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Abortion: Legal or Illegal

Abortion is a common debate in international human rights law whereas taking the fetus' life is considered as a violation of the right to life of the fetus or as a violation of the right to life of the mother's well-being. Both lives are under the protection of the law, however, which life holds more necessity is still debatable in society. To this day, abortion still sparks debate about the fetus's rights. It is known that evidence of when the fetus existed in the mother's body, then that fetus shall receive protection and compensation as a legal person when there are damages or dangers to the fetus when it is born.[1] This rule has been supported by other international conventions as well. Under Article 3 of Universal Declaration of Human Rights, everyone shall have the right to life, liberty and security of the person[2], and article 6 of International Covenant on Civil and Political Rights, everyone has the right to life.[3] International human rights law protects the fetus's right to life. Despite this, in most countries around the world, abortion is now legal. According to Center for Reproductive Rights, only 24 countries prohibit abortion[4], however, the major of the countries that allow abortion must act accordingly to the policy, enforced in the country. Followed by the World Health Organization, abortion is legally common in order to avoid unnecessary deaths to the mother who cannot carry the burden of taking care children; it is found that in 3 out of 10 pregnancies, all of them end in induced abortion. Almost 50% of abortion is life-threatening and most of them commonly happen in developing countries.[5]

According to United Nations Human Rights, "Human rights bodies have provided clear guidance on the need to decriminalize abortion. Ensuring access to these services in accordance with human rights standards is part of State Obligations to eliminate discrimination against women and to ensure women's right to health as well other fundamental human rights".[6] However, there are restrictions the abortion time is legally accepted. To ensure comprehensive legal ground for abortion, WHO has taken action to ensure the safety and policy guidance for the health system to a successful abortion for women's rights. Now, Abortion law is not a criminal regulation if (1) there is a threat to the mother's life, (2) a threat to the mother's health, (3) the pregnancy is a result of rape and incest, (4) there is a fetal impairment, and (5) for economic and social reasons, and (6) on request.[7] For example, in Cambodia, abortion can only be legally carried out only for fetuses that are under 12 weeks old. If the fetus is over 12 weeks old, then the abortion may be authorized if (1) a cause that the fetus does not develop itself or the fetus causes danger to the mother's life; (2) the baby is going to be born with a serious and incurable disease; (3) in the case of rape but there must be a request from the pregnant mother or if they are at the age of 18 or above, or a request from the parents or guardian, or the mother who is under 18.[8] In the United State, abortion is only legal when the fetus is under 20 to 24 weeks depending on the policy of each state.[9]

Abortion is clearly legal in many countries, however, due to society's norms, religious beliefs, and traditions, it contributes to the idea that abortion is a violation of the fetus's rights. Nevertheless, the law still continues to support abortion when such takes place in order to reduce the number of unnecessary dangerous abortions.[10]

[1] Cambodia Civil Code, Article 9, (08 December 2007).

[2] Universal Declaration of Human Rights, Article 3, (10 December 1948).

[3] International Covenant on Civil and Political Rights, Article 6, (1976).

[4] Center for Reproductive Rights, The World's Abortion Laws, (n.d), available at: <https://maps.reproductiverights.org/worldabortionlaws>

[5] World Health Organization, Abortion, (n.d), available at: https://www.who.int/health-topics/abortion#tab=tab_1

[6] United Nations Human Rights, Information Series On Sexual and Reproductive Health and Rights: Abortion, (2020), available at: <https://www.ohchr.org/EN/Issues/Women/WRGS/Pages/Information-Series-Sexual-Reproductive-Health-Rights.aspx>

[7] WHO, Safe abortion: Technical & policy guidance for health system, (2015), p. 2-3.

[8] Kingdom of Cambodia, Royal Kram on Abortion, Article 8, (12 November 1997).

[9] Guttmacher Institute, An Overview of Abortion Laws, (n.d), available at: <https://www.guttmacher.org/state-policy/explore/overview-abortion-laws>

[10] Amnesty International, Key Facts On Abortion, (n.d), available at: <https://www.amnesty.org/en/what-we-do/sexual-and-reproductive-rights/abortion-facts/>

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