

Abortion and Nigeria's Abortion Provisions: An Evaluation

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Abstract

So much value is ascribed to human life. This is so because life is generally regarded as a precious gift to humanity, which should be cherished and protected, as failure to cherish and protect life will bring about the inevitable extinction of the entire human race. Abortion is one of the numerous contemporary issues that undermine the sanctity and value of human life; for it involves terminating a pregnancy by removing a fetus or embryo before it can survive independent of the uterus, or killing the fetus inside the uterus. The issue of abortion is highly controversial; for while some individuals permit it, some others condemn it totally, as evident in the 'pro-life' versus 'pro-choice' controversy. 'Pro-life' advocates condemn abortion because it is an outright disrespect for the dignity and value of human life, and hold that there should be sustained discussions on it, to expose its danger and fatal consequences. 'Pro-choice' advocates are simply indifferent to the issue of abortion; for them, getting involved in abortion is a matter of choice for an individual - that is, one is at liberty to accept or reject abortion

so that in the final analysis, abortion should not be an issue for discussion. This article explores several arguments and bioethical concerns on abortion, approaches to the issue of abortion, and Nigeria's abortion provisions, which are evident in the Criminal and Penal Codes, respectively. Ultimately, this article recommends that beyond merely stating punishments for those involved in abortion, the following should be done: (a) Correcting the disparity between the Criminal and Penal Codes by ensuring that both Codes have the same penalty stated, or completely reducing them into a single Code that will be applied across the country, (b) Modifying the Criminal and Penal Codes by including information that will serve the purpose of educating Nigerians on the bioethical issues associated with abortion, and (c) Designating a body charged with ensuring compliance with and implementation of the abortion laws.

Keywords: Abortion, bioethics, human life, pro-choice, pro-life, Nigeria.

Introduction

Of the numerous controversial issues discussed in ethics, abortion is arguably the foremost. Abortion is widely viewed as the murder of an unborn baby or child, the intentional (induced) or spontaneous termination or killing of a fetus to end a pregnancy. As characteristic of every controversial discourse in ethics, there are both positions for and against abortion. In other words, concerning the issue of abortion, scholars are divided into two camps; namely, 'pro-

life' and 'pro-choice.' While 'pro-life' advocates condemn abortion, 'pro-choice' advocates are simply indifferent to the issue of abortion.

This article will explore several arguments and bioethical concerns on abortion, as well as approaches to the issue of abortion. It will also critically evaluate Nigeria's abortion provisions evident in the Criminal and Penal Codes, respectively, with the ultimate aim of recommending measures that will help improve the *status quo*.

The Notion of Abortion

The word 'abortion' is an English word derived from another English word 'abort,' which means to 'stop,' 'terminate,' or 'end' something, an activity, or a process, as the case may be (Cambridge Dictionary, 2024). Abortion means stopping, ending, or terminating a pregnancy.

There are plural definitions of abortion. Though differing from each other in significant ways, all of these definitions have something in common; they all talk of abortion as referring to a process whereby a pregnancy is stopped, terminated, or ended, so that it does not develop further. For instance, the National Center for Health Statistics, the Centers for Disease Control (CDC) and the World Health Organization (W.H.O) define abortion as the expulsion or termination of pregnancy before 20 weeks gestation, or a fetus born weighing 500gram or less (John *et al*, 2008), when it is not capable of independent survival. That

is, abortion involves removing or expelling a fetus from the uterus or womb of the mother before viability.

In a similar fashion to the above definition, abortion is also viewed as the removal or the extraction of the unborn from the uterine site before the age of viability, thereby subjecting the unborn to death (Mccanthy *et al*, 1998, 83). The standard medical definition of abortion is the extermination of a pregnancy before the fetus reaches the viability stage (George and Sherman, 2007), whether spontaneous or induced (Melissa and Mimi, 2008). Furthermore, abortion has to do with terminating a pregnancy through an intervention that either forces the pre-viable fetus or embryo out of the uterus (womb) or destroys the fetus or embryo within the womb (Wells, 2010, 277). The terms 'fetus' and 'embryo' as used here, simply refer to a baby undergoing different stages of development within the womb of his/her mother. Put simply, abortion is the unprompted or prompted termination of pregnancy before the fetus becomes viable (Davis, 2011).

