

Re-Examination of Criminalization of Abortion in Nigeria through the Lens of Moderate View

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Abstract

Outright criminalization of abortion (except to save the life of the woman) in Nigeria has not stopped abortion neither has it been helpful on the nation's health system as well as the health plus the well being of women and their families. It has led to increase in unsafe abortions and heightened maternal mortality rate. Yet, termination of pregnancy is a critical social issue that has divided theologians, philosophers, feminists and legislators for centuries. For it generates a conflict of right between two persons; the right of the mother to decide what happens to her body and the right of child in the womb, each taken an extreme position. There is therefore the need to balance rights against each other; the right of the mother to life and the same right of the fetus in order to accommodate decriminalization of abortion to certain reasonable level to reduce maternity mortality and morbidity rate caused by unsafe abortion in Nigeria. Hence, this paper adopts dialectical method to provide moral justification for abortion through the lens of moderate view. Arguing that with reasonable decriminalization of abortion, morbidity and maternal mortality rate will drastic reduce in Nigeria. The study recommended that government should give attention to healthy sex education, adequate supply of contraceptive/birth control materials along with expansion in public education/orientation about family planning services.

Keywords: Right, Fetus, Prolife, Prochoice, Moderate

1. Introduction

Nigeria falls into the category of one of the ninety seven countries of the world where abortion is criminalized. Yet, according to a research conducted by a United States-based Guttmacher Institute, in collaboration with University of Ibadan- UI and International Project Assistance Services Community- IPAS, a non-governmental organization, over 1.25 million abortions are carried out in Nigeria every year, with majority of such procedures done in clandestine and mostly by unprofessional hands; traditional attendants and herbalists inclusive. A recent British Broadcasting Corporation (BBC) report suggests that “of the high number of abortions recorded in Nigeria, over 60 per cent are unsafe, while 20 per cent of the 60 per cent are done by traditional healers or the women themselves” (Bankole, Adewole, Hussain, Awolude, Singh, & Akinyemi, p.172)

Comparison of the research from Guttmacher Institute and the British Broadcasting Corporation -BBC report, clearly shows that, of the 1.25 million abortions done in the country every year, about 750,000 are unsafe, while about 150,000 unsafe abortions are done by traditional healers, (Bankole, Adewole, Hussain, Awolude, Singh,& Akinyemi) roadside medicine dealers, poorly trained physicians or the women themselves clandestinely, such that a chunk of these women do not come out of it alive while these who are lucky to come out of it are not without complication. The complications resulting from unsafe abortions are multiple and include sepsis, severe haemorrhage, pelvic inflammatory disease, adhesions and secondary infertility and guilt which have a lasting effect on such women.

Laws regarding abortion as expressed in the Criminal Code Act, Chapter 77 of Laws of the Federation of Nigeria show that “the country is amongst countries of the world with repugnant attitude towards abortion, making the practice of abortion very stringent. According to abortion laws of the Criminal Code expressed within sections 228, 229, and 230, any person providing an abortion to a woman is guilty of a felony and up to 14 years of imprisonment. Section 229 states that any woman obtaining an abortion is guilty of a felony and up to imprisonment for 7 years. Section 230 states that anyone supplying anything intended for a woman's miscarriage is also guilty of a felony and up to 3 years of imprisonment; Abortion is legally permissive only to save the life of the mother” (Nigerian Law, Okagbue, 1990, p.198).

However, there are cases in which abortion is inevitable aside when the survival or health of a woman is in jeopardy. Such include cases of rape (any form of nonconsensual sex), incest, pregnancy of a minor less than 15 years of age (because such minors are prone to Vesico Vagina Fistula (VVF)), fetal malformation, and other health issues like; Duchene Muscular Dystrophy, Anencephalic Embryos and Fetuses etc. Again, because abortion is restricted, only few medical students learn the procedures, which can lead to deadly mistakes.

Amidst the issue of abortion we have two contradictory and extreme views; the pro-choice which defends the right of the woman to have control over her body and the pro-life which defends the value/right of the fetus at every cost. This therefore, makes it unfeasible to decide the moral justification of abortion. Recognizing the inherent loopholes

of these two extreme positions, this paper objective is to provide the moderate position leverage ground between them by providing moral justification for reasonable abortions. The rest of the paper presents section two, conceptual clarification; section three discussion on the moderate position and lastly section four, conclusion and recommendation.

