Abortion

A REPRODUCTIVE RIGHT, OR A MORAL PROFLIGACY?

A POLICY PAPER DISCUSSING THE LEGISLATIVE FUTURE FOR MALTA

GħSL
Għaqda Studenti tal-Liġi

Abortion

An Għaqda Studenti Tal-Liġi
Policy Paper

OPENING REMARKS

INTRODUCTION

It is with great pleasure that I present to you this year's GħSL policy paper addressing the subject of Abortion, a paper which is the culmination of the comprehensive work of the GħSL Policy Office.

GħSL strives to keep law students as well as society as a whole abreast regarding current legal issues in Malta. An ongoing area of contention featuring across local media centres around the topic of abortion. Due to the polarised views on this subject, the GħSL Executive Board decided that it would be opportune to delve into this topic.

As a body representing the interests of law students, throughout this paper our main focus was to maintain and uphold an impartial appreciation of the law while taking into account the sensitive nature of this topic. In light of this, an unbiased approach was adopted so as to achieve a coherent conclusion.

A multidisciplinary modus operandi was employed to offer a holistic discussion and this was achieved through a thorough examination of pertinent areas beyond the legal sphere such as medical research, ethical considerations involved, as well as the psychological aspects, among others.

Moreover, a comparative exercise was carried out, whereby the laws regulating, restricting and prohibiting abortion were evaluated. This contributed towards a comprehensive outcome of this policy paper and provided a robust reference point for active and potential students alike.

Finally, I would like to thank the colleagues of GħSL, including all those who contributed to this paper, namely Dr Desiree Attard, Andrew Sciberras, Pearl Agius, Avv. Jessica Spiteri and Dr Mireille Boffa whose joint input was instrumental to the conclusion of this research, as well as Matthew Charles Zammit for the remarkable design while special acknowledgement is due to Dr Christopher Barbara, Dr David Zammit and Dr Lara Dimitrijevic for their time and contribution despite their commitments.

On behalf of the GħSL Executive and our members, I thank you for showing interest in this research which seeks to enhance the legal academia within our constantly developing society.

MAYA SPITERI DALLI

GħSL Secretary General
2020/2021

GħSL Policy Officer
2019/2020

PRESIDENTS' FOREWORD

It is with great pleasure that I present the 2020 GħSL Policy Paper, tackling abortion in Malta. The GħSL Policy Office is a relatively young office but is the office that has consistently put GħSL at the forefront of legal discussion.

This organisation has never shied away from difficult and controversial topics, having in the past written on subjects such as euthanasia, rule of law, and human trafficking. It is with great responsibility and mindfulness of the polarising nature of this subject that we have undertaken this task. With this paper, we hope to shed light on the legal reality concerning abortion in Malta and how it compares to the reality in different countries, as well as present the organisation's proposals.

Indeed, we have made an active effort to tackle the subject of abortion from all angles and have even interviewed legal minds with different perspectives, in an attempt to make this paper as factual and unbiased as possible.

It must be noted, above all, that as a law student organisation, our primary concern is with the legal aspect of the subject, although we have entered into the realms of medicine and ethics, were necessary, in order to provide a well-rounded approach to our readers.

On behalf of the GħSL 2019-2020 Executive Board, I would like to express my gratitude towards the unwavering work of the Policy Office for its commitment towards this paper, as well as the contributors, inteviewees, and reviewers, without whom such project would not have been possible.

We hope that this paper is able to provide a fresh perspective on abortion in Malta and that it will lead to fruitful discussion on the subject.

CELINE CUSCHIERI DEBONO

GħSL President
2019/2020

This policy paper is a testament to the hard-work, unwavering effort and consistent effort that GħSL exhibits, and has exhibited continously for the past decades, in different areas related to the legal profession and to student activism.

While this is by no means the first policy paper which discusses a topic considered by the vox populi as perhaps more contentious than the norm, the intrepid initiative behind this policy paper is objectively a remarkable step.

The commonly-held assumption, that any discussion related to abortion (be it political, legal, philosophical or even academic) is beset with half-truths, assumptions and unanswered queries, remains to be completely vanquished. Nevertheless, we hope that this paper plants a new standard-bearer for any such conversation moving forward.

Not only does the voluminous effort undertaken by all of the students, researchers, editors and peer-reviewers involved, act as a testament to the strength and power of student activism, but it also ought to serve as further proof of said activism's relevance and importance.

I must laud GħSL's Policy Office, the numerous contributors, peer-reviewers and academics who played a key role in the publication of this policy paper. It's only through such projects, can the present start tangibly shaping up our future, as well as that of our community as well.

Lastly, this policy paper, in no way, shape or form ought to replace the concrete, invaluable effort undertaken by activists in the field.

Our asipiration is not to supplant the efforts undertaken, but rather supplement them, and contribute further in a discussion which must not remain static. Rather, we must remain forward-looking, and make sure that as future members of the legal profession, our laws remain in step.

MATTHEW CHARLES ZAMMIT

GħSL President
2020/2021

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INTRODUCTION, AND THE CURRENT MALTESE LEGAL SCENARIO

INTRODUCTION

Abortion is highly charged debate which triggers off emotive responses both for and against. The anti-abortionists describe this intervention as the murder of the unborn child. The pro-choice movement proclaims abortion as a fundamental right for women so as to safeguard the health and the well-being of women. In this policy paper, our contributors have penned and researched abortion laws in various countries around the world and also delved into the situation in Malta.

With this in mind, the authors contributing to this paper, have analysed and discussed the diverse aspects relating to abortion which were imperative for the outcome of this paper to elicit the proposals forthcoming from the paper. This paper is structured by analysing the legal aspects pertaining to abortion within the local scenario and also in relation to regulations among other states. This is followed by a discussion of the medical and surgical procedures adopted. The psychological aspects as experienced by women who have opted for an abortion are examined together with the bioethical aspects involved.

1.1 THE CURRENT LEGAL SCENARIO IN MALTA

In the United Kingdom, abortion is regulated by the UK Abortion Act of 1967, whereas the decision of *Roe v. Wade* created waves in American Constitutional History enshrining abortion as a constitutional right. The aim of this comparative analysis is to gain a better understanding of the various legal regimes in terms of abortion laws and how states legislate accordingly, however, before one attempts to analyse other jurisdictions, one must initially analyse the current legal scenario in Malta, the only EU country that has a total ban on the procedure with no exceptions for rape, incest, foetal abnormality or the health of the mother.

The Laws of Malta constantly embrace new acts as a result of society's behavioural changes; some examples include the Government Lands Act (Chapter 573) and the Malta Development Land Act (Chapter 574). This does not extend to abortion whereby the only law addressing this in Malta is Article 241 of the Criminal Code, a blanket ban provision which states: This topic has undeniably been a hotly debated one for centuries and is encapsulated neatly in the Maltese Criminal Code.

> *(1) Whosoever, by any food, drink, medicine, or by violence, or by any other means whatsoever, shall cause the miscarriage of any woman with child, whether the woman be consenting or not, shall, on conviction, be liable to imprisonment for a term from eighteen months to three years.*
>
> *(2) The same punishment shall be awarded against any woman who shall procure her own miscarriage, or who shall have consented to the use of the means by which the miscarriage is procured.*

Upon analysis of the provisions of Article 241, this speaks of the procurement of miscarriage rather than addressing it as 'abortion'. Now this already poses a valid argument as to whether the correct wording was used in the drafting of this provision. A miscarriage is defined as the natural death of the embryo typically before the 20th week of the pregnancy.[2] The medical term for a 'miscarriage' is a 'spontaneous abortion'. Therefore, if the act of a miscarriage is spontaneous how can one procure it? If the act is procured, how can it be classified as a miscarriage when such a terminology is medically defined as spontaneous?

