

THE LEGALITY OF ABORTION IN NIGERIA: MATTERS ARISING

Abstract

The legality of abortion has been a topical issue in the world and Nigeria in particular. There has been strong argument against abortion in Nigeria without paying kin interest on the problem associated with it. The fight against abortion may not be unconnected with the proponents' cultural, moral or religious background. Abortion is the termination of a pregnancy after, accompanied by, or closely followed by death of embryo or foetus, especially through medical procedure or inducing expulsion of human foetus to terminate a pregnancy. In Nigeria, abortion is illegal and carries a sentence of 14years imprisonment unless administered to save the life of a pregnant woman. There are plethora of work making argument for and against legalizing abortion in Nigeria, however, very few attention have been paid to matters arising that stems from the legality and illegality of abortion in Nigeria. This paper generally examines the extent of legality of abortion in Nigeria, the merits in legalizing abortion in Nigeria, it discusses; unsafe abortion, social segregation from the society, forced marriages, Religion and Tradition as matters arising on the legality of abortion in Nigeria. This work adopts the analytical method of research. This paper takes the stance that for Nigeria to be free from the risk or problems associated with abortion above, it should join the globe in legalizing abortion in Nigeria. Amongst others, it is recommended that, Nigerian woman be; given the right to best interest of her health, wealth and life. There should be provision for right to contraceptives for both married and unmarried women to enable them prevent pregnancy, etc.

Keywords: Abortion, Legality, Matters Arising, Nigeria

1. Introduction

The legality and illegality of abortion has raised several arguments globally and Nigeria in particular. The position in Nigeria however remains that; abortion in Nigeria is illegal and carries a punishment of 14years imprisonment unless carried out to save the life of the woman¹. Despite the illegality of abortion in Nigeria, we regularly record a high level and number of abortion in our society². Abortion can be in two ways Spontaneous (miscarriage) abortion, the abortion that occurs without any human intervention and Induced or intentional abortion Initiated by human intervention. 14yr jail term for the act, intent or accomplice Several countries have risen to fight for the legal status of abortion; this fight had its breakthrough in US Supreme Court pronouncement, whereby the court pronounced it to be legal³. In Nigeria, this fight got stronger in 1981 when the society for Gynaecology and Obstetrics sponsored Termination of Pregnancy Bill to the House of Representative⁴. The illegality of abortion in Nigeria raises several issues like unsafe abortion that causes death, maternal mortality, ill health, disability and etc⁵. Historically, women were helping their follow women to abort without legal prohibition for about two centuries before 19th Century⁶. The first law on abortion was first passed by Britain in 1803. US followed immediately; by 1880 most abortion was illegal in US except to save the woman's life. In the mid-19th century, the fight between male doctors and female mid-wives that conducts abortion became intensified and formed major reasons for the anti-abortion law as the male doctors sees them as threat to their personal socio-economic power⁷. The law against abortion became stronger as Native Americans felt that, their immigrant's brothers may overcome their population and size⁸. Hence, the history of abortion dates far back as the earliest settlers' arrived America and the time of the adoption of American Constitution in the mid-to-1800s⁹. The Penal Code and Criminal Code are the two major laws prohibiting abortion in Nigeria. These laws sterns/draws from several background such as religious and traditional¹⁰. Abortion should be legalized without restriction. This work defines abortion and

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¹ CAP P3 LFN 2004 Penal code (Northern Nigeria states) Federal Provisions Act; CAP 38, LFN (2004) Criminal Code ss. 228 & 229; Abortion in Nigeria/Gutmarcher Institute <<https://www.guthmacher.org/fact-sheet/abortion-Nigeria>> accessed 22nd February 2021.