2. Conceptual Clarification

Etymologically, abortion which is from the Latin words *aborire*, *abortire* — to perish, to vanish, is the deliberate discontinuation of pregnancy by removing an embryo or fetus from the womb. It involves the removal or evacuation of fetus or embryo from the womb prematurely. It is worth-noting that not all abortions are premeditated; some occur spontaneously which is mostly recognized as miscarriage. The focus of this paper however is abortion carried out on purpose known as induced abortion or infrequently, induced miscarriage. Induced abortion has long been the reason for considerable debate. All the issues concerning abortion be it ethical, moral, philosophical, biological, religious and legal are related to value system. Opinions of abortion may be about fetal rights, women's rights and governmental authority.

By decriminalization of abortion we imply the removal of specific criminal sanctions against abortion from the law, changing the law, related policies and regulations to accommodate provision of safe abortion, treating reasonable abortion like every other form of health care - that is, using best practice in service delivery, the training of providers, and the development and application of evidence-based guidelines, and applying existing law to deal with any dangerous or negligent practices.

The Extreme Positions: The Pro-choice and The Pro-life

Fundamentally, abortion as an ethical issue thrives on two major arguments; argument against; with the pro-life movement as a proponent and argument for; with the pro-choice movement as proponents.

The pro-life movement maintains that human life at every stage is sacred even an embryo or fetus as an embryonic human life is sacrosanct and must be protected by both individual and government. As such, abortion must not be legal neither should it be practiced on an illegal basis. The only situation when abortion should be permissible is when it is a threat to life or health related issue to either the mother or the fetus. Yet, not every pro-life shares this opinion; some conservatives within the Catholic Church adopts a really extreme position, claiming that a woman who dies in childbirth becomes an exemplary image of blessed maternity and Christian self-sacrifice. This is, for example, the reasoning behind one of the beatifications performed by Karol Wojtyla as Pope in April, 1994. The woman distinguished in this way was Gianna Beretta, a pediatrician pregnant with her fourth child, who was suffering from a lethal uterine tumor. She however, insisted that if necessary her life should be sacrificed so that her daughter could be born. In the circumstances, the sacrifice was indeed unavoidable and, on April 28, 1962, the woman died (Philippa, 1978).

Within the pro - life movement is also militant antiabortion individuals and groups who believe that violence especially the bombings of clinics and murder of physicians who performed abortion will lessen the rate of abortion. Some antiabortionists of the pro-life movement, however, disagree with the tactics of the militant antiabortion individuals and groups. They believe that these tactics and murders of physicians have hurt their cause. For they campaign and uphold respect for all persons, including the unborn; for life according to them is sacred. The pro-lifers opine further that the wrongness of abortion is universal irrespective of cultural background and cultural values, just as killing is wrong and stealing is wrong in any society, regardless of cultural values (MacKinnon, 2009).

Again, quoting the Holy Scripture: "The fathers shall not be put to death for the children, neither shall the children be put to death for the fathers: every man shall be put to death for his own sin," "The soul that sinned, it shall die. The son shall not bear the iniquity of the father, neither shall the father bear the iniquity of the son: the righteousness of the righteous shall be upon him, and the wickedness of the wicked shall be upon him" (Deuteronomy 24:16; Ezekiel 18:20), the pro-life maintains that a child in the womb is innocent of any crime deserving death. To them, it is wrong to kill a child for the crime of the father (whether the crime is incest or rape). Pro-choice arguments on the other hand counter the first claim by saying all unwanted pregnancies are inherently emotionally traumatic, and only an individual woman, in her specific place in life, can "rate" the level of trauma. In other words, the conservatives defend fetus at every cost. Yet, research has revealed that sizable number of catholic women still opt for abortion. Thus, McBrien, (2013) asserts that at the heart of church teachings on moral matters is a deep regard for an individual's conscience. Quoting the *Catechism*, he affirms that:

"a human being must always obey the certain judgment of his conscience. As such the church takes conscience so seriously that even in cases of a conflict with the moral

teachings of the church; Catholics not only may but must follow the dictates of conscience rather than the teachings of the Church. Catholics are obliged to know and thoughtfully consider Catholic teaching but in the end, a well-formed conscience reigns” (p.74).