Therefore, Article 241 aims at imposing a blanket ban of a termination of pregnancy but falls short in its wording apart from not offering any definition to what is meant by the term 'miscarriage'. The terms 'abortion' as well as 'miscarriage' are medical terms which were highly debated in the 20th century. In the mid-1900s various English medical journals used both terms interchangeably until there seemed to be a shift in 1985 and later years.

> *Doctors use the word 'abortion' regardless of whether it was a spontaneous or induced event, yet our patients always speak of 'miscarriages' unless they have had a termination of pregnancy. It seems likely that the words have been interchangeable for many centuries...*[3]

stated Professor Richard Beardthen Professor of Obstetrics and Gynaecology in a letter published to the medical journal, 'The Lancet'. In the very same letter however, it was observed that their patients commonly used the word 'miscarriage'. Thus, a distinction was created, and the term 'miscarriage' referred to an early loss of pregnancy rather than a termination of pregnancy.[4]

This distinction was noted back in 1985, however, the Maltese provision remains unaltered, even though the common parlance amongst the public is acknowledged and no one would refer to a miscarriage as an abortion or vice-versa. In the local scenario we often empathise with those who have gone through the traumatic events of a miscarriage, but we offer no solace to women who seek an abortion. Abortion was and remains taboo despite increasing awareness.

Another issue which could be the reason for the legislator not emancipating from its draconian laws is the impervious influence of Canon law and its ties to the Catholic Church. This is also highlighted in terms of Article 2 of the Constitution of Malta which holds that:

> *The religion of Malta is the Roman Catholic Apostolic Religion.*
>
> *(2) The authorities of the Roman Catholic Apostolic Church have the duty and the right to teach which principles are right and which are wrong.*

When compared to European countries such as Poland, the mutual factor is the influence of the Catholic Church.

Time and time again, Malta has been scrutinised by Human Rights Commissioners for its lack of action pertaining to the possibility of including abortion in the chapters of the Laws of Malta. In fact, the subject of abortion gained momentum in the recent European Union Parliament election.

This was immediately dismissed, due to the fact that Article 6 of the Treaty on the Functioning of the European Union outlines that the European Union has the competence to intervene exclusively in order to support or coordinate actions which are the Member States' sole competence, stating that the protection and improvement of human health is a policy area which falls under this criterion.[5]

During a visit to Malta, the current Commissioner for Human Rights, Dunja Mijatović, noted how restrictive Maltese laws are and stated that they "jeopardised women's rights."[6] She also criticised the lack of openness and discussion about this subject. She emphasised the importance of access to safe and legal abortion by EU standards which as a result of criminalisation, Malta does not measure up to. This was further emphasised by the Commissioner who noted that Maltese law contradicts the norms of international human rights law and encouraged lawmakers to remedy the situation as soon as possible.

Surveys, debates and protests have taken place over the years but the provision criminalising abortion in the Criminal Code as amended in 1981 remains unchanged.

1.2 MALTESE NGOS LEADING THE CHARGE

It is estimated that approximately 300 to 400 Maltese women annually have an abortion. Today, there are various NGOs advocating for both the complete legalisation of abortion as well as others, advocating against this for the implementation of stricter laws regulating abortion for the protection of life.

The Abortion Support Network is a pro-choice organisation which seeks to assist women with access to a safe and legal abortion due to the lack of such facilities within the local context. This organisation provides consultation and financial aid for women to travel abroad as well as accommodation. The Abortion Support Network in Malta noted that as a result of the coronavirus lockdown, the number of women seeking assistance for an abortion in Malta suddenly spiked since the travel restrictions blocked any legal route to a safe surgical abortion. Nonetheless, women were referred to 'Women on Web' and 'Women Help Women', international organisations which provide worldwide delivery of the abortion pill, which is an alternative form of termination effective until the twelfth week of pregnancy.

Apart from the introduction of this service in Malta, various pro-choice organisations have recently been established under the unified Voice for Choice campaign namely, the Women's Rights Foundation, the Young Progressive Beings which was founded on the belief, "that abortion is healthcare and that reproductive rights are human rights" and another organisation which has been raising awareness in this regard, the Doctors for Choice NGO which was constituted, "to advocate for comprehensive sexual and reproductive healthcare that is safe, equitable and accessible."

On the other side of the spectrum, there is the LifeNetwork Foundation which is a pro-life NGO aimed at protecting and defending the rights and dignity of every human being as grounded in the Catholic principles of morality and social justice. Another pro-life organisation is the 'Abortion in Malta? Not in my name' NGO which also follows similar beliefs.

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COMPARATIVE LAW ANALYSIS

INTRODUCTION

There is no uniformity among states in relation to abortion laws and there is an absence of international treaties and agreements which regulate this area. Various state laws exist - regulating, restricting or prohibiting abortion, resulting from the diverse socio-cultural realities among states.

To outline the diversity of abortion law as applied in different countries, a comparative exercise of the below mentioned countries will be conducted.

CANADA

In 1969 abortion was decriminalised in Canada. This was limited to particular circumstances and subject to conditions as follows; lawful abortion could only take place if this posed a risk to the woman's life or health, and subject to the approval of the, "therapeutic abortion committee'.

This committee was formulated by certified doctors who were authorised to determine whether the "continuation of the pregnancy would, or would be likely to, endanger the woman's life or health'. The prohibition envisaged by the Canadian Criminal Code in Section 251 on abortion stated as follows;

> *(1) Everyone who, with intent to procure the miscarriage of a female person, whether or not she is pregnant, uses any means for the purpose of carrying out his intention is guilty of an indictable offence and is liable to imprisonment for life. (2) Every female person who, being pregnant, with intent to procure her own miscarriage, uses any means or permits any means to be used for the purpose of carrying out her intention is guilty of an indictable offence and is liable to imprisonment for two years*[8]

However, in the *R v. Morgentaler* judgement of 1988 ruled by majority, it was declared that Section 251 of the Canadian Criminal Code was unconstitutional. Section 7 of the Canadian Charter of Rights and Freedoms envisages the right to life, liberty and security of the person whose right may only be deviated from "in accordance with the principles of fundamental Justice". The Supreme Court of Canada stated that:

> *forcing a woman, by threat of criminal sanction, to carry a foetus to term unless she meets certain criteria unrelated to her own priorities and aspirations, is a profound interference with a woman's body and thus an infringement of security of the person. A second breach of the right to security of the person occurs independently as a result of the delay in obtaining therapeutic abortions caused by the mandatory procedures of which results in a higher probability of complications and greater risk. The harm to the psychological integrity of women seeking abortions was also clearly established.*[10]

Consequently, in terms of the primacy of the Constitution of Canada, Section 251 was repealed whereby it was declared that, "the effects of the limitation upon the rights of many pregnant women are out of proportion to the objective sought to be achieved and may actually defeat the objective of protecting the life and health of women."[11] This resulted from the fact that the conditions imposed on women were manifestly unfair.

As a response to the Supreme Court decision, abortion in Canada is no longer restricted by the Canadian Criminal Code and may take place lawfully whereby, "under the Canada Health Act, abortion services are insured in all provinces and territories."[12] However, provinces regulate access to lawful abortion and so certain procedural restraints hinder access to abortion as a consequence of the irregular policies imposed. Such restraints include that the procedure is limited to hospital facilities approved by provincial jurisdiction and other diverse requirements for the authorisation of an abortion in an accredited facility including, "requiring a doctor's referral or gestational limits"[13], among others. Moreover, an alternative to surgical abortion is provided by means of medical abortion through the introduction of "Mifegymiso', the abortion pill which, "has been available since 2017 and is effective for use up to nine weeks gestation"[14] and can be prescribed by all physicians and nurses.

IRELAND

By means of the eight amendment of the Constitution Act, abortion was prohibited in 1983 whereby Article 40.3.3 of the Constitution stated that "the State acknowledges the right to life of the unborn and with due regard to the equal right to life of the mother, guarantees in its laws to respect and, as far as practicable, by its laws to defend and vindicate that right"[15], and thus provided constitutional protection to the unborn child, to the extent that the life and health of the mother was not at risk[16].

