

A brief history of abortion law medical essay

[Law](#)



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The legal framework afforded to abortion is the very foundation of its good or bad functioning. Laws found to be archaic have seen to be having no place in many countries and have thus faced an evolution.

1. 1 Abortion laws

1. 1. 1 United States of America

1. 1. 1. 1 A brief history of abortion
In 1800, there was not a single abortion statute in America (Rose, 2008). In 1973, the U. S. Supreme Court in two cases (Roe v. Wade and Doe v. Bolton) decriminalized abortion nationwide. Abortions could still be banned after viability—with exceptions to protect a woman's life and health (Kaiser 2002, page 1). Abortion law in the United States is currently governed by Planned Parenthood of Southeastern Pennsylvania v. Casey , 29 June 1992. The Casey ruling left no doubt that laws prohibiting abortion were unconstitutional. Following the Casey decision, abortion restrictions in the United States continue to vary by state (United Nations 2002). 1. 1. 1. 2 The current policy framework in USA

1. 1. 2. 1 " Partial-birth Abortion" Bans
In 2007, in the case Gonzales v. Carhart, the Supreme Court upheld a ban on partial-birth abortion . This was a significant departure from earlier abortion rulings (Maschi. et al. (2013 cited Pew Research Center 2013)). In USA, 19 states have laws banning " partial-birth" abortion (Guttmacher 2013). 1. 1. 1. 2. 2 Ultrasound laws
In Casey 1992, the supreme court upheld a state regulation requiring patients to give " informed consent" at least 24 hours before having an abortion. The new ultrasound laws also required women to first undergo a trans-vaginal ultrasound procedure before abortion; therefore led to a more demanding consent (Maschi. et al. (2013 cited Pew Research Center 2013)). 1. 1. 1. 2. 3 "

Fetal Pain" Laws Nine states have put in place laws prohibiting abortions after 20 weeks and for some countries it is earlier. These laws are backed by the reasoning that a fetus, carried for more than 20 weeks, can experience pain from an abortion procedure and so is to be prohibited (Maschi. et al. (2013 cited Pew Research Center 2013)).

1. 1. 1. 2. 4 " Born-Alive Infants Protection Act" According to " Born-Alive Infants Protection Act" (HR 2175) contains measures to give federal rights to a human fetus " born alive" at any stage of development. Any " live birth" that might occur during an attempted abortion is explicitly included (Maschi. et al. (2013 cited Pew Research Center 2013)).

1. 1. 1. 3 The other conditions

1. 1. 1. 3. 1 Physician and Hospital Requirements In USA the majority of States require that a licensed physician carry out abortions while other states require an abortion to be performed in a hospital before a specified point in the pregnancy, and lastly some require the involvement of a second physician after a specified point (Guttmacher 2013).

1. 1. 1. 3. 2 Gestational Limits 41 states prohibit abortions, after a specified point in pregnancy, most often fetal viability. However an exception to this is where the abortion is necessary to protect the woman's life or health (Guttmacher 2013).

1. 1. 1. 3. 3 Waiting Periods Some 26 states require women to wait, usually 24 hours, between when she receives counseling and the procedure is performed (Guttmacher 2013).

1. 1. 1. 3. 4 Parental Involvement Most States require parental intervention concerning a minor's decision to have an abortion. In some states one or both parents need to consent to the procedure while in others one or both parents must be notified and at last some requires both

parental consent and notification (Guttmacher 2013). 1. 1. 1. 3. 5 The grounds on which abortion is permitted Grounds Permitted To save the life of the woman Yes To preserve physical health Yes To preserve mental health Yes Rape or incest Yes Fetal impairment Yes Economic or social reasons Yes Available on request Yes (United Nations 2002)