From the foregoing, we can surmise that abortion, in all its forms and kinds, is the murder of an unborn baby or child, the intentional (induced) or spontaneous termination or killing of a fetus to end a pregnancy.

Kinds of Abortion: Spontaneous and Induced Abortion

As implied in the definitions of abortion given above,

abortion can occur in two ways; it can be spontaneous or induced (Okoro, 2005, 99). Spontaneous abortion is a situation whereby a pregnancy is terminated as a result of the sudden expulsion of the fetus from the uterus. This is otherwise known as 'miscarriage.' In other words, spontaneous abortion, which is also known as miscarriage or involuntary abortion, is an unplanned or accidental evacuation of the fetus from the womb of the mother due to some factors or circumstances within or beyond the control of the woman carrying the pregnancy (Gichure, 1997, 147).

Spontaneous abortion may occur if the pregnant woman gets involved in strenuous or hard work, falls or collides with something or someone, experiences great emotional or psychological trauma, or experiences shock as a result of some bad news (for instance the death of her loved one), to mention but a few.

Induced abortion is the medical or surgical termination of a pregnancy before the time of fetal viability. Simply put, it is a situation whereby a pregnancy is terminated through surgery or medication. Here, someone (for instance, a doctor, a nurse, physicians or other trained/experienced personnel, a lay person, or the pregnant woman herself) deliberately or unintentionally causes the abortion. Thus, induced abortion is intentional if the medication or surgery is done solely to terminate the pregnancy. On the other hand, induced abortion is

unintentional when the medication or surgery is done not solely to terminate the pregnancy, but in a view to ensuring the safety of the mother.

Following the immediately preceding paragraph, induced abortion can also occur as a result of some other actions, such as the treatment of some illness (Gichure, 1997, 147). In the case of the treatment of an illness, the intention of destroying the fetus is absent; nevertheless, the fetus is eventually terminated as a result of the drugs taken by the mother. That is; the death of the fetus in this case, is never a means by which the mother is treated, but only a result of the treatment; that is, it is not a cause but an effect of the act [treatment] (Onimhawo, 2005, 115).

Methods of Deliberate Induced Abortion

Induced abortion happens in various strata and has different phases in which it occurs. It also has its varied modes or methods, some of which are identified and discussed herein; namely: saline abortion, prostaglandin chemical abortion, dilation and curettage, dilation and evacuation, hysterectomy, and suction or vacuum aspiration.

(i) Saline Abortion

This method of abortion is also known as 'salt poisoning' or 'salting out.' It is commonly used after thirteen weeks of pregnancy. Here, abortion is done by inserting a large needle through the mother's abdomen, just below her

navel and six ounces of a strong saline solution are injected directly into the amniotic fluid which surrounds the child, having withdrawn about four ounces of the amniotic fluid. The baby, upon breathing and swallowing the saline solution, is slowly poisoned and his/her skin burns as well (Schwarz and Tacelli, 1989, 85). Barely a day after the act, the mother goes into labour to deliver a dead child. However, some babies have survived this method, and been born alive, though with fatal bruises.

(ii) Prostaglandin Chemical Abortion

This method of abortion is said to be the latest method of abortion. Here, developed chemicals are used. It is usually done by injecting hormone-like compounds into the muscle of the uterus (womb), causing it to contract (shrink) intensely, and thereby pushing out the developing baby (Schwarz and Tacelli, 1989, 85). The chemical(s) induced or applied can also cause constrictions of the blood vessels and disrupt the proper functioning of the heart, thus the child may suffer as if having a heart attack and then die eventually.