In the European Court of Human Rights judgement *A, B and C v. Ireland*, it was argued that the Irish abortion law was in violation of Article 8 of the European Convention of Human Rights[17] which protects the right to private and family life and was stated by Judge Casadevall:

> *States enjoy a margin of appreciation under Article 8 of the Convention in dealing with abortion cases, in which a fair balance must be struck between the health and well-being of the woman seeking an abortion and other interests and principles to be defended by the State authorities … However, while States enjoy a margin of appreciation in this regard, this does not confer on them absolute discretion or freedom of action, as the Court has reiterated on many occasions.*
>
> *As the judgment affirms, where a particularly important facet of an individual's existence or identity is at stake, the margin allowed to the State will normally be restricted. While bearing in mind the State's margin of appreciation, the degree of intensity and gravity of the present dangers to the woman's health or well-being must be taken into account on a case by case, in order to appraise whether the prohibition falls within that margin of appreciation.[18]*

Although in the abovementioned judgement it was ruled that Article 8 does not confer the right to an abortion and so the Irish prohibition on abortion does not exceed the margin of appreciation afforded to member states, the Court stated in terms of the applicant C, that:

> *there existed "no accessible and effective procedure to enable her to establish whether she qualified for a lawful termination of pregnancy"*[19] *and consequently this legal impediment amounted to a violation of her right to private and family life.*

Following which, the "Protection of Life During Pregnancy Act" of 2013 was adopted, extending the scope of abortion laws in Ireland. This Act provided women with the right to terminate the life of an unborn child if there is a "real and substantial risk"[20] and also "that risk can only be averted by carrying out the medical procedure"[21] in the case of risk of loss of life caused by physical illness, physical illness in emergency and suicide. However, this right was subject to various conditions including the examination by medical experts to acquire authorisation, such authorisation must be made in good faith and must be carried out at an appropriate institution.

Further to this, in the *Mellet v. Ireland* 2016 judgment it was ruled by the United Nations Human Rights Committee that the prohibition on abortion in Ireland violated rights envisaged by the International Covenant on Civil and Political Rights[22].

The "Joint Oireachtas Committee on the eighth amendment" in its December 2017 report, recommended a referendum to repeal the eighth amendment, "and access to abortion for any reason up to 12 weeks, with access for stated reasons after that"[23] which referendum took place in 2018 and the majority vote was in favour of amending the laws prohibiting abortion. Today this has been repealed by means of Part 2 of the thirty-sixth amendment of the Constitution Act of 2018, providing for the regulation of termination of pregnancy. This was followed by the Health (Regulation of Termination of Pregnancy) Act of 2018 which allows access to an abortion subject to certain conditions. As stated in Article 12, these conditions include that the pregnancy has not exceeded the term of twelve weeks and poses risk to life or health of the mother or is likely to lead to death of the foetus. This law also envisions the right to review the medical opinion, therefore facilitating access to the right to an abortion.

POLAND

Laws regulating abortion in Poland are even more restrictive when compared to the other states as discussed above. Whereas under the 1956 law abortion was legal, in September 1990 the bill on the "legal protection of the conceived child" was approved, supporting the Church-backed view that, "every human being has the legal right to life from the moment of conception"[24].

Following various discussions and amendments, this was approved in January 1993 as, "the law on family planning, legal protection of the foetus and the conditions of permissibility of abortion" and implemented in March 1993 whereby abortion could not lawfully take place except under three circumstances as follows, "abortion is allowed only when there is justifiable suspicion that the pregnancy constitutes a threat to the life or a serious threat to the health of the mother, that the foetus is irreversibly damaged, or that the pregnancy resulted from an illegal act"[25] including rape or incest and must be conducted in public hospitals.

Moreover, the 1993 law imposed an obligation on government agencies and schools to provide education on the matter of sex and responsible parenting and to provide means of birth control.[26]

However, even when one of the three conditions is satisfied, further restrictions are imposed resulting in the request for abortion to be refused. These include; if such pregnancy poses a threat to the life of the mother this must be certified by three physicians, if the foetus suffers from a foetal abnormality, prenatal diagnostic examinations must take place and be confirmed by two physicians[27] and if pregnancy results from an illegal act this must be verified by a public prosecutor.[28]

Furthermore, physicians or anyone performing abortions beyond the scope of the law would be subject to up to two years of imprisonment as a further deterrent,[29] and according to the Medical Code of Ethics, their license to practice would be revoked. Physicians are entitled to refuse to perform the procedure under what is known as the "'clause of conscience', which gives doctors the right to refuse an abortion on faith grounds'.[30] This is similar to the position held in Italy as will be discussed below.

In 1996 an amendment was proposed which envisaged various legitimate causes for lawful abortion including social causes such as poverty wherein such circumstances the possibility for mothers to exercise the right to abortion was allowed up until twelve weeks of pregnancy. This was to be subject to mandatory consultations and a three-day waiting period.[31] However, this was deemed unconstitutional due to its failure to protect the right to life of the foetus by the Constitutional Tribunal and was thus dismissed by Parliament.

Another bill was proposed in an attempt to eliminate lawful abortion in its totality, including cases of foetal abnormalities and to criminalise women who receive abortion services.[32] Nevertheless, this was opposed by the "Black Protest" and rejected by Parliament.

In 2017, yet another proposal was put forward to further impede access to abortion, the proposed amendment included referral to a Committee for further consideration and "would force women to carry non-viable pregnancies to term, endanger their physical and mental health and force them to give birth to children often with no chances of survival."[33] This was followed by the imposition of a prescription to acquire access to emergency contraception commonly known as the morning after pill.[34]

The European Court of Human Rights ruled that where the state allows abortion in certain circumstances, prohibiting access to that right through procedural hurdles constitutes a violation of the fundamental rights of women. This was held in various cases including *Tysiac v. Poland*[35] 2007 wherein various doctors confirmed that carrying out the pregnancy to term would be prejudicial to the health of the mother. Nonetheless, the pregnant mother was refused the procedure for an abortion resulting in the deterioration of her eyesight due to her condition.

The Court stated that since the government failed to provide a right to appeal the refusal of the request for an abortion, "the State failed to comply with its positive obligations to secure to the applicant the effective respect for her private life".[36] Therefore, the state must not only provide for legislative access to abortion but also ensure that such right may be effectively exercised in practice. Otherwise, as mentioned above, this would amount to a violation of the right to private and family life as envisaged by Article 8 of the European Convention on Human Rights.

This was also declared in *P. and S. v. Poland*[37] 2012 where an adolescent girl whose pregnancy resulted from rape was refused an abortion, the Court held that the positive obligations inherent to this right,

> [i]nvolve the adoption of measures designed to secure respect for private life even in the sphere of relations between individuals, including both the provision of a regulatory framework of adjudicatory and enforcement machinery protecting individuals" rights, and the implementation, where appropriate, of specific measures.[38]

Therefore, to ensure that the rights of women are protected in terms of Article 8, following adoption of regulations allowing for access to abortion, the State must make this available in practice.

Most recently, the Polish Constitutional Tribunal ruled that abortion in the case of a foetus having severe abnormalities or defects is not consistent with the Polish Constitution, with Chief Justice Julia Pryzłębska stating that the existing legislation governing abortion is incompatible with the Constitution. On November 2nd, the Polish Government missed a deadline which required it to carry out the court's ruling and as a result, the judgement's passage and discussions which were meant to take place in Parliament were postponed.

BELGIUM

Initially, under the 1867 law, abortion was illegal in Belgium. Following various proposals by lobby groups, feminist movements, social parties, lawyers and citizens including the "Action Group of the Outpatient services performing abortion" to effect an amendment, abortion was partially decriminalised in Belgium.