Not to allow any valid grounds for abortion, whether rape or congenital or genetic deformities, or even when the mother’s health or life is at risk, is something that offends the liberal conscience, to which this seems an inhumanity. For the liberal, the life of an actual living woman is of much greater value than that of a potential child; her death would not only cut off a life in full bloom, but it would also destroy existing family and social relationships. In a case of rape, the liberal will say “the woman who has suffered this form of violence has no duty to go through with her pregnancy since she has borne no responsibility for it; why, besides suffering the trauma of rape, must she undergo a forced pregnancy? To be compelled to give birth and then raise a child resulting from a rape (a child she will then be obliged to look after) is cruel, inhuman and degrading” (Follet, 2009, p.14)

The pro-choice conceive the overemphasizing of the right of fetus at the expense of the women's right as misogyny and inability to comprehend the situation of women due to their celibacy and the patriarchalism that characterizes the ecclesiastical mentality of the conservative.

The pro-choice agrees that a fetus is a potential human being belonging to Homo sapiens species. However, denies that it’s intrinsically valuable because according to Warren (1973) it lacks “ (i) consciousness (of objects and events external and/or internal to the being), and in particular the capacity to feel pain; (ii) Reasoning (the developed capacity to solve new and relatively complex problems); (iii) Self-motivated activity (activity which is relatively independent of generic or direct external control); (iv) The capacity to communicate, messages of with an indefinite number of possible contents on indefinitely many possible topics; (v) The presence of self–concept and self-awareness” (p.54).

Accentuating the ideology of pro-choice and what makes abortion ethically permissible Lopez (2012,) affirms these: “(i) the mother does not want the child; (ii) the father does not want the child; (iii) the mother will possibly die from giving birth; (iv) the pregnancy is the result of rape. The fact that the mother does not want the child could embrace several reasons: (i) the mother knows the child will be born with physical or mental abnormalities; (ii) the mother is a drug or alcohol abuser; (iii) the mother knows she is not financially fit to take care of the child; (iv) the mother knows her relationship with the father of the child will not last, and she feels insecure; or (v) for no specific reason, she does not want the child. The pro-choicers thus unanimously affirm that a woman is the legitimate owner of her body not the state or government; As such, she has right and control over her body and over what happens inside her body” (p. 511).

The pro-life radically prohibit abortion and emphasizes that the law must enshrine the moral principles that defend the life of the fetus above that of the mother. Thus for extreme conservatives the main premise is that the zygote is a complete human being from the moment of conception and that it has the right to life. This right, they will tell us, is the most fundamental of rights; pre-eminent, absolute, and cannot be restricted by any other right. The reason adduced is that without life no other kind of right can be exercised; it constitutes the basic precept underlying all other rights: a kind of “super-right” that would defeat any other right with which it were to enter into conflict. In fact, according to conservatives, even if women were to be accorded a right over their own body, the conceived’s right to life would outweigh it. Thus, glorification of the fetus as having more value than the woman it is dependent on. Conversely, the pro-choice overemphasis the right of the woman to decide what happens in and to her body to the detriment of the unborn even to imply the right to secure the death of the fetus; thus, presenting the pro-choice as murderer. The implication of aforementioned is that both positions are used extremely and inconsiderately to justify restrictions of abortion. Therefore, justifying the moral criminalization of abortion and making inevitable abortion to be performed in unsafe clandestine and crude manners.

However, the secret world of illegal abortion is mostly worrisome, scary and finance-wise, it is expensive. Describing the scenario of illegal abortion Schnall (1998) harangues that most illegal abortionists, doctors, and those who claimed to be doctors cared only about being well rewarded for their trouble. Some abortionists are rough and sadistic while some male abortionists insisted on having sexual relations before the abortion. These quack abortionists emphasize speed and their own protection. They often fail to use anesthesia because it will take too long for women to recover, and they want women out of their workplace as quickly as possible. Almost no one took adequate precautions against hemorrhage or infection. Most often than not, in order to maintain secrecy and prevent the harassment by the law, these illegal abortionists threaten the woman never to contact him/her again and deny ever having any deal with her.