² Isabella Okagbue, 'Pregnancy Termination and the Law in Nigeria', <<https://www.jstor.org/stable/1966614?seq=1>> accessed 22nd February 2021

³ Stanley Henshaw & others, 'Abortion is Common in Nigeria Despite Restrictive Laws' <<https://www.ipas.org/en/news/2015/november/abortion-is-common-in-nigeria-desite-restrictive-lawspx? = 1>> Accessed 20th February 2021

⁴ Ugoji Ebujo, 'Rape and Abortion and the Society' Vanguard Newspaper (June, 6 2015) <https://www.vanguardngr.com/2015/06/rape_and_abortion_and_the_society> accessed 20th February 2021

⁵ Abortion in Nigeria/Gutmarcher Institute (n.1)

⁶ History of Abortion <<https://www.feminist.com/resource/ourbodies/abortion.html>> accessed 22nd February 2021

⁷ Ibid

⁸ History of Abortion <https://prochoice.org/education_and_advocacy/about_abortion/history_of_abortion> accessed 20th February 2021

⁹ Ibid

¹⁰ Penal code s. 232-236 (n 1) ; Criminal Code Act 228-230, 309 (n 1)

examines the provisions of Penal and Criminal Code. It also discusses the matters arising which includes; unsafe abortion, social segregation from the society, forced marriages, Religion and Tradition etc. and makes recommendations that women whether married or unmarried be given right to abortion and contraceptives to help them prevent pregnancy.

2. Definition of Terms

Abortion

Medical Definition

The termination of pregnancy after, accompanied by, resulting in, or closely followed by the death of the embryo or foetus: (a) Spontaneous expulsion of a human foetus during the first 12 weeks of gestation; (b) Induced expulsion of a human foetus. It is arrest of development of an organ so that it remains imperfect¹¹.

Legal Definition

The termination of a pregnancy after, accompanied by, or closely followed by death of the embryo or foetus; especially: the medical procedure of inducing expulsion of human foetus to terminate a pregnancy¹². Oxford Dictionary defines abortion as the deliberate termination of a human pregnancy, most often performed during the first 28 week¹³. Unsafe Abortion – This is the type of abortion carried out when a person lacking in necessary skills terminates a pregnancy or when it is done in an environment without standard medical tools or both¹⁴. Generally, abortion is the intentional effort to stop the pregnancy before it gets to the age of fetal viability

3. Legal Framework on Abortion in Nigeria

Constitution

The most important tool or law for the protection of Human Rights in Nigeria is the constitution. It provides for rights which empower individuals to make decisions regarding their reproductive rights as to abortion. It also helps create economic and social conditions conducive to good sexual and reproductive health¹⁵. Unfortunately, there is nowhere abortion is mentioned in our constitution but it can be inferred in the following sections S.33 Right to life Ss.34,35,37 Right to dignity of Human Persons, Right to Personal liberty and Right to Private and family life respectively¹⁶. S.16 (1) (b) promotes the welfare of citizens, Ss.17 (13) (d) 17(3h) provides for, to ensure the health, safety and welfare of workers, to ensure for adequate medical facilities for all and promote family life respectively¹⁷. S12¹⁸ gives the power to domesticate international laws like African charter¹⁹.

Penal Code

S232 provides for punishment of 14 years imprisonment for any person who causes a woman to have miscarriage where such acts were not done in good faith to save the life of the woman. S.233 – provides for 14 years imprisonment for any person who does an act with the intent to cause miscarriage and causes the death of the woman. S.234 provides that; Any person who does an act unintentionally that causes miscarriage will be imprisoned for 3 years with or without fine, however if the act was done knowing that the woman was with a child, he shall be liable for five years imprisonment with or without a fine. S. 235 Any person who does an act with the intent to stop or prevent a child from being born alive or cause his death after his birth if not done to save his mother be imprisoned for 14 years with or without fine.²⁰

Criminal Code

S.228 Provides for 14 years imprisonment for any person who attempts to procure abortion by procuring miscarriage of a woman with or without a child by unlawfully administering or making her to take any poison or anything by force or any other means. S.229 any person who does anything to procure miscarriage to herself whether she is with or without a child is liable to 7 years imprisonment. S.230 is to the effect that any person who unlawfully supplies to or procures for any person knowing to be unlawfully used to procure miscarriage of woman whether with or without child is liable to imprisonment of 3 years. S. 297 where a person will not be able if he

¹¹ Merriam-Webster <<https://www.merriam-webster.com/dictionary/Abortion>> accessed 22nd February 2021

¹² Ibid

¹³ Oxford Dictionary Abortion-definition of Abortion in English <<https://en.oxforddictionary.com/definition/abortion>> accessed 20th February 2021

¹⁴ Ruth Choji, 'The Many Scourges of Unsafe Abortion' Leadership Newspaper (15th November, 2015) <<https://Leadership.ng/news/474720/The-many-scourges-of-unsafe-abortion>> accessed 20th February 2021.