The 'Lallemand and Herman-Michielsen proposal' was adopted and implemented as the new abortion law on the 3rd of April 1990. For this to happen, King Baudouin I who refused to endorse such legislation, had to abdicate for a twenty-four hour period during which the proposal was consequently promulgated by the government. The adoption of this legislation was facilitated by the transitory guidelines[39] set out by organisations lobbying in favour of the decriminalisation of abortion which established the provision of counseling preceding the termination of pregnancy and also following the procedure.

Besides this, the guidelines also aimed at ensuring that an abortion is financially attainable as a standard procedure, as otherwise the purpose of amending the law would have been defunct. Following the implementation of the partial decriminliation, this resulted in an increase in facilities and hospitals where women could access the abortion procedure so as to ensure that this would fall within the framework of a monitored programme. An alternative to the surgical abortion procedure may be obtained by women in Belgium through the abortion pills Mifepristone or Misoprostol which are only effective during the early stages of pregnancy.[40]

In terms of Article 350 of the Code Penal[41], this law decriminalies abortion in certain circumstances whereby this may only take place during the first twelve weeks of pregnancy if the woman and doctor declare that she is "in a state of distress".[42] This condition is not defined at law and the doctor must agree in writing to perform such a procedure. Moreover, this is subject to a minimum six day period of reflection from the initial consultation until the procedure is carried out, during which mandatory counseling takes place and the doctor to perform the termination of pregnancy must inform the mother about the possibility of adoption among other alternatives.

Further to this, as envisaged by Article 350 sub-article 2[43], the doctor is subject to various positive obligations which include the duty to inform the mother of medical risks which may be incurred by such procedure, to ascertain the consent of the mother and to discuss alternatives which may be considered rather than the abortion.

Following the first twelve weeks of pregnancy, as per Article 350 sub-article 4[44] termination of pregnancy could only lawfully take place if carrying the pregnancy to term would be prejudicial to the life of the mother, in the case of serious medical reasons and if the unborn child suffers from an incurable disease. Such procedure may only lawfully be conducted if authorized by a second doctor at a hospital. As per Article 348 of the Code Penal[45], if the termination of pregnancy takes place without the consent of the mother, the doctor responsible is subject to imprisonment for a term from five years up to ten years.

Similar to the position held in Poland, doctors have the right to refuse to carry out the procedure but must provide an alternative reference upon first consultation. Following the procedure, women are obliged to have a check-up during which doctors must propose future alternatives for contraception. Termination of pregnancy taking place beyond the prescribed conditions will result in prosecution both on the part of the pregnant woman in terms of Article 351 and also that of the doctor or anyone performing the procedure in terms of Article 350 as discussed above.

At present, various proposals are being discussed to amend the current legislation regulating abortion, including the reduction of the reflective period from six days to forty eight hours and also the extension of the period during which pregnant women may opt for a termination of pregnancy from twelve weeks to eighteen weeks from conception.[46] Although there is no consensus regarding the full decriminaliation of the procedure, decriminaliation of practitioners alongside revocation of abortion from the criminal code is also being discussed.[47] The proposal whereby the twelve week period is extended up to eighteen weeks from conception has been adopted by the Justice Commission[48] and in February 2020 the Council of State declared that it has no objection to the amendments proposed however, this is being opposed by various deputies.[49] Therefore, the future regarding the decriminalistion of abortion in Belgium remains uncertain and subject to scrutiny.

THE NETHERLANDS

Abortion in the Netherlands is less restrictive when compared to other states and is regulated by the "Termination of Pregnancy Act'[50] as enacted in 1981 which entered into force in November 1984. Prior to entry of this Act, under the 1911 law, abortion was a crime against public morality. However, abortion would still take place in private clinics due to the demand by women suffering from, "social and psychological factors', in the years preceding enactment as such clinics were tacitly accepted by the government[51] and so safe abortion has been accessible to women since 1971.[52]

As opposed to the countries discussed above whereby an abortion may only take place if certain conditions are satisfied, the only prerequisite for an abortion to take place in the Netherlands relates to the period of reflection if the woman is in a state of distress so as to ensure that this is the necessary solution due to the individual's circumstances.

The 'Termination of Pregnancy Act' stipulates that termination of pregnancy may lawfully take place up to the twenty-fourth week of pregnancy. Upon consultation the doctor is under the obligation to discuss alternatives which may be resorted to in such a situation and the termination of pregnancy procedure may be utilised both by Dutch residents as well as by non-residents. A mandatory five day period of reflection similar to that imposed under Belgian law, must be abided by for the lawful termination of pregnancy to take place from the initial consultation until the termination procedure takes place. Minors may opt for an abortion if authoried by their legal guardian. Following the twenty-fourth week of pregnancy an abortion may only take place due to serious medical reasons[53] in two circumstances as follows if,

> [t]he unborn has an untreatable disease expected to lead inevitably to its death during or immediately after birth; or the unborn has a disease that has led to serious and irreparable impairment, where a chance of survival exists.[54]

However, if exercised beyond the remit of the law, termination of pregnancy may result in imprisonment as stated in Article 296 of the Criminal Code as follows,

> [A]ny person who provides treatment which he knows or could reasonably suspect might terminate a pregnancy shall be liable to a term of imprisonment not exceeding four years and six months or a fourth category fine. The act referred to in paragraph 1 shall not be an offence if the treatment is given by a medical practitioner in a hospital or clinic in which such treatment may be provided pursuant to the Termination of Pregnancy Act.[55]

Entities offering such services must be licensed by the government to ensure that high standards pertaining to facilities and medical equipment are maintained including those in hospitals and clinics. Also, for Dutch nationals abortion is covered by basic health insurance and so are cost-free, facilitating access for women in practice.[56] An alternative to the surgical termination of pregnancy is also legal by means of the abortion pill which may be administered up to forty-nine days from last day of menstruation.[57]

Although the Netherlands has one of the most progressive laws in terms of abortion, Christian anti-abortion organisations hold annual protests against the supposed liberal law in place and also hold protests outside abortion clinics in favour of the unborn child.[58] Nonetheless, readily available access to contraceptives, family planning services and public sex education have been linked to the low abortion rate in the Netherlands when compared to rates in other countries[59] and so the legal status is not linked to an increase in abortions.

ITALY

Under Italian law, the unlawful termination of a pregnancy was a crime in terms of Articles 545 and 555 of the Italian Penal Code. This was abrogated by means of Article 22 of the Italian Law 194, 'Norms on the Social Protection of Motherhood and the Voluntary Termination of Pregnancy' which was implemented on the 28th of May 1978.

The introduction of Law 194 was preceded by two decisions from the Italian Constitutional Court; Judgment 49 of 1971[60] which declared that the ban on information on contraceptives was contrary to Article 553 of the Italian Penal Code and Judgment 27 of 1975[61] whereby the Court had to determine between the Right to Life of the unborn child in terms of Articles 2 and 31 of the Italian Constitution when in conflict with the Right to Health of the mother in terms of Article 31 of the Italian Constitution. The Court held that,

> "[N]o equivalence exists at this time between the right, not only to life but also to health, of the one who is already a person, as the mother, and safeguarding of the embryo which has yet to become a person." Therefore, it admitted that pregnancy could be interrupted when the mother's health is in danger.[62]

and consequently, the court "declared the partial unconstitutionality of the crime of 'self-provoked abortion' under Article 546 of the Criminal Code.[63]

In terms of the reformed law, a surgical abortion may lawfully take place for women over eighteen years of age subject to certain conditions. Alternately, minors may opt for an abortion if authoried by their legal guardian or by the approval of a judge.[64] In both circumstances, this may only take place up until the ninetieth day of pregnancy if carrying the pregnancy to term poses a threat to one's physical or mental health.[65] Following which an abortion may only be resorted to if there exist fatal abnormalities in the unborn child or if this poses a risk to the health of the pregnant mother.[66]

Under such circumstances a certificate must be obtained from a doctor declaring the pregnancy and purpose for request of termination procedure. If this is deemed to be required urgently then the abortion may take place with immediate effect whereas if this is not urgently required a period of reflection of seven days is imposed upon the pregnant woman.[67] Once the certificate is acquired, the procedure may then take place in public hospitals or health care centres[68] and so private clinics as well as the abortion pill are prohibited by law.

