

MORALITY AND THE LAW: THE ABORTION QUESTION

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Like many other people, I am personally opposed to abortion. I would not choose to have an abortion myself, and I would try to persuade other women to choose another option. But I do not believe that the law should restrict access to abortions during the early stages of pregnancy. This article explains why

Laws against abortion do not stop abortion

Laws restricting access to abortion do not discourage women from having abortions. They simply drive abortion underground and into backstreets, with tragic consequences for women's health and wellbeing. Consider the following examples.

The country with the lowest abortion rate in the world is the Netherlands. Dutch law has allowed abortion on request during the first 12 weeks of pregnancy since 1979, but a comprehensive programme of sex education and family planning services has kept the abortion rate extremely low.

In contrast, consider the case of Romania, where abortion and contraception were both illegal until 1989. The rate of abortion during this period was higher than that in any Western European country where abortion was legal, while over 10 000 women died from illegal abortions and 200 000 children were placed in orphanages. After the repeal of the restrictive legislation, maternal deaths dropped by 317%.

Even in countries which are strongly and uniformly religious, it has proved impossible to legislate morality. For example, there are a number of Latin American countries where the influence of the Catholic Church has discouraged contraceptive use and encouraged the passage of strict laws forbidding abortion. Yet in Argentina, almost half a million women have illegal abortions each year, and botched abortions are the leading cause of maternal deaths. In Brazil, at least 1 million women who have illegal abortions each year, with some estimates suggesting that the number might be as high as 4 million. Illegal abortion is the leading cause of maternal death in Chile, where 30 000 women are hospitalised annually for complications from illegal abortions. In Columbia, abortion is the leading method of "birth control" despite the fact that it is illegal, with a quarter of a million abortions being performed each year on adolescent girls alone.

Looking closer to home, there are only three African countries where abortion is available on request during the early stages of pregnancy – Togo, Tunisia, and South Africa (where a new abortion law came into force in February of this year). The contrasts are telling. Tunisia has a very low abortion rate, and the incidence of abandoned children and suicides by pregnant women have almost disappeared.

On the other hand, in Zimbabwe (which has a law similar to that now in force in Namibia), an estimated 70 000 illegal abortions take place every year. Abortion is one of the major causes of death among women, and there is a high incidence of "baby dumping", as we are beginning to see in Namibia as well. Similarly, in Nigeria, where abortion is illegal except to save the life of the mother, illegal abortions are rife. One

study found that complications from unsafe abortions caused 72% of all deaths to Nigerian women under the age of 19. Experts believe that about 10 000 African women undergo unsafe abortions *every day*, including a high percentage of teenagers.

The problem of unsafe abortion has received international attention. At the 1994 UN Conference on Population and development in Cairo, representatives from 180 nations agreed to a programme of action which included the following statement on abortion:

All governments and relevant intergovernmental and non-governmental organizations are urged to strengthen their commitment to women's health, to deal with the health impact of unsafe abortion as a major public health concern and to reduce the recourse to abortion through expanded and improved family planning services.

Discrimination against poor women

Laws against abortion do not prevent abortions from taking place, but they do discriminate against poor women. In most countries where abortion is illegal, women with sufficient financial resources can find a safe way to obtain an illegal abortion. Women with money also have the option to travel to countries where abortion is legal. Poor women are left with the option of “backstreet abortions” or home remedies, both of which have killed countless numbers of women. At present, any woman with enough funds to get across the border to South Africa can get a safe, legal abortion. Other women are left only with choices that endanger their health. This is the practical reality, and it is manifestly unfair.

Freedom of religion and conscience

Different religions have different theories about when life begins, just as different religions have different attitudes about the use of contraceptives. There are differing moral views about a host of matters related to sexuality and reproduction – including abortion, contraception, and fertility techniques such as artificial insemination.

The Namibian Constitution promises freedom of religion and freedom of conscience and belief to every person in Namibia. This means that society as a whole cannot be forced to accept the views of any particular religion. The right to make decisions on matters of conscience is a fundamental part of what it means to be human.

Some other examples will illustrate the limits of the law when it comes to personal moral issues. Suppose that you see another person drowning in dangerous water. Should there be a law which punishes you if you do not risk your life to save that person? Suppose that someone who is ill needs a blood transfusion in order to live. Should you be charged with a crime if you do not offer to give your blood to save that person? Suppose that someone with kidney failure needs a transplant and your kidneys are the only ones in the world that will be medically compatible. Can the law force you to donate a kidney to save a life? Suppose that what is being asked of you will endanger your life or cripple you permanently – should the law still force the decision upon you?

Such questions usually inspire much debate. On matters where there is wide disagreement about what is right and wrong, the decisions should be left to the conscience of the individual. If all questions about right and wrong were decided by law, the concept of morality would be meaningless.

The following statement by Albie Sachs, a human rights activist who is now a member of South Africa's Constitutional Court, is a good summary of the notion of freedom of conscience:

Those who are against birth control or against abortion, will have the right to argue their views and work towards finding alternative approaches, but will not have the right to impose their position on others who hold different opinions. Similarly those who favour contraception and the right to terminate unwanted or dangerous pregnancies should be free to put forward their positions but not have the right to insist on birth control and abortion for those who do not want it. What apartheid society has never done is to allow people to choose for themselves how they wish to lead their lives. What post-apartheid society must do is to guarantee to people for the first time the basic rights of personal self-determination.