¹⁵ Nigeria-Human Rights Matrix-Policy Project/futures Groups < www.policyproject.com/.../matrix > 2cm accessed 21st February 2021

¹⁶ Constitution of the Federal Republic of Nigeria, 1999 as (amended) CAP C 23 2004

¹⁷ Ibid

¹⁸ Ibid

¹⁹ African Charter of Human and Peoples Right on the Right of Women in Africa (Maputo Protocol) 2004

²⁰ CAP 345 LFN 1999; CAP P3 LFN 2004, Penal Code (Northern Nigeria states) Federal Provisions Act

does a surgical operation on a woman with reasonable care and skill for her benefit and causes the loss of the unborn child S.309 – A person is deemed to have killed a child where the child dies as a result of the consequences of an act done or omitted before or during the birth²¹

4. Legality of Abortion in Nigeria

Several persons have taken a stand to fight against abortion in Nigeria, but have paid little or no attention on abortion when faced with unwanted pregnancy²². These persons are moralist and Christian from Catholic churches who believe that life begins at conception, hence zygote has sanctity of life like every human and calls abortion destruction and murder²³. The modern fight to legalize abortion started in the 1960s, when Civil liberty group and women took to the streets in the US, some states started allowing for abortion but with conditions and restrictions to some circumstances like; when it has to do with rape and incest being under 15 years²⁴. These circumstances were expanded by New York City in 1970 when they allowed for abortion within 24weeks from last menstrual period (LMP) and Feminist Network offered support to women who could not afford it²⁵. By 1973 US Supreme Court legalized abortion when it held that the right to private liberty encompasses a woman's right to decide whether or not to terminate her pregnancy, holding that, after the period of trimester only a woman and her doctor has right to terminate her pregnancy²⁶. In Nigeria, given the high poverty rates and the high maternal mortality rates, thousands of women who get pregnant do not want the pregnancy and children as it is not in their best interest²⁷. In 2010, Dr. Obasanjo Bello, The Chairman, Senate Committee on Health reports that Nigeria records about 500,000 abortions every year²⁸ and most of these abortions are unsafe because they are done clandestinely by unskilled providers²⁹. Studies have shown that more than a million abortion were performed in 2012 which are major contributor to mortality rate³⁰. In some societies like the US and South Africa, the right of a woman to abortion is a reproductive Right³¹, however, it is not so in Nigeria, as several factors like; culture, religion would not allow the Nigerian government to give it a thought. The legality of abortion in Nigeria is restrictive and conditional as the combine effect of all the laws (penal and criminal code) that allows for abortion is only to the extent of saving the life of the woman³². Generally, in Nigeria, under the penal code, a woman must be pregnant for the crime of abortion to be committed, while under the criminal code, the crime of abortion only requires intent to commit the act³³.

Reasons for Abortion

There are several reasons people indulge in abortion, however, this paper argues that amongst others, people indulge in abortion because of; (i) Poverty, senseless death, high cost of having a child, tradition and religion; ³⁴ (ii) They don't want more children, the mother is not ready to have a child, they don't want people to know they are pregnant, that is, shame of pregnancy, problems with foetus³⁵ etc It is argued that every woman should have right to abortion without restrictions; it should be a right accruable by birth. The constitution of Nigeria recognises that the right to abortion is a Human Right that Nigerian women deserves and has³⁶ as it is in the best interest of the woman and her family to help her prevent an unwanted pregnancy³⁷. Women should be free to decide when to be mothers, as child bearing is too emotional and too tasking to be imposed and foisted on the unwilling woman³⁸. The fight to legalise abortion will continue being in the increased in Nigeria, as no one can stop it until is gotten because of the lack of access and use contraceptives in Nigeria. This lack of access and inefficient use of contraceptives denotes that Nigerians will be left with abortion as an only option since they do not intend to have the children. Studies have revealed that 14% of all women between 15- 49 years in Nigeria have an unmet need for family planning, mostly when they are sexually active and want to space their births or stop child bearing³⁹.