Unlike the Dutch system, in Italy it is not legally required to have a follow-up visit following the abortion procedure. Therefore, it is evident that access to an abortion is restricted by time limits, conditions and medical authorisation and may not be exercised readily.

Moreover, under the Italian Law 194 in terms of Article 9 there exists the right of conscientious objection whereby doctors may refuse to carry out the procedure due to moral reservations[69] and such doctors are included in an exempt register. This creates a further restriction on access to the right to abortion by Italian women due to lack of abortion service providers as, "68.4 per cent of gynaecologists'[70] do not perform the termination of pregnancy procedure as a result of this right. At law the right to conscientious objection may not be exercised if the non-performance on the part of the doctor of an abortion will result in the death of the mother.[71] However, in practice this does not always follow as is evidenced by the Milluzzo trial, an ongoing case among various others, whereby nonperformance on the part of the doctor for the termination of pregnancy resulted in the death of the pregnant mother[72].

The issue of lack of effective protection of the right of the mother under Italian law was further manifested through the noncompliance to decisions of the European Committee of Social Rights following the 2014 and 2016 judgments. In the case of *International Planned Parenthood Federation European Network (IPPF EN) v. Italy*[73] the Committee declared the right to conscientious objection to be in violation of the European Social Charter in terms of Article 11, the right to protection of health which states that, "Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable'[74] and also Article E relating to non-discrimination which states:

> [T]he enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.[75]

These violations arose due to the high number of doctors resorting to conscientious objection as the Law 194 does not provide an alternative to ensure that women may access abortion throughout Italy resulting in discrimination on the grounds of regional and socioeconomic status and the Committee held, "adequate measures must be taken to ensure the availability of non-objecting medical practitioners and other health personnel when and where they are required to provide abortion services'[76].

Therefore, it it is evident that the varying laws among states inhibit access to an abortion even though as stated by the Report on Health and Sexual Rights and Family Planning (2001/2128 (INI), this "recommends that women's health and rights in terms of sexuality and family planning be secured, abortion should be legal, safe and accessible to all'[77].

ARGENTINA

To date, abortion remains illegal in all cases in Argentina, however, in 1922, an amendment waived punishment in cases where abortion is performed to save the pregnant woman's life or to preserve her health, or if the pregnancy is the result of rape, and the pregnant woman is mentally disabled.[78] This legislation has attracted criticism and scrutiny both nationally, as well as on an international level.

In 2007, the Human Rights Committee (HRC), the monitoring body which oversees the implementation of the International Covenant on Civil and Political Rights by the state parties, was presented with a case which challenged Argentina's position on abortion. In *V.D.A. v. Argentina*, the HRC was presented with a nineteen-year-old with a permanent mental impairment, who had become pregnant, it was suspected, as a result of rape.[79]

Despite the fact that at law, an abortion in this case would not have led to criminal proceedings, a judicial injunction against the woman was issued by the state, on the basis that that abortion would bring about "a new innocent victim, i.e. the unborn child'.[80]The heavy legal and social pressure on the barely-adult woman led her to resort to an illegal abortion, with her mother's assistance.

In this case, the HRC found that the Argentinian state had failed not only in its duty to correctly apply its laws, but that the imposition of the judicial injunction constituted "an arbitrary interference" in the victim's life and a breach of the International Convention. [81]

In 2012, the Supreme Court of Argentina issued a landmark decision on the issue. In *F, A.L. s/ Medida Autosatisfactiva.* a fifteen-year-old who had been raped by her mother's partner had been refused an abortion, despite evidence that the pregnancy would endanger her life. Following considerable juridical toing and froing, the minor was able to access a safe abortion.

The Supreme Court, nonetheless, exercised its jurisdiction and analysed the events which occurred.[82] For the first time, it declared that abortion was not punishable in all instances of pregnancies resulting from rape, irrespective of the woman's mental capacity. It also declared that having to request court authorisation for an abortion ran counter to the principles of emergency health care and urged authorities to remove unnecessary barriers to access to abortion.[83]

Legal amendments towards the legalisation of abortion in Argentina seem to be close, with President Alberto Fernandez committing himself to presenting a Bill to Congress which would legalise abortion, as well as provide access to safe health service providers to women who choose to terminate their pregnancy.[84]

BRAZIL

Brazil's Penal Code criminalises abortion in all cases, however, if the pregnancy is terminated by a physician strictly to save the woman's life, or where the pregnancy is the result of rape, then no criminal proceedings are to be initiated.[85] In any other case, the punishment ranges from imprisonment from one to four years, which may double if the pregnant woman is a minor, or dies as a result.[86]

As is the case with its Latin American neighbour, Argentina, this legislation is not without its critics. In 2015, the United Nations Committee on the Rights of the Child, the monitoring body of the Convention on the Rights of the Child, squarely called for the decriminalisation of abortion in all circumstances, in order to ensure access to safe abortion and post-abortion care services.[87]

In 2012, an eight-year-long case managed to crack the restrictive nature of the Brazilian penal code slightly wider, with the Brazilian Federal Supreme Court ruling that the abortion of anencephalic foetuses is legal.[88] The case, known as *ADPF 54*, found that forcing women to carry to term a foetus which will not survive is "physical and psychological torture, causing harm (sometimes irreparable) to the lives of the women who are affected."[89]

Further progress was made in 2016, when the Brazilian Federal Supreme Court ruled that the criminalisation of abortion during the first trimester of the pregnancy breached several fundamental human rights.[90] As a result, the physicians and clerks who had been arrested for carrying out abortions in a clandestine clinic were released, since, in the Court's view, pregnancies terminated with the consent of the woman within the first trimester did not constitute a crime.

Brazil's right-wing conservative Government, however, seems to be swaying in the opposite direction of its Courts, with a Bill introduced to increase penalties for abortions performed in cases of anencephaly,[91] and yet another Bill requiring victims of rape to prove they had been raped before accessing safe abortion.[92]

UNITED KINGDOM

In 1803, the United Kingdom officially criminalised abortion – without exception and at all times – by means of the *Offences against the Person Act.*[93] Nonetheless, the somewhat vague drafting of the legislation permitted its debate before the Courts, and in 1938, the case of *Rex v. Bourne* paved the way towards the legalisation of abortion for broad social and economic grounds.

In *Rex v. Bourne*, a fourteen-year-old who had become pregnant, as well as suicidal, as a result of a violent rape, sought an abortion from Mr Bourne, a surgeon, with her parents blessing.[94] Bourne's acquittal set a powerful precedent which shattered the assumption that abortion was completely illegal in the United Kingdom.

Thirty years later, the *Abortion Act* of 1967, which is the law currently in force, made specific exceptions to the *Offences against the Person Act*, therefore de facto legalising abortion in particular instances. Abortion is allowed:

- if it is performed by a registered medical practitioner, in a registered hospital, following the opinion of two other practitioners that the procedure may lawfully proceed;[95]
- until the twenty-fourth week of pregnancy if the continuation of that pregnancy would lead to "injury to the physical or mental health" of either the pregnant woman or of any existing children;[96]
- at any stage of the pregnancy if it would lead to grave permanent injury or is a life risk to the pregnant woman, or if there is a substantial risk that the foetus would be severely handicapped were it to be carried to term.[97]

While the *Abortion Act* does not explicitly provide for the availability for abortion upon the woman's request, or for cases of rape or incest, the Act requires an assessment of the woman's physical or mental health, as well as of her environment, a provision which is interpreted very widely.

