

## Could Termination of Pregnancy Become a Criminal Act

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### ABSTRACT

According to the data presented in the paper “Unsafe Abortion: Unnecessary Maternal Mortality,” termination of pregnancy is a serious global health problem because a large number of women, when unplanned pregnancy occurs, decide on abortion. How serious a problem is, numbers are proven: in unplanned pregnancies, 42 million women are opting for abortion, and 20 million of abortions are unsafe because a large number of women die and a large number of women have persistent health consequences. On the question „Could the termination of pregnancy become a criminal act“, answer will try to give this paper.

### KEYWORDS

Termination of Pregnancy; Abortion; Criminal Act.

### INTRODUCTION

Every year, worldwide, about 42 million women with unintended pregnancies choose abortion, and nearly half of these procedures, 20 million, are unsafe [1]. Some 68,000 women die of unsafe abortion annually, making it one of the leading causes of maternal mortality (13%). Of the women who survive unsafe abortion, 5 million will suffer long-term health complications. Unsafe abortion is thus a pressing issue. Both of the primary methods for preventing unsafe abortion—less restrictive abortion laws and greater contraceptive use—face social, religious, and political obstacles, particularly in developing nations, where most unsafe abortions (97%) occur. Even where these obstacles are overcome, women and health care providers need to be educated about contraception and the availability of legal and safe abortion, and women need better access to safe abortion and post-abortion services. Otherwise, desperate women, facing the financial burdens and social stigma of unintended pregnancy and believing they have no other option, will continue to risk their lives by undergoing unsafe abortions.

### PREGNANCY

Most particularly, women who are pregnant are generally expected to act in ways that help, or at least do not harm, the embryo or foetus they are carrying, in the same way as

it is anticipated that they will behave responsibly, conscientiously and for the welfare of born children [2]. It is, of course, not necessary to conceptualise the woman as being in some form of conflict with her foetus, and most women will do everything in their power to ensure that their future child has the best possible start in life. This holds true even if it means making personal sacrifices. For example, so many products in daily life are now known to be potentially harmful to the developing embryo that women will give them up; alcohol, cigarettes, even caffeine may all harm the embryo and are often willingly sacrificed by women when they become pregnant – sometimes even beforehand. Yet, on a liberal account, the woman is, and should be, entitled to make the opposite choice. While some commentators have proposed that once a woman decides to carry a pregnancy to term she must accept certain constraints on her personal freedom, the liberal account would dispute this, arguing that what matters is that the individual woman is competent and making autonomous decisions; the consequences of these decisions are not relevant unless they harm others, a group to which non-persons arguably do not obviously belong.

Abuse is a destructive, undesirable and complex reality that no one should advocate on behalf of anything [3]. The most striking conflicts appear to be the contraposition of a woman's

right to abortion with the right of the unborn child to be born. This results in two basic problems. First of all, the question arises when life begins, and the second is whether there is no question of legal status of the unborn child before the status of a woman's right over the life of the unborn child. The complexity of (legal) abortion issues is evident through various issues such as abortion of a minor, eugenic abortion, mother's information and consent, father's rights, etc.

Almost every abortion death and disability could be prevented through sexuality education, use of effective contraception, provision of safe, legal induced abortion, and timely care for complications.

Unsafe abortion occurs when a pregnancy is terminated either by persons lacking the necessary skills or in an environment that does not conform to minimal medical standards, or both.

### Medical terminology

In non-medical circles, the term 'abortion' is usually used to refer to the termination of an early pregnancy by artificial means whereas 'miscarriage' is used for those pregnancy losses occurring because of natural events [4]. The medical term for both of these is an 'abortion', the definition of which is the termination of a pregnancy before 28 weeks (note that there is no mention of the cause); 'miscarriage' has no medical definition. This difference in the use of the same word may give rise to confusion. A woman who is already distressed by the loss of a wanted pregnancy may be angered to discover that the medical records describe her as having had an abortion and she may, incorrectly, assume that this implies that she chose to rid herself of the pregnancy. Her anger may cause her to seek legal advice and it is important that her advisers are able to explain the true interpretation.