(iii) Dilation and Curettage

This method of abortion is said to be performed during the first trimester of the pregnancy, which is between seven to twelve weeks of the pregnancy. This method utilizes a sharp curved knife to approach the uterus through the vaginal (Schwarz and Tacelli, 1989, 85). It commences with the instrumental expansion of the cervical opening or the

uterine wall (Okoro, 2005, 100). Then the body of the fetus is carefully and manually cut and scraped out of the uterus into a basin. Common to this method or technique of abortion is the profuse bleeding that usually accompanies it. Hence, it could lead to blood shortage and even death of the mother.

(iv) Dilation and Evacuation

Dilation and Evacuation is said to be a relatively new procedure in late-term abortion and is generally believed to be among the safest and least psychologically painful for the woman, though considered the most traumatic for doctors and staff. This method of abortion is said to be similar to Dilation and Curettage, for it involves cutting the child into pieces through the use of a sharp knife, only that the child is bigger and by far more developed, weighing about a pound, and measuring a foot in length. In other words, this method of abortion involves dismembering the fetus while still in the womb, thus certainly eliminating any possibility of survival for the fetus (Schwarz and Tacelli, 1989, 86).

(v) Hysterectomy

Hysterectomy is another method of abortion. It is considered a corrective measure for the failure of the saline solution in the quest to abort a child. This method of abortion is said to be more of a mini cesarean section performed in late pregnancy. The woman is operated upon and the baby is lifted out of her body and dumped somewhere to die (Okoro, 2005, 102). However, it must be noted that the child having attained

the age of viability may survive on itself. Thus to ensure a successful completion of this exercise, a dose of saline solution may be administered to the mother before the operation to procure certainty on the death of the baby.

(vi) Suction or Vacuum Aspiration

This method of abortion is usually performed between seven and twelve weeks of gestation. This technique employs the use of a powerful suction tube. It begins with the virginal insertion of a series of graduated instruments to stretch open the cervix, which is tightly closed during pregnancy (Okoro, 2005, 101). The cervix is opened, and a transparent plastic tube is introduced into the uterus, with a knife at the edge; then the placenta is sliced off and torn into pieces, and sucked into a jar (Bergel, 1985, 2-4). Based on the nature of this method of abortion, the body parts of the baby are seen in bits, in the flowing morass of blood and tissues.

Reasons for Deliberate Induced Abortion

There are several reasons why deliberately induced abortion may be carried out on a pregnant woman. Some of such reasons are given below:

- a. Some pregnancies result from rape or incest, and women who are victims of these assaults often seek an abortion.
- b. Most women, however, decide to have an abortion because the pregnancy represents a problem in their lives.

- c. Some women feel emotionally unprepared to enter parenthood and raise a child; they are too young or do not have a reliable partner with whom to raise a child.
- d. Many young women in high school or college find themselves pregnant and must choose between continuing the education they need to survive economically or dropping out to have a baby.
- e. Young couples who are just starting their lives and do not want children at that moment, might prefer to develop financial security first to provide better care for their future children.
- f. Sometimes, people enter into a casual sexual relationship that leads to pregnancy with no prospect of marriage, but even if the sexual relationship is more than casual, abortion is sometimes sought because a woman decides that the social status of the male is inappropriate.
- g. Some of the most difficult and painful choices are faced by women who are happily pregnant for the first time late in the reproductive years (thirty-five to forty-five) but discover in late pregnancy (twenty-six or more weeks) that the fetus is so defective that it may not live or have a normal life. Even worse is a diagnosis of abnormalities that may occur in later stages of the child's development if he/she is born (Hern, 1995, 1-7).

Arguments/Bioethical Concerns on Abortion

There are both positions for and against abortion. Usually, agitators for abortion question the status of the embryo. For them, the embryo is to be viewed as not being a human person, as life for them, does not begin at conception, but rather at birth. Mary Ann Warren asserts this view by saying that even though the embryo possesses the potentiality of becoming a person, it however does not in any way sufficiently resemble a person (1988, 163).