It is important to note that the Act applies limitedly to England, Scotland and Wales. Up until October 2019, Northern Ireland still enforced a blanket ban on abortion by applying the *Offences against the Person Act*. From October 2019 onwards, no criminal charges can be brought against women seeking abortions or healthcare professionals providing them. Once the interim period (October 2019 – March 2020) lapses, medical abortions will be available in two Northern Ireland hospitals.[98]

UNITED STATES OF AMERICA

Abortion rights in the United States hinge on one monumental decision: *Roe v. Wade,* the landmark judgment transformed abortion into a constitutional right overnight. Other judgments, such as *Doe v. Bolton*, *Planned Parenthood v. Casey*, and *Whole Woman's Health v. Hellerstedt*, continue to shape the practical implications of this right, and at state level, access to abortion remains in constant flux.

In 1973, Norma McCorvey, known throughout the proceedings and for many years later, as "Jane Roe', sought to declare unconstitutional the provision within the Texas Penal Code which criminalised abortion in all cases, excluding where necessary to save the woman's life. The Court noted that the state's interest in the matter was threefold: ensuring adequate safety during medical procedures, protecting the woman's health and life, and finally, protecting potential prenatal life.[99]

To that end, the Supreme Court held that the Constitutional right to privacy and liberty encompassed the woman's right to terminate her pregnancy; that personhood within the US Constitution could not be extended to include the foetus; and that, based on a trimestral view of pregnancy and the concept of viability, the State could choose to regulate abortion procedures only following that point of viability, that is, approximately after the first trimester.[100] Thus the American constitutional right to abortion, at a time where almost all states banned it, was created.

Over the years, *Roe v. Wade* was tested on various occasions through many creative restrictions on the right to abortion attempting to circumvent it. The 1992 decision given in *Planned Parenthood v. Casey,* for instance, reaffirmed the spirit of the landmark judgment; however, it greatly diluted the strict scrutiny which *Roe* imposed on restrictions to abortion.

In this case, the Supreme Court was asked to strike down a number of obstructive provisions in Pennsylvania's Abortion Control Act. Steering away from the absolute liberty *Roe* had given to women in their first trimester of pregnancy, the Court instead held that the interest to protect potential life began "from the outset of the pregnancy'.[101]

The Court also adopted the "undue burden" standard" when dissecting abortion provisions, explaining that "[a]n undue burden exists, and therefore a provision of law is invalid, if its purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the foetus attains viability.'[102] This case resulted in an ambiguous test for state laws, and effectively gave conservative states the possibility to circumvent *Roe v. Wade* and implement restrictive laws on abortion at any stage of the pregnancy.[103]

Thankfully this position was once again clarified in *Whole Woman's Health v. Hellerstedt* in 2016, where the Supreme Court emphasised that the undue burden test is intended as a rigorous examination of the impact of abortion restrictions on pregnant women, and whether they truly further a valid state interest, based on reliable methodology.[104]

In line with the fluidity of Supreme Court rulings, access to abortion, together with the grounds for requesting it and the time limits for obtaining it, varies greatly at state level, despite its status constitutionally.

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THE MEDICAL ASPECT

INTRODUCTION

In order to achieve a balanced and holistic approach it was deemed necessary to seek the advice of medical experts. This would ensure that the legal aspects of this controversial topic would respect the medical implications.

The contribution of all the diverse actors, be they law students, respected academics or other professionals was fundamental to a critical analysis on the subject under discussion. GħSL has always maintained that expert analysis must be referred thus for this part of the policy paper, GħSL has contacted and coordinated with doctors in the medical field and made reference to literature recommended in the text.

THE MEDICAL PROCEDURE

Abortion can be best defined as a pregnancy that ends pre-maturely, with the loss of the embryo or foetus, either spontaneously or by artificial induction. In common parlance, the word 'abortion' refers to artificial induction, while a spontaneous abortion is generally known as a miscarriage[1]. There is no denying that abortion is a highly emotive issue, in which the opposing sides refer to medical evidence and ethical arguments to support their narratives.

That being said, the decision to have an abortion, is never free of conflict. Different jurisdictions tackle the execution of procedure in different ways, as prescribed by laws of a particular jurisdiction, which may be the consequence of moral, political or ethical beliefs. In order to understand the Medical perspective of the abortion debate, the general procedure will be outlined and comparative perspectives will also be taken into account. This section aims to describe to the reader what happens at every stage of the abortion procedure, to gain a deeper understanding of the subject in general and to further contribute to the argument whether abortion is a public health matter or a moral profligacy.

THE HISTORY OF ABORTION

Abortion, whether given consensus from the law or carried out by unsupervised and illegal means, has existed since the very beginning of humanity. People have tried to terminate pregnancies by means of internal or external methods. The formal method of induced miscarriage included mainly herbal concoctions which attempted to induce the expulsion of the embryo or the foetus.

These methods were harmful, not only because some of the so-called 'concoctions' had high amounts of mercury and lead compounds in them,but were further aggravated by the use of instruments such as knitting needles, bottles or syringes which were generally unsanitary.

An example of this is the use of the herb *Mentha Pulegium* otherwise known as Pennyroyal[2] - the ingestion of certain plants and concoctions can lead to multiple organ failure. Besides this, as a result of unsafe and unsupervised abortions with the use of clandestine methods such as removing with needles, syringes or hangers often lead to complications to the person undergoing the unsafe procedure. The WHO has deemed the use of this method as the unsafest means of induced termination.

The latter method (the external method) included such means as: hot sitz baths, binding the abdomen, jumping from high places, punching or pummeling the abdomen and abdominal massage - all methods which pose significant danger to the internal organs and the human body in general.

All of these are deemed as unsafe and clandestine methods of abortion. Of course, one cannot compare the methods used in the past to those which are safely monitored by doctors, as well as the scientific advancements at present.

The World Health Organisation has time and time again reaffirmed that unsafe and medically unmonitored abortions often lead to further complications and harm to the quality of life of the person undergoing procedures, with some methods leading to life-threatening and fatal complications. Unsafe abortions can lead to the following complications[3]:

- Blood Hemorrhage and Abnormal Vaginal Bleeding
- Bacterial Infections
- Damage to the internal reproductive organs as a result of unsanitary and sharp objects entered into the vaginal cavity or the anus.

PROCEDURES IMPLEMENTED PRIOR TO AN ABORTION

What happens before an abortion depends on the jurisdiction of the countries where abortion is legal. In Belgium, a pre-medical assessment is required as well as a counselling session to examine the options available to the person seeking an abortion, whereas in the United Kingdom, the consent of two doctors is required before the procedure may commence.

The World Health Organisation, in the Clinical Practice Handbook for Safe Abortion, provides general guidelinesfor the practice of abortion providers - subject to the requirements established by law of the country, however, the general framework is that clinic practice related to abortion is to promote and protect:

- Womens' and adolescents' health and their human rights
- Informed and voluntary decision-making
- Autonomy in decision-making
- Non- Discrimination
- Confidentiality and Privacy

Information

Providing information, through means such as leaflets, in a language which deviates from the medico-legal jargon, in a legible text which is intelligible for everyone. This is an imperative component for any medical provider. The minimum considerations the following:

- The different methods of abortions, and any such pain management to be chosen from
- A timeline of what is done before, during and after the procedure is complete, and any important tests needed
- An explanation of any such risks or complications that may arise
- Follow-ups and any such post abortion care that might be required

Counselling

As aforementioned, in Belgium, it is a requirement by law that any person seeking an abortion is required to go for counselling at least six days prior to the date of the procedure. WHO defines abortion counselling as a voluntary opportunity whereby a person receives support from a qualified professional.[4] What is imperative is the confidentiality between the patient and the profession, as well as the support to the questions and needs of the person seeking the abortion. The Royal College of Obstetricians and Gynecologists put forward a recommendation that women who are certain of their decision to have an abortion should not be subject to compulsory counselling and that healthcare staff caring for women requesting abortion should identify those who require more support in the decision-making process.[5]

The Decision on the Way Forward

Once the decision is taken by the woman requesting the abortion to proceed, she is presented with the methods available for the termination. The recommended methods available depend on the following factors:

- The Gestational Period of the pregnancy
- The result of the medical assessment carried out by the medical professional
- Any such medical conditions of the person undergoing the procedure
- Potential Risk Factors
- The Advantages and Disadvantages of every available method

Knowledge of the Individual's Medical History

Access to the individual's medical history is imperative in practice to gain an understanding of the patient's physiology as well as to identify possible risk factors in any possible complications:

- Personal Data: such as the name and age of the patient
- Obstetric history: Details of any such previous pregnancies, to term or otherwise.
- Gynecologic history: these include the Menstrual cycle patterns of the patient, such as heavy flow periods or if the patient suffers from dysmenorrhea, use of contraceptives, contraceptives used in the past and the experience the patient has experienced with such methods.
- Sexual history: the current partner(s) of the patient, the sexual history of previous partners and determination of any symptoms, and known history of, any sexually transmitted infections (STIs).

