 500 grams or more. In several states, the weight requirement for viability has recently been reduced to 300 grams (4).

The general population typically refers to an abortion as a miscarriage when they mean an abortion that occurred naturally, but the term abortion refers to an abortion that was induced, regardless of whether or not it was legal (1).

Abortion was defined as the termination of a pregnancy before viability in the 1982 edition of the *Encyclopedia Britannica*. Viability was defined as a fetus weighing at least 1000 grams or having been pregnant for more than 20 weeks (1).

3. LEGAL FRAMEWORK

International law has always viewed abortion rights within a medico-legal paradigm, the notion that legal and medical control guarantee safe abortion. Self-managed abortion (SMA), supported by feminist action, challenges this paradigm. SMA action has revealed that more than medical service delivery matters for safe abortion and questioned legal abortion control beyond criminal restrictions. This study discusses how abortion rights have begun to depart from the medico-legal paradigm and support SMA action in a field shift. SMA activism reimagines abortion rights in human rights objectives relating to structural violence and injustice, collective organizing and international solidarity, and political engagement (5).

International law has always described abortion rights as 'safe and legal abortion.' The end of abortion decriminalization is legalization or a regulatory structure for legal abortion (6). Legalization refers to legal laws governing who, where, and how an abortion can be provided and accessed. A regulated system is believed to ensure safe abortions. Abortion rights have focused on legal abortion grounds and access to services under these grounds (7). Human rights require states to include safe, legal abortion into health care (Assis and Erdman, 2021). The medico-legal paradigm represents a global public health and human rights truth that unlawful abortions are hazardous (8). In 1990, the WHO defined "unsafe abortion" as being performed by "individuals lacking the essential expertise or in an environment that does not adhere to minimal medical standards, or both" (World Health Organization, 1993). Illegal abortion didn't meet these standards. This scheme succeeded for decades since abortions outside these conditions were invasive and risky. WHO has revised its safe and unsafe abortion scheme to incorporate a risk gradient (9). While preserving the safe/unsafe binary, it acknowledged that informal use of abortion medicines (mifepristone and/or misoprostol) has made illegal abortion safer (10).

Decriminalization and legalization are coterminous within the medico-legal paradigm. In this perspective, human rights standards argue for decriminalizing and legalizing abortion (11, 12). These standards are sup-

ported and rationalized by a focus on maternal mortality and morbidity, health-related harms of criminalization, which designate medical systems as the remedial state institution for violations (13, 14).

In a classic formulation of the paradigm, the Special Rapporteur on the Right to Health warned that "safe abortion will not immediately be available upon decriminalization unless States create conditions under which they may be provided," namely establishing clinics, training physicians and health-care workers, enacting licensing requirements, and ensuring the availability of medicines and equipment (15).

4. THE PROVISION OF ABORTION AS A NECESSARY HEALTH SERVICE

After the COVID-19 pandemic, when sexual and reproductive health services were disrupted, disempowering individuals and exposing them to preventable health risks, the World Health Organization (WHO) added comprehensive abortion care to the list of essential health services in recent technical publications and guidance issued in the aftermath of the pandemic. The new recommendation emphasizes that reaching the Sustainable Development Goal goal 3.8 of universal health coverage requires not only access to essential health services of high quality but also access to critical medicines at reasonable prices. It acknowledges that expanding access to abortion care is an essential component of creating a favorable environment for universal health coverage, the goal of which is "to accelerate efforts to ensure that all people and communities receive the full spectrum of essential, quality health services" without experiencing undue monetary strain. In addition, WHO recognizes, in terms of the regulation of abortion, that "unlike other essential health services, abortion is commonly regulated to varying degrees through the criminal law in addition to regulation under health-care law." This is something that is different from other essential health services. The elimination of all forms of criminal regulation pertaining to abortion is a recommendation made within the scope of this guideline (16).

5. ACCOUNTABILITY

The World Health Organization (WHO) acknowledges that responsibility is one of the most important factors in ensuring that sexual and reproductive health and rights are safeguarded, respected, and realized. The recommendation makes notice of the fact that accountability can take on a variety of forms in the process of ensuring that women have access to safe abortions. One of these forms is ensuring that abortion laws and policies comply with human rights standards. It explains that this should be accomplished by recording and monitoring health outcomes related to abortion laws and policies and reporting them to national human rights institutions. Additionally, it should be accomplished by ensuring that all individuals have access to justice, which includes an accessible mechanism "to challenge denial of abortion in a timely manner" and a meaningful and

effective remedy in cases where the individual's rights have been violated. Restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition can all fall under the category of remedies. Remedies can also involve changes to laws and policies. In the guideline, it is emphasized that an environment that is enabling should feature the regular review and reform of laws and policies on abortion, including the decriminalization of services and "forms of behavior that can be performed only by women, such as abortion." This is because abortion is a form of behaviour that can only be performed by women (16).