Women who were victims of these substandard and unsanitary abortions came in desperation to hospital emergency wards when consequences (complications) of this botch abortion come into sight, where some died of widespread abdominal infections. Many women who recovered from such infections found themselves sterile or chronically and painfully ill, some with damaged wombs (Schnall, 1998) The enormous emotional and physiological stress often lasted a long time. The need to curb this menace and reduce morbidity and maternal death has prompted moderate abortion partisan to leverage the ground between the extreme positions in order to accommodate reasonable decriminalization of abortion.

3. Discussion

The Moderate Position: Synthesizing the Pro-life and Pro-choice Argument

According to the moderate position, a human conceptus is biologically human and biologically alive. Yet, there is no good reason to consider it to have a full set of human rights until after birth. Human right is another name for moral rights, and moral rights are linked primarily with persons, not biological types. Personhood develops among humans after birth, with self-consciousness, an ability to interact with others, use language, etc. The absolutist anti-abortion view fails to make the distinction between personhood and biological humanity. As such the moderate stance emphasizes no limitations on abortion before the time the fetus becomes sentient because before that time the fetus has no interest for the state to protect. The implication of this is that the fetus is important, but it's not human life in the same way the pregnant woman is.

The moderate stance agrees with the view of the pro-life that human life begins from conception and that it is a gamut; a gamut of development, of change from less to more in many dimensions. Developmental studies show that the conceptus only gradually develops the physical basis for personhood. As these physical features develop during pregnancy, abortion of the conceptus becomes a more serious moral issue. The implication is that, other things being equal, an early abortion is less somber from all indications particularly from the ethical point of view than a late one.

However, the strict pro-choice view, which reasons from the assumption of the woman's absolute liberty of control over her own body, would deny that there are any circumstances in which it would be morally wrong for the woman to terminate her pregnancy. Against this stance, the moderate view holds that the right to control one's own body is only a strong seemingly and superficial right which could be incongruent most times; for there are occasions when terminating pregnancy would be ethically wrong. Such circumstances as Kentucky, (2002) comments include: where there is no unusual danger to the life or health of the mother, it is late in pregnancy, the fetus is healthy, there is no rape or incest and good adoptive homes are waiting

The Moderate view as the name implies stands in the middle, naturally. Abortion of pregnancy caused by rape, incest, pregnancy of teenage less than 15 years of age with the wards'/parents' consent, (we suggest the wards'/parents' consent in bid to curb the excesses of youthful exuberant) and health complications should be allowed within the first-trimester to the mid of second trimester, outlaw them beyond that (unless the mother's health is seriously threatened). In other words, abortion should be decriminalized up to 12 - 18 weeks of a pregnancy in the cases of pregnancy by rape, incest, teenage less than 15 years of age with the parents' consent

The reason being that in the first trimester, the medical assumptions include the fact that the fetus has no brain and therefore no awareness, by and large, movement cannot yet be felt and abortion in the first trimester is extremely safe (MacKinnon, 2009). In second trimester the fetus is becoming more human-like, can be felt moving, gender can be determined, etc., emotional connections to the fetus being a true baby are far stronger. In the third trimester, the fetus fully resembles a born baby, at least superficially. The emotional connection is impossible to deny at such point. Few if any nations that allow abortion, allow it during the third trimester unless the woman's health is threatened or the fetus develops serious problems.

Thus, throughout the first trimester to the mid of second trimester, the wishes of the pregnant woman should take precedence over the welfare of the unborn. Since afterwards in the second trimester, a fetus begins to assume undeniably human characteristics and becomes potentially viable especially with medical care. Beyond this point, the welfare of the unborn must take precedence over the wishes of the mother. After viability, States should ban abortion entirely except where continuing the pregnancy would threaten the woman's life or health.