The right to liberty and human dignity

In other countries with Constitutions similar to ours, the courts have found that women have a constitutional right to make their own decisions about abortion during the early stages of pregnancy, before the foetus is able to live outside of the womb.

In the United States, the right to liberty includes the right to make personal decisions about intimate matters such as whether or not to bear a child. As one US Supreme Court justice stated, "*Some of us as individuals find abortion offensive to our most basic principles of morality, but that cannot control our decision. Our obligation is to define the liberty of all, not to mandate our own moral code.*"

In Canada, the Supreme Court stated that "*forcing a woman, by threat of criminal sanction, to carry a foetus to term unless she meets certain criteria unrelated to her own priorities and aspirations, is a profound interference with a woman's body and thus a violation of security of the person.*" Another Canadian judge said that one part of "*respect for human dignity*" is "*the right to make fundamental personal decisions without interference from the state*".

Even in Germany, where the foetus was found to have Constitutional protection as part of the right to life, the Constitutional Court decided that this must be balanced against the woman's constitutional right to life, human dignity, physical integrity and the development of personality. So the court decided that the best way to discourage abortion would be through positive support for the woman, not through criminal punishment.

The right to equality

Some people believe that the right to make personal decisions about child-bearing is part of sexual equality. For example, the US Supreme Court said that the "*ability of*

women to participate equally in the economic and social life of the nation has been facilitated by their ability to control their reproductive lives".

Laws restricting a woman's right to choose whether or not to have an abortion are often related to stereotypes about the role of women in society. Many societies believe that women have a duty to bear children. So these societies pass laws saying what a woman can do with her body and telling her how to think. These societies believe that greater access to abortion will lead to promiscuity, selfishness and irresponsible behaviour on the part of women.

This attitude sometimes becomes evident from inconsistencies in moral arguments against abortion. For example, people often say that they are completely opposed to abortion because they believe that life begins at conception. But the same people are sometimes willing to make an exception for pregnancies which result from rape. This is illogical -- the foetus is not affected by how or why the pregnancy occurred. The real reason behind this thinking may be the belief that a woman can be forced to continue a pregnancy as long as the pregnancy is really "her fault" because she voluntarily had sexual relations.

The inconsistencies also show up where people who argue against abortion do not have any problems with the use of the "loop" as a method of family planning. This device works by preventing fertilised eggs from lodging in the womb, but there have been no suggestions that its use should be prohibited by law – even by people who believe that life begins at conception.

The law should recognise women as full human beings with freedom and dignity who have the right and the capacity to make complex moral decisions about their reproductive capacity.

Better ways to discourage abortion

Making abortion illegal is not an effective way to discourage people from having abortions. There are other approaches which are far more likely to have a useful impact.

In Germany, the Constitutional Court said that the state has a duty to make sure that a woman is not seeking an abortion because of pressure from her husband, her family or the social environment. The state must ensure that women will not be forced to suffer heavy personal or financial setbacks as a consequence of bearing a child, by providing essential services such as affordable child care. Abortion counselling should include assistance with practical problems such as housing and employment, and there must be offers of follow-up support after the birth of the child, as well as information about how to prevent future pregnancies.

In Namibia, the state, the churches and other non-governmental organisations can discourage women from having abortions by a number of positive measures:

- providing family life education in the schools
- making family planning methods more accessible
- providing counselling for pregnant women

- making it possible for young mothers to continue with their education
- promoting options to abortion such as adoption and foster care
- making sure that fathers do their share to support their children
- providing financial assistance where it is necessary.

Such steps as these are far more likely to reduce abortion and infanticide than either moral condemnation or legal punishment.

The question we should be asking ourselves is not whether abortion is right or wrong. The question is whether the law should decide this issue for everyone.

A police investigation was launched after a 32-year-old nurse from Tsumeb died from a "backstreet abortion" in which a local shopkeeper injected an unknown substance into her womb. (Sister, October-November 1993)

Two women were charged with culpable homicide after giving the daughter of one of them a mixture to drink which was intended to cause abortion but killed the pregnant woman instead. (Information from Prosecutor-General's Office, 1994)

According to a 1993 study of teenagers aged 13-19, many school girls who become pregnant try to abort, and a few girls have died from illegal abortions. Some of the methods cited for causing a miscarriage were drinking bleach or taking certain medications. (P Hailonga, A Study to Identify Adolescents' Knowledge, Attitudes and Beliefs Towards Teenage Pregnancy, March 1993, pp. 23-24)

In June 1995, a 17-year-old girl was sentenced to 10 years' imprisonment (seven of which were suspended) for stabbing her newborn child to death. (The Namibian, 22 June 1995)

In August 1995, a 23-year-old woman was sentenced to seven years' imprisonment for placing her three-day-old baby boy in a plastic bag and abandoning him in a riverbed. A 24-year-old woman who gave birth to her first child at the age of 12 was sentenced to five years' imprisonment for strangling her month old baby boy. A third woman received a suspended sentence of seven years after she pleaded guilty to murdering her newborn son by slitting his throat. (The Namibian, 8 September 1995).

In Keetmanshoop a mother apparently gave birth to a live baby girl in a field and abandoned the baby. The body was later mutilated by dogs. (The Namibian, 3 June 1996)

In July 1996, a 23-year-old woman set her newborn baby on fire. (Windhoek Observer, 13 July 1996)