An abortion may be classified by cause (spontaneous or induced), infection (septic or non-septic), stage (threatened, inevitable, complete or missed) or occurrence (isolated or recurrent). Unfortunately, matters are complicated by the fact that these groups are not mutually exclusive so that, for example, an induced abortion may or may not be infected and may have proceeded to any stage.

### Termination of pregnancy

In many jurisdictions, abortion has been, or continues to be, prohibited unless legal exceptions apply [5]. A notable exception to this approach can be found in the United States, where women have a constitutional right to privacy that encompasses the right to terminate a pregnancy (at least until viability, when the state's interest becomes compelling). However, in many jurisdictions where no such right is recognized, lawful abortion has historically been tethered to assessments of the danger posed by the pregnancy to the life or health of the

woman. Although this "maternal health" exception has been interpreted as broad enough to encompass abortion for serious fetal abnormalities, some jurisdictions have created a distinct exception to permit abortion to avoid the risk of "serious handicap." The impetus for such an exception has resulted from the tremendous recent advances in prenatal diagnosis. Although such advances have enabled these abortions to take place earlier in pregnancy, they have also enabled doctors to detect serious conditions only diagnosable later in pregnancy. Because these abortions sometimes occur after viability, arguments about "serious handicap" as a regulatory concept tend to converge upon arguments about the status of the fetus as birth approaches.

The purpose of pre-natal diagnosis is to discover as much as possible about the unborn child and, in particular, to detect any abnormality or illness [6]. Once a diagnosis has been made and with due recognition of any potential limitations on the accuracy of diagnosis, the information may be used in one of the following ways:

- It may be used as a reason for abortion;
- It may indicate the need for treatment, either in utero or immediately after birth;
- It may identify an indication for pre-term delivery or delivery in an environment where special facilities are available;
- It may be used to prepare the parents or the staff involved for an adverse outcome, although nothing can be done to alter this or a decision has been made not to alter this.

The consequences of failure to make a pre-natal diagnosis may be a complaint or legal action under any of the following headings. Parents may claim that, if they knew of a fetal abnormality in advance, they may have sought a pregnancy termination. The parents or the child may claim that a failure to treat in utero or immediately after birth might have led to permanent damage or handicap that, otherwise, could have been avoided. Finally, the parents may claim that they had a right to know the abnormal results of tests taken antenatally, so that they could prepare themselves for a baby with an impairment or abnormality.

The women who need help to find funding are primarily those of limited means financially, educationally, and emotionally [7]. They are often single parents and women who are struggling to make ends meet, living paycheck to paycheck. Regardless of why a woman is choosing to have an abortion, having to seek out financial assistance is a humbling experience. Many women wait to have an abortion because either they are not aware that funding exists or they are trying to raise the funds themselves. Yet every week a woman waits, she is aware the pregnancy is growing and developing, which adds to her emo-

tional stress. Many women unwittingly wait too long to find help and either have higher fees or are no longer able to have abortions due to the longer gestation of the pregnancy.

Legally induced abortion represents a medical service that, for example, in the Republic of Croatia provides in health institutions within the national public health system, and in private medical institutions which provide their services on the market of medical services. Whether there is a medical institution of the state system or a private institution, the cost of a medical procedure abortions are not covered by health insurance, but they should be paid from personal funds. This fact clearly shows that this is a medical service that was provided to women for financial compensation and therefore falls within the scope of legislation regulating relations in the market.

### Intentional termination of pregnancy

Intentional termination of pregnancy, abortion, lat. Abortion artificialis, not necessarily always associated with unplanned pregnancy [8]. Many women became pregnant unplanned, but after a short deliberation still decide to keep the baby. In these cases, somewhat extent will change life's priorities, every days business schedule and after giving birth will definitely decide whether to keep the baby or put up for adoption. A number of women who unexpectedly carried away, however, will decide on abortion. Reasons why women decide to have an abortion is a lot. Sometimes its education that is underway, sometimes partner whom are women still not seen as the father of their child, sometimes heavy financial or family situation. More recently, and increasingly, women choose to abort the pregnancy and for fear of losing their jobs.