THE ABORTION PROCEDURE

Methods of Abortion

The medical definition of abortion is the termination of pregnancy, so it does not result in a birth. There are two main types of abortion:

- **Medical abortion** *(also known as 'abortion with pills') – taking medicine to end the pregnancy*
- **Surgical abortion** – *a procedure to physically remove the pregnancy*

According to the guidance of the Royal College of Obstetricians and Gynaecologists,[2] women should be offered the opportunity to choose an abortion method whenever possible.

Medical Abortion

Medical abortion involves taking two different medicines to end the pregnancy. The medicines are prescribed by a doctor and are usually taken over two days. According to World Health Organisation's guidance,[3] updated in 2020, abortion pills may be safely self-administered by the pregnant woman at home as long as she is given accurate information on the abortion process and can access medical help if needed. This method of abortion does not require any surgery or anaesthetic.

It involves the following steps:

- First of all, a tablet of Mifepristone is swallowed with water. Mifepristone blocks the effects of the main pregnancy hormone progesterone and prepares the body for a miscarriage.
- One or two days later, tablets containing Misoprostol are placed under the tongue, between the gums and cheeks, or inside the vagina for thirty minutes. Misoprostol causes contractions of the uterus and the expulsion of the pregnancy. Within 4 to 6 hours of taking Misoprostol, the lining of the womb breaks down, causing pain, bleeding and expulsion of the pregnancy. For pregnancies of over 9 weeks, a second dose of Misoprostol is recommended.

A medical abortion is experienced by most women in a similar way to a heavy period, with cramps and bleeding over a few days up to a few weeks. Ibuprofen is an effective pain killer for women undertaking medical abortion. In rare cases, the pregnancy does not pass fully and a surgical procedure is needed to remove it.

Surgical abortion

Surgical abortion involves a straightforward procedure to remove the pregnancy from the womb. Unlike most other surgeries, it does not involve incisions – the pregnancy is removed through the vagina. It may be done with:

- Local Anaesthetic (to numb the genital area)
- Conscious Sedation (where the patient is relaxed but awake)
- Deep Sedation or General Anaesthetic (where the patient is asleep)

Women opting for deep sedation or general anaesthetic are unlikely to remember any part of the procedure. The type of sedative use will depend on the procedure, the patient's medical history, and the patient's preferences. There are two methods of surgical abortion:

Vacuum or Suction Aspiration

This can be used up to 14 weeks of pregnancy. A tube is inserted into the womb through the cervix (the opening to the womb from the vagina), and the foetus is removed using suction. In later pregnancies, the doctor may need to use special instruments to help remove the foetus. Vacuum aspiration takes about 5 to 10 minutes and most women go home a few hours later.

Dilatation and Evacuation (D&E)

This method is used after 14 weeks of pregnancy. It involves inserting forceps through the cervix and into the womb to remove the pregnancy. D&E is usually carried out under sedation or general anaesthetic. This normally only takes about 10 to 20 minutes and the patient is usually able to go home the same day.

Post-abortion care is crucial for the health of women who procure abortions. Just like any other medical procedure, it is vital that patients are observed after the procedure in order to make sure that no negative effects have resulted from the procedure. The same is true for abortions. This is true for both induced abortions as well as spontaneous abortions.

Post-abortion care is most important for women who experience unsafe abortions, and it can be used as a way to limit any possible complications.[15] Many other things can go wrong, and it is all the more important that a proper follow-up is conducted so that any possible complications are minimised as much as possible.

It is important that women are given clear instructions on what to do while recovering.[16] First of all, the World Health Organisation recommends that placing anything inside the vagina, including sexual intercourse, should not take place until the recovery is complete. Bleeding is completely normal following both a surgical as well as a medical abortion, however bleeding tends to be worse following medical abortions.[17]

Women should also be given advise as to what symptoms may suggest that the pregnancy has not been terminated successfully, in order to set a further medical appointment in order to follow up.[18]

Contraceptive information should be available to women, including standard forms of contraception as well as emergency contraception, in order to prevent future unwanted pregnancies.[19] It is not healthy for women to go through multiple pregnancies with little space between them, or even worse, have to have abortions which could have been easily avoided with proper contraceptive care.[20]

Different types of contraception should be discussed, to see which fits in best for each woman. Certain types of contraception can be begun straight after the abortion, however others cannot be started immediately after an abortion.[21]

Some women may request sterilisation following an abortion, however special care should be taken when this request is made immediately following an abortion, to ensure that this irrevocable decision is not taken in the heat of the moment, and the woman is able to give informed consent.[22]

Women go through many different mental states following an abortion, and it is important that they are prepared for them. It is normal to have feelings such as guilt, regret, sadness, and anger.[23]

Having an abortion is a difficult choice, and takes a toll on the mental state of the woman. If a woman already has a history of mental health issues, an abortion can exacerbate existing problems, and therefore these need to be tacked from the beginning.[24] It is therefore vital that following an abortion, women are directed to holistic psychiatric care, including psychological support, should they require it.[25]

Studies show however that the emotional effects on women who have a later abortion and those who suffer from a late miscarriage are similar in character, suggesting that the popular belief that later abortions harm women's mental health more than other pregnancy outcomes, may not be completely true. In any case, such emerging evidence points toward the need for further research.[26]

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POSSIBLE COMPLICATIONS

The vast majority of women having an abortion will not experience any problems and all abortion methods are considered to be safe.[4] In approximately 7% of patients having a medical abortion before 14 weeks of pregnancy, residue of conception are retained and an additional procedure to remove them may be required. This increases to around 13% for medical abortions beyond 14 weeks of pregnancy. Haemorrhage and infection are rare and happen in around 0.1% of medical abortions.

Around 3% of patients having a surgical abortion experience an incomplete removal of pregnancy which may require another procedure to remove the remaining residue of conception. In surgical abortions performed during the first 14 weeks of pregnancy, the risk of haemorrhage or infection is around 0.1% - comparable to medical abortion. Beyond 14 weeks, the risk of complications increases to 1-10%.

Abortion is around 14 times less likely to result in death than childbirth. Abortion is also less likely to cause morbidity than childbirth.

EFFECTS OF THE ABORTION PROCEDURE

According to the UK National Health Service (NHS), the majority of women who have an abortion will not experience any complications.[6] This sentiment is also stated by the Royal College for Obstetrics and Gynaecologists.[7] They do admit however that like any other medical procedure there is a small risk that something could go wrong.

A difference must be made between the different types of abortion, medical abortions, and surgical abortions. This section will not delve deep into the difference between the two, only making reference to the different effects they have on the mother as this was defined in the previous section.