1. 1. 2 France

1. 1. 2. 1 A brief history of abortion Abortion has been a crime in France at least since the eighteenth century. Under Article 317 of the French Penal Code of 1810, both a woman and her abortionist could be imprisoned for long periods (Dorothy 1986, pg 278). In 1975, the Law No. 75-17 relaxed the abortion law of France. This law is commonly known as " La Loi Veil" and is still the applicable law in France (United Nations 2002). The law of 4 July 2001 extends the period permissible for abortions from 10 to 12 weeks of pregnancy. The new law also allows a pregnant girl under the age of 16 to ask for an abortion without consulting her parents first but has to be accompanied by an adult (Direction générale de la Santé 2007, pg 2). 1. 1. 2. 2 The conditions for an abortion in France 1. 1. 2. 2. 1 A pregnancy that places a woman in a situation of distress. Article L. 2212-1 of the ' Code de la santé publique' allows any pregnant woman who feels a situation of distress to ask a doctor terminate her pregnancy, whether major or minor. Only the concerned woman can apply. (Direction générale de la Santé 2007, pg 2) 1. 1. 2. 2. 2 The termination must be before the twelfth week of pregnancy or before the end of the fourteenth week after the last menstrual period Termination of pregnancy (IVG) is legal in France up to 12-weeks after conception. There is one week period of compulsory " reflection" prior to

termination, except in an urgent case where this can be reduced to two days. (Direction générale de la Santé 2007, pg 2)Minors (girls under 18 years of age) and unmarried women must meet with a counselor during the week prior to the process and in the days immediately after. (Direction générale de la Santé 2007, pg 5)1. 1. 2. 2. 3 Article L. 162 of the ' Code de la santé publique'Article 162-4: " A voluntary termination of pregnancy may be performed only by a physician. The procedure may be carried out only in a public hospital establishment or in a private hospital establishment conforming to the provisions of Article L. 176 (Code de la Santé Publique)." Abortions performed by the surgical technique are exclusively carried out in a health centre (hospital, clinic). The medical abortions are performed by either a Health centre, or the cabinet of a doctor. Article L. 162-3. provides that a physician who has been approached by a woman with a view to the termination of her pregnancy is required from the time of her first visit, to inform her of the medical risks to herself and to her future maternity, and of the biological seriousness of the operation requested by her. 1. 1. 2. 2. 4 Article L. 162-12A Voluntary termination of pregnancy may also be performed on therapeutic grounds. According to article L. 162-12 such terminations may be performed at any stage of gestation if two physicians certify, after an examination and discussion, that the continuation of the pregnancy is seriously endangering the woman's health or that there is a strong possibility that the unborn child is suffering from a particularly serious disease or condition considered as incurable at the time of the diagnosis. 1. 1. 2. 2. 5 The grounds on which abortion is permitted

Grounds

Permitted

To save the life of the woman
 Yes
 To preserve physical health
 Yes
 To preserve mental health
 Yes
 Rape or incest
 Yes
 Fetal impairment
 Yes
 Economic or social reasons
 Yes
 Available on request
 Yes
 (United Nations, 2002)

1. 1. 3 Mauritius

1. 1. 3. 1 A brief history of abortion
 Abortion was illegal in Mauritius under the Penal Code 1838. Nonetheless, under general criminal law principles of necessity, an abortion may be performed to save the life of the pregnant woman. As a result of the educational campaigns conducted by the Government and the MFPA, the population of Mauritius has increasingly accepted contraception for limiting births and therefore tackled the issue of unsafe abortion in 1993 (United Nations 2002).

1. 1. 3. 2 Legal framework in Mauritius
 The recent amendment of the Criminal code Act 1838 has for effect to allow a pregnant woman to terminate the pregnancy. Such termination can, however, be carried out under the following circumstances, according to section 235A (2) of Penal Code 1838 which deals with authorised termination of pregnancy (Criminal Code Act 1838 Act 6/1838).