### Legal assumptions for abortion

The Act on health measures for the realization of the right to free decision-making on childbirth [9] is a law that in the Republic of Croatia allows women and men to become parents. The right of a man to decide freely on childbirth can be limited only to protect the health, under the terms and in the manner determined by that law. Because of its legal nature, for that law we can said to represent a good starting point when considering the termination of pregnancy.

Abortion is a medical procedure. Abortion can be made until the expiry of ten weeks from the date of conception. After the expiry of ten weeks from the date of conception, abortion may be performed only under the conditions and according to the procedure established by law. Abortion should not be performed when it is determined that the weight could impair the health of women.

Abortion is done at the request of the pregnant woman. Along with the request for termination of pregnancy submitted by a minor, who has not reached 16 years of age, is required and

the consent of a parent or guardian with the consent of the guardianship.

Pregnant woman addresses with a request for termination of pregnancy Health organization that performing an abortion, according to their choice. If the conditions for termination of pregnancy pregnant women referred to a doctor who performs abortions.

After the expiry of ten weeks from the date of conception, may be granted termination of pregnancy, with the consent or at the request of the pregnant woman, in the cases:

- when on the basis of medical indications that otherwise cannot save lives or eliminate impairment of health of women during pregnancy, childbirth or after childbirth;
- when based on medical indications and findings of medical science can expect that child will be born with severe congenital physical or mental defects;
- when conception occurred in connection of rape, sexual intercourse with a helpless person, sexual intercourse by abuse of position, sexual intercourse with the child or incest.

A process according to claim for pregnancy is urgent. Pregnant women because abortion can pay hospitals and other licensed health care facilities.

### Illegal termination of pregnancy

Criminal laws in states around the world are considering this extremely important question. For example, illegal abortion is a crime which is described in Article 115 of the Croatian Criminal code [10]:

(1) Whoever, contrary to regulations on abortion, a pregnant person executed encourage it or assists a termination of pregnancy with her consent, shall be punished by imprisonment of up to three years.

(2) If the crime referred to in paragraph 1 of this Article caused death of a pregnant person or his health is severely damaged, shall be punished by imprisonment for one to ten years.

(3) If a pregnant person without her consent perform abortions, shall be punished by imprisonment for one to eight years.

(4) If the crime referred to in paragraph 3 of this Article caused death of a pregnant person or his health is severely damaged, shall be punished by imprisonment of three to fifteen years.

(5) The attempt of the crime referred to in paragraph 1 of this Article shall be punished.

The crime of illegal abortion, protect directly the body of pregnant women [11]. This protection is established indirectly unborn fetus as a human being. Abortion is any discharge or separation of the fetus from the uterus of a woman before the birth process.

Termination of pregnancy (abortion) can be seen as legal or medical phenomenon. Medically, abortion is the termination of pregnancy at the time when the fetus is not viable outside of the uterus.

The basic work has three forms: execution, initiating execution or helping the execution of abortion with the consent of women contrary to regulations on abortion. Consent should be expressed in full awareness, voluntary, without the use of force or threats. A woman needs to be able to consent.

An important feature of normative meaning is treatment contrary to regulations, which in some cases permit abortion. Cases in which an abortion are provided based on specific indication or reason to allow abortions.

Starting abortions has actually attempted criminal act. However, the law provides for it as a completed criminal act. This means that the work completed even though the result is not damaged or destroyed. Helping the abortion is equated with the execution of abortion.

Perpetrator may be any person, but in practice, most often health care workers. For guilt is necessary awareness of unlawfulness, which means that the perpetrator must be aware that it violates the regulations governing the termination of pregnancy.

## CONCLUSION

As it apparently from this paper, termination of pregnancy is a serious global health problem. 20 million of abortions performed are insecure because a large number of women die and a large number of women remain enduring health consequences. In the world exist legislations in which termination of pregnancy is prohibited, but also exist legislations which allows termination of pregnancy without any consequences. In this paper, it is briefly described how the problem of termination of pregnancy is solved in the Republic of Croatia because such and similar examples exist elsewhere in the world. In the event of a pregnancy termination, unwanted consequences can happen, and when they can happen, the question of legal responsibility is arises. When viewed all legal and medical

facts, the termination of pregnancy can result with the existence of a criminal act.

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## Nomenclature:

NN = National Newspaper