Furthermore, those in support of abortion often subscribe to the view of Judith Jarvis Thomson that a woman has the right to determine what happens to her body; she decides whether to keep a pregnancy or to terminate it, so to argue otherwise, will be interpreted as a forced maternity, which of course is not accepted by any society (1988, 141). By extension, those who are sympathetic to abortion also regard it as a method of birth control and contraception.

Conversely, those against abortion opine that life begins at conception and that there is a sanctity and value that is accorded to human life. For them, every unborn innocent child has the right to life. The fertilized ovum has the human chromosome pattern containing all the inheritable factors, and it can never grow into anything else other than a human being (Okoro, 2005, 106). If we are to follow the view of those who permit abortion that life is measured by self-determination and rationality to a logical conclusion, then, a

one-year-old child, for instance, would automatically have no right to life, for at that point, the child is incapable of these conditions.

Finally, it is noteworthy that there are situations whereby certain actions are morally right, even though they are wrong intrinsically. These situations fall under the “Double Effect” principle. This principle is said to serve as the basis upon which women whose pregnancies pose a threat to their lives are treated.

Approaches to the Issue of Abortion

Regarding the issue of abortion, scholars are divided into two camps; namely, 'pro-life' and 'pro-choice.' While 'pro-life' scholars condemn abortion as immoral (evil) on the ground that it is an outright disrespect for the dignity and value of human life, and hold that there should be sustained discussions on it, to expose its danger and fatal consequences, 'pro-choice' scholars are simply indifferent to the issue of abortion; for them, getting involved in abortion is a matter of choice for an individual; that is, one is at liberty to accept or reject abortion, so that in the final analysis, abortion should not be an issue for discussion. As an addendum, pro-life scholars argue that our legal framework ought to reflect a prohibition of abortion so that the unborn baby (fetus) is necessarily protected from unjust harm (Beckwith, 119).

Beyond the pro-life and pro-choice battle, the issue of

abortion is also examined from three standpoints or perspectives; namely: the religious, medical, and legal perspectives, respectively. The religious opinion circles around the evaluation of all human actions and sees abortion as being morally wrong. From the religious view, life begins at conception, so abortion simply becomes equal to murder. This view is explicitly expressed in John Paul II's definition of abortion; namely that abortion is a direct and deliberate killing of a human person (1995, 45).

All though it is taken for granted that every human person has an inherent right to life (Patil *et al*, 2014, 544), from the medical perspective, abortion is considered a matter of choice; that is, an individual, in this case, the pregnant woman reserves the right to decide to keep or terminate his/her baby. Whereas, from the legal perspective, it is held that there are no universal legal laws, either for or against abortion (Aduba, 2011, 4). Legislation of such depends on the legislators of every country. In other words, every country is at liberty to permit or prohibit abortion.

Nigeria's Abortion Provisions

Just like most countries in the world, Nigeria is not without abortion provisions. Although abortions are done rampantly in the country, it should be noted that in reality, the abortion laws of Nigeriamake it one of the most restrictive countries regarding abortion (Love Matters, 2020). For instance, in Nigeria, the only situation recognized by the law

when one can have an abortion is if having the child is going to put the mother's life in danger (The United Nations). This does not in any way deny the fact that sex-selective abortion has long been accepted in Nigeria (Simran and Adetutu, 2018, the Economist, 2014).

Precisely, abortion in Nigeria is governed by two different laws, depending on the geographical location. The Northern part of Nigeria is governed by the 'Penal Code,' while the Southern part of Nigeria is governed by the 'Criminal Code' (Ayorinde and Co, 2014).

The Criminal Code

As stated above, this code is currently enforced across Southern States in Nigeria. Precisely, the abortion laws in this code are stated in sections such as 228, 229 and 230, respectively (World Intellectual Property Organization).