Ground
 Permitted
 To save the life of the woman
 Yes
 To preserve physical and mental health
 Yes
 Rape or incest or sexual relations with minors
 [1]
 Yes
 Foetal impairment
 Yes
 Moreover, Section 235A also requires that the person providing treatment to terminate a pregnancy must be a specialist in obstetrics and gynaecology and should be providing the treatment in a prescribed institution. The actual prescribed institutions, that is, an institution where abortion can be carried out under the authorization of the Ministry of Health, are the 5 regional hospitals and

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some private clinics(Criminal Code Act 1838 Act 6/1838). The specialist may only provide treatment to terminate a pregnancy where another specialist in obstetrics and gynecology and other specialist in the relevant field share his opinion, formed in good faith that it is a genuine case falling under Sect 235A (2)[2](Criminal Code Act 1838 Act 6/1838). The pregnant woman must consent to this abortion, and if a minor must have the consent of parents, and must also be advised by a psychologist who will closely supervise the woman after the operation (Criminal Code Act 1838 Act 6/1838). On the other hand Sect 235 of the act provides for unlawful terminations of pregnancies except for those provide at section 235A. The sentence is 10 years penal servitude for a person who procures or attempt to procure the miscarriage of a woman and same for a woman who procures her own miscarriage (Criminal Code Act 1838 Act 6/1838).

1. 2 Different consequences of abortion legalization

Abortion laws put in place cannot be put on test unless measured by the consequences brought or to be brought by.

1. 2. 1 Its consequence on health

A first perspective of the consequence following legalization of abortion resides over whether having the procedure results in health consequences. In the case of abortion, there are two separate schools of thought. People on both sides of the issue have formed opinions based backed by the most persuading scientific evidence. Many pro-life supporters are firmly convinced there are dramatic consequences of abortion. Many of the complications they mention can and do happen, but they are rare (Lanier, 2009). Pro-choice advocates insist abortion is safe. This is generally the case. However, <https://assignbuster.com/a-brief-history-of-abortion-law-medical-essay/>

it happens that practitioners downplay possible complications or fail to provide adequate information about what happens during the procedure. Women who inquire about the foetus or how much discomfort they can expect, may be given incomplete or false information. Sometimes this is an effort to spare the woman's feelings. In some cases, however, it is accomplished to make sure that the woman goes through the procedure (Lanier, 2009).

1. 2. 2 Abortion Legalization and its impacts on Women's Rights

1. 2. 2. 1 Legal abortion strengthens women's rights Here Petchesky defends abortion as crucial to women's freedom and equality with men. Abortion in itself does not create reproductive freedom. It only makes the burdensome and fatalistic aspects of women's responsibility for pregnancy less total. It does not socialize that responsibility, empower a woman in her relations with men or society, or assure her of a liberated sexuality. It only allows her the space to move from one point in her life to the next, if she is a heterosexual woman; to navigate some of the more oppressive patriarchal and institutional forces that are beyond her control. Abortion is but one of many social conditions that encompass an economic and sexual self-determination. As such it is both minimal and indispensable (Petchesky (1990 cited Bender & Leone 1991, pg 178)). Abortion is a necessary, though far from sufficient, condition of women's essential right and need, not only for bodily health and self-determination, but also for control over their work, their sexuality, and their relations with others- including existing children. From this perspective, abortion conducted under safe, affordable, and stigma-free conditions is

neither a necessary evil nor a matter of private choice. Rather, it is a positive benefit that society has an obligation to provide for all who seek it, just as it provides education and health benefits (Petchesky (1990 cited Bender & Leone 1991, pg 179)).

1. 2. 2 Legal abortion exploits women

The opposing viewpoint has also been put forward that is abortion legalization does not strengthen a woman's right but in fact exploits a woman. The author Daphne de Jong is of the view that legal abortion has destroyed, rather than promoted, women's rights (Daphne de Jong (1976 cited Bender & Leone 1991, pg 183)). If women must submit to abortion to preserve their way of life or profession, their monetary or societal status, they are pandering to a system devised and run by men for male convenience. The politics of sexism are perpetrated by accommodating to expedient societal structures which decree that pregnancy is mismatched with other activities, and that the responsibility of children belong to a mother only (Daphne de Jong (1976 cited Bender & Leone 1991, pg 183)). Of all the things which are done to women to fit them into a society dominated by men, abortion is the most violent invasion of their physical and psychic integrity. It is a deeper and more destructive assault than rape, the culminating act of womb-envy and woman-hatred by the jealous male who resents the creative power of women. (Daphne de Jong (1976 cited Bender & Leone 1991, pg 183))