6. RELIGION AND ABORTION

Both a person's individual bioethical decision about whether or not to have an abortion and a nation's legal framework for abortion are heavily influenced by religious beliefs and practices. Despite this, there hasn't been enough research done to develop a comprehensive knowledge of the Islamic stance. This research began with an in-depth and methodical examination of Islam's stance on abortion. This was accomplished by looking at the two most authoritative biblical sources (i.e. the Quran and the Sunnah) in addition to other elements that provided relevant information (i.e. contemporary fatwas, Islamic mysticism and broader Islamic principles, interest groups, and transnational Islamic organizations). There is no clear biblical prohibition on abortion, despite the fact that Islamic jurisprudence does not support the practice. There is a wide range of opinion on the topic of abortion, and a significant number of religious academics advocate for the legalization of the procedure under certain conditions and at certain ages of gestation. However, there is remarkable heterogeneity in regards to other circumstances (such as preserving physical or mental health, foetal impairment, rape, or social or economic reasons), and later gestational development of the foetus. It is generally agreed that the least blameworthy abortion is when the life of the pregnant woman is threatened and when 120 days have not lapsed. In the second part of this research project, a comparative evaluation of abortion laws across nations with a Muslim-majority population was carried out. It was discovered that the majority of nations take a conservative view on the issue, since 18 of the 47 countries studied do not permit abortions under any circumstances other than when the life of the pregnant woman is in danger. However, there was a significant amount of variation between countries, and ten of those countries permitted abortion "upon request." There is a discussion on the discursive aspects that could allow for the creation of policy in nations with a predominantly Muslim population, as well as on future research that could improve the study of abortion rights. Particularly, more lenient abortion laws may be achieved by disabusing individuals of the misconception that the most authoritative texts unambiguously oppose abortion, highlighting more lenient interpretations that exist in certain Islamic legal schools, emphasizing significant actors that support

abortion, and being mindful of policy frames that will not be well received in Muslim-majority countries (17).

7. ABORTION PERSPECTIVES IN SOME ARABIC AND ISLAMIC COUNTRIES

7.1. Jordanian perspectives of abortion

According to the report by the United Nations Development Programme (2022), Articles 321–325 of the Penal Code make abortion illegal for anybody to undergo an abortion, including a woman who has been sexually assaulted. Any individual who engages in the practice of abortion is liable to a possible sentence of one to three years in prison. If the offender is a member of the medical community, the punishment will be enhanced by one-third. A woman who induces her own miscarriage or who allows another woman to induce her miscarriage faces a possible prison sentence of between six months and three years. In order to protect the lady's reputation, the penalties for getting an abortion are less severe if the procedure is carried out by the woman herself, a descendant, or a relative up to the third degree (Article 324). According to Article 322(2), a person who performs an abortion and is responsible for the death of the woman who had the abortion faces a minimum of five years in prison and a sentence of forced labor at a temporary location. Article 323(1) of the law stipulates that anybody who knowingly terminates the pregnancy of a woman without her agreement is subject to a sentence of hard labor for a period of time not to exceed ten years. According to Article 323(2), the minimum sentence for an abortion that results in the woman's death must not be less than ten years in prison. Article 12 of Public Health Law No. 47 of 2008 makes it illegal for doctors to counsel patients on abortion or to perform abortions, with the exception of situations in which it is required to protect the life or health of the pregnant woman. The law does not provide a precise definition of a woman's health but rather refers to health in general, including mental and physical well. Since 1993, numerous fatwas addressing various aspects of abortion have been published (18).

According to freedom house organization, in Jordan, having an abortion is against the law, with a few exceptions, such as when it is necessary to protect the life or health of the mother. Women who perform abortions on themselves face penalties ranging from six months to three years in prison under the provisions of Article 321 of the penal code. Those who perform abortions on others, including doctors, face penalties ranging from one year to three years in prison under the provisions of Article 322. The person who is responsible for an abortion that results in the death of the mother gets a mandatory minimum term of five years in jail. According to Article 323, individuals who carry out an abortion on a woman against her will face a possible penalty of up to ten years in jail, with the potential for a minimum sentence of the same length if the woman passes away. If a woman performs her own abortion in order to protect her family's honor, or if the individual carrying out the abortion does so in order to protect the honor of a female relative,

the woman or the individual may be eligible for reduced sentences under Article 324, which range from three months to two years (19).

7.2. Egyptian perspectives of abortion

Articles 260–264 of Egypt's Penal Code from 1937 make it illegal to have an abortion in the country (20). Despite this, Article 61 of the Penal Code allows for exceptions to be made in circumstances of need. This provision has traditionally been interpreted to allow for abortions that are required to preserve the life of the pregnant woman. This exception has, in certain circumstances, been broadened to cover pregnancies that pose risks to the health of the pregnant woman as well as pregnancies that result in the impairment of the fetus (21). In these kinds of situations, a doctor is only allowed to execute an abortion if they have received permission from two different specialists, or the woman's life is in immediate danger (1, 22–23). Anyone who assists in the termination of a pregnancy is subject to criminal prosecution, including medical professionals who participate in such activities. Because the prosecution has the burden of proving both that the lady was pregnant and that the pregnancy was terminated in some manner, convictions for this crime are extremely rare (24).

7.3. Tunisian perspective of abortion

In 1973, Tunisia was the first Muslim, African, and Arab country to liberalize its legal system, coming in ahead of France, Germany, and the United States of America in the process. In point of fact, Tunisia legalizes abortion “upon request” up to 12 weeks into a pregnancy, and the procedure is offered free of charge inside the country's public healthcare system (25). This stands in stark contrast to the majority of other Muslim-dominated countries, the majority of which only permit abortions in the event that the pregnant woman's life is in danger. Notably, Asman (26) examined the legal frameworks of three Muslim nations (i.e. Egypt, Kuwait, and Tunisia) and found that the abortion laws in these nations had gotten less restrictive over time.

8. CONCLUSION

Abortion is an old topic that is continuously discussed from various perspectives including medicine, laws, and society. Abortion is illegal in general terms, but it can be carried out under certain medical conditions for the interest of pregnant woman, if the pregnancy is threatening her life. From religious points of view, abortion implies ending the life of the fetus. The right of life is to be kept. The international laws do not permit abortion and criminalize the parties involved in its existence unless it is recognized it is crucial to save the life of pregnant woman.

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