²¹ Criminal Code CAP C. 38 LFN (2004)

²² Ugoji (n.4)

²³ Ibid

²⁴ History of Abortion (n.6)

²⁵ Ibid

²⁶ ROE V WADE (1973) 410 U.S. 113; (n 3)

²⁷ The Case of Legal Abortion in Nigeria <<https://Nigerianstalk.org/2013/01/22>> Accessed 22nd February 2021

²⁸ Ibid

²⁹ Gutmarcher Institute (n 5)

³⁰ Ibid

³¹ (n.26)

³² Penal code (n.20) ; Criminal Code (n 21)

³³ Ibid; Emmanuel Olawuyi Fakayode, 'The Nigerian Criminal Code Companion' 391 64(1997) in 'Women of the World Laws and Policies affecting their Reproductive lives'(6th June 1997) Centre for Reproductive Right (c) 2003 Centre for Reproductive Rights <www.reproductiverights.org> accessed 24th March 2021

³⁴ (n.28)

³⁵ (n.14)

³⁶ (n.16), Ss.33, 37 17(3)(c), 17(3)(d) 17(3)(h) CFRN 1999

³⁷ Ibid

³⁸ (n.23)

³⁹ (n.29)

The legality of abortion in Nigeria came to lime mark in 1981 when gynaecology and obstetrics sponsored termination of pregnancy bill in the House of Representative, although, the bill failed because Pressure groups lobbied against it⁴⁰ because of their cultural, religious, social background.

This work argues that abortion should be legalized to allow women free access to good medical care. That, the fear of what the enforcement agencies would do to women, ladies and practitioners when caught doing abortion have made them to patronise quack, consequently endangering their lives. This work argues that the anti-abortion laws or restrictive laws on abortion encourages unsafe abortion as it forces women seek for clandestine abortion from unskilled and untrained personnel or quacks and puts women and girls in harm⁴¹. A review of our laws to allow for abortion will help to give proper health service delivery to those in need, as criminalization will help to drive our girls to quacks, thereby, endangering their lives⁴². The importance of legalizing abortion cannot be overemphasized as no anti-abortionist can stand or allow any of their wards the troubles, shame, depression, pains and loneliness that comes as a result of pregnancy from a militant, Boko Haramist, armed robber, rapist damaging to the patients mental or physical health. Legalizing abortion saves the lives of women because, it will prevent them from visiting clandestine or quacks practitioners. Studies in South Africa have shown that by 2002, six years after legalizing abortion, death due to abortion reduced by at least 50% and problems associated with post abortion fell dramatically⁴³. It is better to legalise abortion as it does and will do Nigerians more good than harm. More importantly as its illegality is an infringement on the right of Nigerians. I advise that anti-abortionist most soberly reflect on the moral justification and position.