Section 228 states that:

Any person who, with intent to procure [the] miscarriage of a woman whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever is guilty of a felony, and is liable to imprisonment for fourteen years (World Intellectual Property Organization, 118).

The point expressed here is simply that masterminding abortion or administering any substance that can cause a woman abortion is

considered a criminal offense, and a person involved in that will be made to serve a 14-year jail term.

Section 229 states that:

Any woman who, with intent to procure her own miscarriage, whether she is or is not with child, unlawfully administers to herself any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, or permits any such thing or means to be administered or used to her, is guilty of a felony, and is liable to imprisonment for seven years” (World Intellectual Property Organization, 118).

This section simply states that any woman who masterminds abortion, administers to herself, or allows another person to administer any substance that can cause her abortion is considered guilty of a criminal offense, and will be made to serve a 7-year jail term.

Section 230 states that “any person who unlawfully supplies to or procures for any person anything whatever, knowing that it is intended to be unlawfully used to procure the miscarriage of a woman, whether she is or is not with child, is guilty of a felony, and is liable to imprisonment for three years” (World Intellectual Property Organization, 118). This simply means that anyone who supplies whatever that will aid abortion is equally considered guilty of a criminal offense, and will be made to serve a 3-year jail term.

Finally, it should be noted that the Criminal Code does not explicitly permit abortion to save the life of the mother.

However, following the cases of *Rex vs Edgar* (2016) and *Rex vs Bourne* (1938), it has become generally accepted that an abortion that is performed to save the mother's life is not necessarily considered an outright violation of the Criminal Code (Love Matters, 2020).

The Penal Code

As stated above, this code is currently enforced across Northern States in Nigeria. The Penal Code is different from the Criminal Code in the sense that while the Criminal Code only states imprisonment as punishment for offenders, the Penal Code's punishments include imprisonment, fine, or both (Love Matters, 2020). In addition, every offence against the Penal Code is punishable, whether the abortion was successfully done or not (Umeha, 2006).

Specifically, in the Penal Code, the abortion laws are stated in sections 232, 233 and 234, respectively. Section 232 of the Penal Code basically talks about causing abortion. It states that “whoever voluntarily causes a woman with child to miscarry shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment for a term which may extend to fourteen years or with fine or with both” (Center for Reproductive Rights). That is, an abortion caused intentionally, without the motive of saving the mother's life, is punishable by a jail term, which may be up to 14 years, and payment of fine.

Section 233 of the Penal Code talks about death caused as a result of an act done to cause abortion. It states:

Whoever with intent to cause the miscarriage of a woman whether with child or not does any act which causes the death of such woman, shall be punished- (a) with imprisonment for a term which may extend to fourteen years and shall also be liable to fine, and (b) if the act is done without the consent of the woman, with imprisonment for life or for any less term and shall also be liable to fine (Center for Reproductive Rights).

This means that anyone who intentionally causes a woman miscarriage or acts in a way that leads to the death of that woman shall be made to serve a jail term, which may be up to 14 years, and pay a fine. If the woman willingly agreed to the act, she would be imprisoned for life or made to serve a less jail term and pay a fine.

Lastly, section 234 of the Penal Code talks about the unintentional causing of abortion. It states:

Whoever uses force to any woman and thereby unintentionally causes her to miscarry, shall be punished- (a) with imprisonment for a term which may extend to three years or with fine or with both, and (b) if the offender knew that the woman was with child, he shall be punished with imprisonment for a term which may extend to five years or with fine or with both (Center for Reproductive Rights).

This means that anyone who unintentionally causes a woman miscarriage by using force on her shall be made to serve a jail term, which may be up to 3 years, and pay a fine. If that person

was aware that the woman was pregnant, he/she shall be made to serve a jail term, which may be up to 5 years, and pay a fine.