Some moderate position advocate that first-trimester abortions be legal and given to any woman who requested for it, outlaw them after five months unless the mother's health is endangered, and permit them between three and five months only in cases of rape, incest or health complications (Bayan, 2017). Subscribing to this view leads to

abortion on demand and consequently, abuse of abortion where abortion will be used in lieu of contraceptive, selfish act to avert responsibility. Thus, we opine that this view is awkward and inhuman.

The salient question one is impelled to ask at this junction is: what would be the fate of other women seeking abortion but do not fall within the category aforementioned? This paper does not in any way suggest that abortion should be given on demand. Any woman who does not fall within the category aforementioned could be a problem-solver to another woman especially the expectant women. For what is tagged unwanted pregnancies by these individuals are earnestly wanted phenomenon for some couples. Hence, we suggest that such should be given up for adoption.

4. Conclusion and Recommendations

Virtually all abortions in Nigeria are clandestine and unsafe due to criminalization of abortion. These unsafe abortions have been a major contributor to Nigeria's maternal mortality and morbidity rate, which remains among the highest in the world. However, the controversy between the two extreme positions has made the decriminalization of abortion a thorny ethical issue to determine.

The liberals are essentially the protagonists of pro-choice ideology; characterized by the belief that freedom should be exercised by the women who determines what happens in and to her body. While the conservatives who are the supporter of pro-life ideas, believe freedom should be exercised by the state or institution over the right of the woman in order to protect the life of the fetus. However, the leverage for reasonable abortion has been provided by the moderate position. For the moderate position provides us with the paradigm to base our decriminalization campaign of abortion by taking cognizance of both the right of the mother and the right of fetus. The implication of this is that it will reduce unsafe abortions which have led to increased maternal mortality and morbidity rate in Nigeria. This it does by allowing abortion within the first trimester to the mid of second trimester of pregnancy by rape, incest, teenagers less than 15 years with the parents' consent and pregnancies which cannot be taken to term due to health complications.

Importantly, the issue of unwanted pregnancy and unsafe abortion in Nigeria could be vetoed through:

Healthy Sex Education should be taught both at home and schools. Launching of sex education should be at home where parents inculcate acceptable concepts of sex to their children as early as possible before they are misguided by unscrupulous individuals, licentious magazines and media. As a curriculum subject, the learning objectives of sex education should vary with the age and the environment. Yet, it should have a well and carefully knitted syllabus that will include exposing various risky behaviours among youths, such as forced sex, indulging in pornography, premarital sex leading to the spread of Sexually Transmitted Diseases (STD) and early pregnancies; the unethical and inhuman of such behaviours; the significance of self worth, etc. The main aims of sex education amongst others are to encourage abstinence from premarital sex, disabuse media glorification of sex, educating youths about family planning and civilized ways to prevent unwanted pregnancy. However, youths that are sexually active are encouraged to use contraceptives but with caution and medical advice. As such we advise that sound moral and religious education should be inculcated in the youngster especially at tender age.

Adequate supply of contraceptive/birth control materials and expansions in public education/orientation about family planning services. According to a report by Guttmacher Institute (United Nations Population Fund, 2014) a total of 225 million women in developing countries are having unmet needs for family planning. The impact of the unmet need include; 74 million unplanned pregnancies, 28 million unplanned births, 36 million abortions every year. Investing to meet the needs for modern contraceptive services would reduce unintended pregnancies, reduce unsafe abortions, decrease maternal deaths and reduce newborn deaths. Investing in Family Planning, the report says, will reduce unwanted pregnancy by 70 percent, unsafe abortions by 74 percent and decrease maternal deaths by 25 percent.

Due to delusion and myth surrounding the use of contraceptive, Nigeria like most developing country experience appallingly low rate utilization of contraceptive. Such misconception and beliefs range from damages to reproductive organs (which according to them could cause health challenges, permanent infertility, diminish sexual urge) to leading to increased in sexual promiscuities among women folks. Again, lack of knowledge about the various available options, combined with misconceptions about the utility and utilization of contraceptives and inadequate supplies of contraceptive are contributory factors to low usage of contraceptive in Nigeria. As such we recommend that public orientation/education should be given to people. This will enhance them to know about the arrays of available contraceptives, the most effective types and how they can access them. This will drastically reduce unwanted pregnancies and unsafe abortion in the country.

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