5. Matters Arising

Abortion is now a contemporary issue in Nigeria commonly and regularly performed every day⁴⁴. Abortion has raised and is currently raising a lot of issues to be discussed in Nigeria. Abortion has caused and is causing many Nigerian women to engage in all sorts of unprofessional and untraditional practices (self induce drugs, use of hot waters, taking of high percentages of alcoholic drinks etc) to terminate pregnancies. These women engage in these practices mainly to shy away or avoid the wrath of the law when caught indulging in abortion. As a result of the above, it has raised a lot issues. This work addresses or discusses these issues as matters arising from the illegality of abortion. They include; **Unsafe Abortion** –This is the major contributor to the country’s high level of cost of abortions, maternal death, ill health and disabilities of economic burden⁴⁵ and it comes as a result of the illegality of abortion in Nigeria whereby pregnant ladies or women patronizing unqualified medical personal who uses unhealthy medical utensils to terminate pregnancy . It is now known facts that unsafe abortion is dangerous and results to pain, shame, insult, hostility of practitioners, prevalence of illegal abortion, sterility, emotional stress, infections and bleeding to more serious conditions like sepsis, pelvic infections and injury from instruments and even death⁴⁶ The death toll caused by unsafe abortion in Nigeria has risen to 34,000 every year⁴⁷, according to Chidi Esike 50% women die yearly in Nigeria as a result of complication caused by unsafe abortion⁴⁸. World Health Organisation WHO reports that a woman dies in every 8 minutes in developing nations as a result of complication from an unsafe abortion⁴⁹. In 2008, Nigerian Society of Gynaecology and Obstetrics reports that 11% of maternal deaths are caused by unsafe abortion⁵⁰. In 2012, about 285,000 women had complications from unsafe abortion because they couldn’t get the required treatment needed from health facilities as a result of the illegality of abortion, while 212,000 were treated in health facilities for complication induced abortion⁵¹. Unsafe abortion will lead to perforation in the womb that will cause too much bleeding that may eventually lead to death as a result of patronage of quack doctors or abortionist because abortion is illegal⁵² A country where abortion is legalized also experience reduction of crime because people no longer have unwanted children, destitute and the number of children that are put up for adoption are reduced. This is explained in this principle of less people less crime as abortion lowers and gives sustainable population growth⁵³. This principle of unsafe abortion also

⁴⁰ Okabue (n.1)

⁴¹(n.34)

⁴²Ibid

⁴³ (n.31) ; Susan Acolian, Facts and Consequences Legality, Incidence and Safety of Abortion Worldwide/GuthMacherInstitute <[http://www.Guthmacher.org/gpr/2009/n/facts_and_consequences_legality_incidence_and_safety_of_abortion\)worldwide](http://www.Guthmacher.org/gpr/2009/n/facts_and_consequences_legality_incidence_and_safety_of_abortion)worldwide)> accessed 22nd February 2021

⁴⁴(n.1)

⁴⁵ (n.29); Choji (n.14)

⁴⁶ Ibid 29; (n.24)

⁴⁷(n.45) ; (n 14)

⁴⁸Ifejeh Martins, ‘Unsafe Abortion and Maternal Deaths in Nigeria’ cited in This Day Newspaper (14th July, 2016) <http://www.thisdaylive.com/index.php/2016/07/14/unsafe_abortion_and_maternal_death_in_Nigeria> accessed 26th March 2021.

⁴⁹(n.47)

⁵⁰ ‘Abortions Laws Around the World’ Pew Research Centre 30th September 2008<<http://www.pewform.org/2008/09/30/abortion-laws-around-the-world/>. Accessed 26th March 2021

⁵¹ (n.46)(fast sheet)

⁵²(n.48)

⁵³<[http://www.larangode/viagiator.info/2008/7/legalizing_abortion\)has_positive_consequences_to_reducing_crime](http://www.larangode/viagiator.info/2008/7/legalizing_abortion)has_positive_consequences_to_reducing_crime)> Accessed 26thMarch. 2021

entails self-induced abortion like taking drugs by oneself. In 1996, survey of 67 health professionals from two-third of Nigeria shows that women of all socio-economic level obtained induced abortion and only one-third of them obtained it from a physician. One quarter goes to a nurse or mid-wife, while half of them use traditional providers, who have no formal medical training or takes drugs obtained from the counter⁵⁴. Generally speaking, apart from death, unsafe abortion can also lead to: Significant short- and long-term illness and injury to women, high costs for treating complications, negative impacts on women, their families and the society at large and increased likelihood of death among children whose mother has died.

Maternal Mortality-This is majorly caused by excessive bleeding that usually leads to death or kidney failure⁵⁵. It also leads to feta parts remaining in the womb which may lead to serious ill health and possible death.

Infection –This principally deals with the drive of women patronizing quack medical practitioners in an unsafe environment, using unsafe and unsterilized instrument and even visiting and allowing quacks, lack of medical trained personnel for abortion.

Forced marriages –when young single girls get pregnant, because of the ban and illegality of abortion, they are forced to go into marriages with the men that have impregnated them even though they do not naturally love the men or ready to go into marriage.