1. 2. 3 Its consequence on maternal mortality rate

1. 2. 3. 1 Is there a direct relationship between legalizing abortion and maternal mortality rates (MMR)? Maternal mortality refers to the death of a woman while pregnant or within forty-two days of termination of pregnancy from any cause related to or aggravated by the pregnancy or its

management. According to the United Nations Population Fund (UNFPA, 200d), more than 80% of maternal deaths arise from five direct causes: hemorrhage, sepsis (systemic infection), unsafe abortion, obstructed labour, or toxemia.[3] Contrary to what some organizations claim, there is no direct relationship between the legal status of abortion and maternal mortality rates (MMRs), or even between the legal status of abortion and rates of maternal death caused specifically by abortion (Minnesota Citizens Concerned for Life Global Outreach & National Right to Life Educational Trust Fund, 2012). That means that though abortion is legal, it does not decrease maternal mortality, that is, it does not reduce maternal deaths caused by abortion. According to estimates from WHO, UNICEF, UNFPA, and the World Bank, the four countries that decreased their Maternal Mortality rates the most between 1990 and 2008 are the Maldives, Romania, Iran and Bhutan. Three of these countries (excepting Romania) have maintained bans on abortion (Minnesota Citizens Concerned for Life Global Outreach & National Right to Life Educational Trust Fund 2012, pg 2). The two previous paragraphs are to demonstrate that there is no relationship between the legal status of abortion and MMRs. Conversely, South Africa legalized abortion on demand in 1997, has since then experienced increasing MMRs to the extent that it nearly doubled the rate of 1990 by being 410 in 2008. The MMR of Canada, which permits abortion on demand increased 94 percent from 1990 to 2008. (Minnesota Citizens Concerned for Life Global Outreach & National Right to Life Educational Trust Fund 2012, pg 3). To conclude, it seems that policies legalizing abortion have a negative effect in that it leads to higher MMRs. This example is taken as to show the extent to which

abortion may represent such substantial loss for the economy and thus deter the economy from progressing further.

1. 2. 4 Abortion legalization and its consequence on crime

According to Levitt and Dubner (2005), there was a substantial drop in crimes in the United States during the 1990s. Researchers realized that the result of the 1973 Roe v. Wade Supreme Court ruling triggered, in fact, the trend in low criminality, considering it gave women the choice of not having a child when they did not want the child. (European Journal of Social Sciences - Volume 27, Number 4 (2012)) Perhaps the earliest and most vocal critic of the Donohue and Levitt study who focused on its statistical defects is a writer and businessman Steve Sailer. He put a logical argument and says that, following the theory of Donohue and Levitt, those babies born soon after 1973, that is, soon after legalization of abortion, should have grown up to be especially law-abiding teens in the early '90s. However this was not really the case. Instead according to FBI statistics, the murder rate in 1993 for 14- to 17-year-olds (born in 1975-1979, where the peak number of abortions occurred) was a horrifying 3.6 times higher than that of the kids who were the same age in 1984 (who were born in the pre-legalization years of 1966-1970). (Sailer, 1999) Statistician David Murray (2001) confirmed that young males aged between 17 to 25 commit the majority of crimes. So, if abortion had reduced crime, the crime rates in the United States would have dropped first among young people. They did not. Instead, the number of crimes committed by older people dropped first. Nearly 60% of the decline in murder since 1990 involved killers aged 25 and older and they were born before Roe v. Wade, that is, before the legalization (Ertelt, 2001). Murray

also found that other countries with high abortion rates showed a large increase in crime about eighteen years after they legalized abortion. For example, in Great Britain, which legalized abortion in 1968, violent crime has been rising steeply since about 1985. This is exactly when it should have been declining, according to the DonohueLevitt thesis. Additionally, Russia, with the highest abortion rate on earth, has experienced a great increase of every kind of violent crime following the breakup of the Soviet Union (Ertelt, 2001).