Evaluating Nigeria's Abortion Provisions

Nigeria, no doubt, as evident in the Penal and Criminal Codes, strongly prohibits abortion, except when it is done to save the mother's life. While this is laudable, we still have numerous cases of abortions in the country. The reason for this is simply that Nigeria's abortion provisions are inadequate in a number of ways, some of which are stated below:

a. Lack of uniformity: There is some level of disparity between the Criminal and Penal Codes. While the former only states imprisonment as punishment for offenders, the latter's punishments include imprisonment, fine, or both. Such disparity or lack of uniformity is unsafe and not ideal for nationhood, as it can foster confusion and exclusion, since both codes are applied in the same country.

b. Failure to educate Nigerians on the bioethical issues associated with abortion: Merely stating punishments for those involved in abortion is not enough. In addition to this, Nigeria's abortion provisions should be modified in such a way that they will include information that will serve the purpose of educating Nigerians on the bioethical issues associated with abortion. This will significantly reduce the rate of abortion in the country, as so many Nigerians seem to

be ignorant of the moral implications of abortion.

c. Failure to designate a body charged with ensuring compliance and implementation: Usually, when an Act is enacted, a body that will be charged with ensuring compliance is immediately established. In the case of Nigeria's abortion provisions, ably represented by the Criminal and Penal Codes, there is not statement whatsoever that establishes a body that will ensure compliance throughout the country. Such body ordinarily is supposed to closely monitor medical centers in order to ensure that they are compliant, and when the laws are breached, the body is to ensure that necessary penalties are implemented on a case-by-case basis.

Summary

Thus far, this article has been able to establish a comprehensive understanding of the notion of abortion. It began by positing that abortion, in all its forms and kinds, is the murder of an unborn baby or child, the intentional (induced) or spontaneous termination or killing of a fetus to end a pregnancy, or put differently, a process whereby a pregnancy is stopped, terminated or ended, so that it does not develop further.

Going further, the kinds of abortion (spontaneous and induced abortion) were exposed, with spontaneous abortion being an involuntary, unplanned or accidental evacuation of

the fetus from the womb of the mother due to some factors or circumstances within or beyond the control of the mother, while induced abortion being the medical or surgical termination of a pregnancy before the time of fetal viability. Some methods of deliberate induced abortion were identified and discussed; namely: saline abortion, prostaglandin chemical abortion, dilation and curettage, dilation and evacuation, hysterectomy and suction or vacuum aspiration.

Still progressing, some reasons why deliberate induced abortion may be carried out on a pregnant woman were enumerated. It was also established that there are both arguments for and against abortion, especially with particular reference to the status of the embryo as either being or not being a person. There was also a discourse on the approaches to the issue of abortion. Here, the pro-life and pro-choice battle was exposed, as well as the three standpoints or perspectives from which the issue of abortion can be examined; namely: the religious, medical and legal perspectives respectively. The ultimate focus of this article was Nigeria's abortion provisions, which are evident in the Criminal and Penal Codes and applied in the Southern and Northern regions of Nigeria, respectively.

Conclusion

From the exposition on Nigeria's abortion provisions, it is clear that Nigeria's laws highly prohibit abortion. Even though this is the case, abortions are still rampant in the

country. The reason for this is simply that Nigeria's abortion laws are fraught with inadequacies, such as lack of uniformity, failure to educate Nigerians on the bioethical issues associated with abortion and failure to designate a body charged with ensuring compliance and implementation.

To improve the *status quo*, the following should be done:

a. Correcting the disparity between the Criminal and Penal Codes: This can be done by ensuring that both Codes have the same penalty stated, or completely reducing them into a single Code that will be applied across the country.

b. Modifying the Criminal and Penal Codes: This can be done by including information that will serve the purpose of educating Nigerians on the bioethical issues associated with abortion. This will ultimately foster reduction in the rate of abortion in the country.

c. Designating a body charged with ensuring compliance and implementation of the abortion laws in Nigeria: This can be done by modifying the Criminal and Penal Codes to include a statement of a body that will ensure compliance with the abortion laws and implement the laws throughout the country.

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