Social segregation from the societies –The inabilities of a pregnant woman or girl to legally abort her unwanted pregnancy generally puts her off her peers and society as she will be shy to freely communicate with them. Conversely her friends will withdraw from her. This makes the person to be depressed, lonely, angry etc thereby withdrawing from the society.

Religion- this is a stumbling block to the legalizing abortion in Nigeria, this is because of the overwhelming believe of two sects of religion in Nigeria majorly Islam and Catholic Church which sees abortion as murder. Legalizing abortion will help to protect a woman's health, checkmate family size and prevents complication arising from unwanted pregnancy⁵⁶. It will give women rights and powers to make their decision with or without barriers⁵⁷.

6. Conclusion and Recommendations

This work is generally geared towards putting more emphasis and encouraging the legality of abortion in Nigeria. The issue of abortion has several comments from all works of life and dominant amongst these comments are arguments for and its legality. This work defines abortion and states that in Nigeria abortion is illegal unless carried out to save the life of the woman. It also states that the history of legalising abortion dates back to the adoption of the US constitution, while the major trend for the legality of abortion stems from the ROE V WADE in 1973 US. The fight for the legality of abortion in Nigeria started with the sponsorship of a failed bill by the Society for Gynaecology and Obstetrics. Most persons who have been at the front burner fighting abortion have not paid attention to the effects of not aborting a pregnancy arising from rape or unwanted pregnancy, where couples want to space their child bearing or who cannot afford to have a child at that moment or life threatening issues from ectopic pregnancy. This work has discussed the issue of problems associated with illegalising abortion, that is, matters arising, which includes: unsafe abortion, which is the major contributor to maternal death, ill health and disability as a result of pain, bleeding etc, forced marriages, religion and social segregation. This work amongst others recommends and argues that the way forward is that abortion is legalized and its funds be subsidized. There should be training and retraining of health personnel to provide abortion and prompt care for women suffering from unsafe abortion procedure. Civil Liberty group in Nigeria in conjunction with Nigerian Society Gynaecology and Obstetrics and feminist should take this fight serious by campaigning on all media and platforms and sponsoring a bill to legalise abortion. Abortion should be legalized irrespective of religions, traditional or societal believes as it gives the Nigerian woman the right to best interest of her health, wealth and life. To reduce the rate of abortion, Nigeria must give all women the right and access to the range of sexual reproductive health services and education as inefficient health services or system is a major bane to Nigerians. There should be provision for right to contraceptives and more contraceptives for both married and unmarried women so that any of them who; do not want more children, or wants to space their children would access them and would not see abortion as an option. There should be provision and expansion of post abortion care service unit to help women to prevent and avoid disability and death Training and retraining of health personnel to provide abortion and prompt care for women suffering from unsafe abortion procedure. State should fund or subsidize abortion. There should be provision of medical facilities and abortion providers to the rural communities

⁵⁴ Nigerian Health Professional Perception about Abortion Practice, JSTOR < <http://www.jstor.org/stable/2950839> > accessed 26th, March 2021.

⁵⁵(n.46)

⁵⁶Pros and Cons of Abortion 'What Are the Advantages and Disadvantages of Abortion' <<https://www.simpleremedies.com/health-tips-3/pros-and-cons-of-abortion>> Accessed 26th March,

⁵⁶<http://www.larangode/viagiator.info/2008/7/legalizing_abortionhas_positive_consequences_to_reducing_crime> Accessed 26thMarch. 2021

⁵⁶ Nigerian Health Professional Perception about Abortion Practice, JSTOR <<http://www.jstor.org/stable/2950839>> accessed 26th, March 2021.

⁵⁶(n.46)

⁵⁶ Pros and Cons of Abortion: What Are the Advantages and Disadvantages of Abortion <<https://www.simpleremedies.com/health-tips-3/pros-and-cons-of-abortion2021>>

⁵⁷ Advantages and Disadvantages Tables in GCSE Religious studies <<https://getrevising.co.uk/grids/religious-education>> Accessed 26th March, 2021