There are a number of different complications that can arise out of early medical abortions. A Finnish paper with a sample size of over twenty-four thousand adult women showed that 15.4% experienced bleeding, 2% experienced infection, 10.2% had an incomplete abortion, and 13% required a surgical evacuation to complete the abortion.[8]

Uterine Rupture

This complication is extremely rare, however it is possible at late gestations. The RCOG states that the risk is less than one in one thousand. The risk does increase however in those who have previously undergone a caesarean section. A more recent study found that the risk of uterine rupture for those who have undergone a c-section is less than 0.4%.[10]

Failed Abortion

It is possible that the procedure undertaken to cause abortion is unsuccessful. This can happen after both a medical abortion as well as a surgical abortion. After an attempted medical abortion, it is recommended that the woman either seek a repeat dosage of the medication, or a form of surgical abortion, such as vacuum aspiration, in order to complete the abortion.[12]

There is little available data on the effects on the foetus after a failed medical abortion, meaning if the mother changes her mind, it is important to inform them that there are unknown risks on the unborn child.[13] When it comes to an attempted surgical abortion performed at 12 weeks of gestation or less, according to the Royal College of Obstetricians and Gynaecologists, the chance of a failed abortion is 2.3 per 1000 abortions.[14]

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THE PSYCHOLOGICAL ASPECT

INTRODUCTION

When a person is psychologically tormented, her/his mood and/or day to day activities may be impacted.

The person's mood can have an impact on life experiences, and the way of adapting. A person's character and personality is also relevant and will also affect the way s/he interacts with others.

Psychological impacts are defined as being:

> *effect caused by environmental and/or biological factors on individual's social and/or psychological aspects.*[1]

The term *"affect"* is used in the area of psychology to describe a person's feeling, emotions and experience which can be perceived as both positive or negative[2]. More precisely, affect is the outward expression of feeling and emotion which can be expressed with a tone of voice, a smile, a frown, a smirk and basically any facial expression or body movement which indicates emotion.[3] Affect also influences how people interpret and feel about something. Affect is used mainly in the field of psychology to describe someone who presents her/himself as suffering from a mental disorder.

Psychologists give much importance to how a client or patient presents him/herself during therapy. There are different types of affects such as the 'Broad Affect' which is when a physically healthy individual can portray different emotions such as sadness, happiness and others.There is also the restricted affect in which a person would demonstrate limited emotion. When the person is under the 'Blunted Affect' s/he is even further limited in showing emotion and expression than under the 'Restricted Affect'. The 'Flat Affect' is when the individual completely conceals or restricts any sense of emotion and expression.

All of which describe how a particular experience or situation may lead to a range of diverse sensations resulting in various emotional reactions. Psychological research helps us understand peoples' everyday actions as well as interactions. Knowledge of psychological effects on people leads to a better understanding as to how the mind creates different perceptions and views by which a person is to weigh or understand the situation one would be in or how the person would act.[4]

The psychological effects may vary from one person to another. People face different experiences such as being bullied or being stressed or having an addiction such as smoking for example. When one is stressed, the results could be headaches, irregular sleeping patterns, anxiety and much more. All these factors may determine a person's ability to understand and interact with others. How a person experiences his or her emotions may often influence the mode of thinking, behaving and communicating.

In this section, the author will not delve into the psychological effects of stress but focus on the possible psychological effects of abortion. Abortion is a topic which has been debated at length for many years. In various countries or states abortion has been legalized although some limitations have been noted. Different jurisdictions have proclaimed not only that abortion is acceptable but also up to which weeks of the pregnancy and how the pregnancy would be terminated according to the implemented legislations of such jurisdictions. Abortion is when a pregnancy is terminated before the due course and thus will not result in the birth of a child. This is known as the termination of a pregnancy.

Abortion is not a recent concept, in fact it has a very long history. According to a blog titled *Thoughtco*[5]. Abortion started way back in ancient Egypt as recorded in a medical text which was written around 1550 BCE. Various articles mention that right up to the 1800s some women known as women healers in Western Europe and the United States carried out abortions and trained others to do so as there were no laws to prohibit such acts. States and countries around the globe started prohibiting abortion soon after.

However, the ban on abortion in the past was not with regards to surgical abortion but in relation to pharmaceutically induced abortions or the use of other means common in the ancient world. More recently, States began to prohibit abortion during the 19th century.

Britain passed abortion laws in the early 1800s which became stricter as time passed by. Later in 1880 the United States outlawed abortion although nowadays this is no longer the case in many states. Today, a number of states in the USA have legalised abortion although they may apply different limitations.

One must take into consideration that both in the past as well as in the present, in many countries illegal abortion was and still is being conducted. In fact many consider that the reasons for illegal abortions have not changed a lot. Unfortunately many women who opted for illegal abortion, especially those who were poor, were at a greater risk of death due to the unsafe conditions available. However, others declare and the author agrees that abortions today are done for other reasons which concern more the problems women face in the 21st century.[6]

It is worth noting that in the USA pressure for legalizing abortion started in the 1960's. [7] In Malta, lobbying for the legalisation of abortion has only started recently during the past few years. Currently it seems that local society is still divided on the subject of the legalisation of abortion.

There are different procedures by which one may abort. The type of abortion one would get depends mainly and entirely on how far along one would be in one's pregnancy. There are two main methods; the Medical abortion also known as the abortion pill and surgical abortion.. Surgical abortion involves a type of procedure to terminate the pregnancy. An anesthetic would be used to numb the area and the woman would be locally or completely sedated. The methods used for termination would be either vacuum or suction aspiration and dilation and evacuation.[8]

With regards to dilation evacuation, not every country agrees that such a method can be used in a pregnancy up to 15 weeks. This method can be used during the second trimester at 12 weeks and also if one is having an abortion further along one's pregnancy. This however, all depends on the legislations which are implemented in different jurisdictions as not every method is common to every country. Once the procedure has been carried out of course one is to rest in the clinic for some time under supervision.[10] Side effects may vary however, the main side-effects are vaginal bleeding up to 2 weeks and cramps for a few days.[11]

Leaving behind the physical effects as stated above, we will delve into the mental effects on the woman who has just had an abortion by examining the psychological effects. Dr Edna Astbury Ward[12] is a major contributor and has written many articles on abortion. Back in 2008 she wrote an extract titled the 'Emotional and psychological impact of abortion: a critiqueof the literature' in the Journal of Family Planning Reproductive Health Care. She started her article by stating that to describe the psychological after effects and the emotional state of a woman is difficult to understand and outline. This is because many factors may affect a woman's emotional journey through her experience of abortion.

According to this article, abortion is often the subject of methodological misinterpretations and misleading facts. Analysing the amount of information, extracts and articles on this subject is not only complicated but it has to be done methodologically to understand the situation in a comprehensive manner. There are many variations in such extracts dealing with women's emotional state and psychological experiences after an abortion had been carried out. However, many researchers have striven not only to gather information and research but also to produce informative literature which may indicate the emotional effects resulting from an abortion.

According to Dr Edna Astbury Ward it is not easy to understand the physiological effects on a woman after abortion because of the stigma that is still attached to this. It is also difficult to gather data on such psychological effects as many who have undergone the procedure of abortion may be unwilling to discuss the after effects of such procedure. One should bear in mind that many articles portray the personal opinion of the author pertaining to this situation and could influence that of the reader.

The reader should examine and critically analyse the various opinions in a transparent and academic approach before reaching her/his conclusion. Although nowadays many studies on abortion have been conducted, there is still a dearth of large scale studies in which women who have gone experienced abortion are the main contributors. As previously mentioned, the psychological and emotional effect after the procedure combined with a reluctance to participate by these women contribute to a lack of experiential data. Until recently the topic of abortion was closely debated with that of mental health and this will be examined later in this section.

Thus, to understand the effects of abortion on women one must sift through the literature available for the reader to evaluate. Emotions will affect the way we take decisions or at least influence the person[13] according to Professor Ray Dolan of university College London. For those who undergo abortion, this would be one of the most challenging and also important decisions taken in their lives which would cause psychological effects during that difficult time. Some authors relate feelings of negative emotion such as regret, shame, anger, guilt but others argue that these will not be present. Some also believe that such a procedure is one of the most discussed and debated as an issue in one's political, social and also moral sphere.[14]

Most importantly, the complexity of people and the in-depth analysis of such an experience seems not to have been adequately examined nor does it seem to be conclusive even though numerous studies have been conducted. The psychological effects and also emotions are vast and again too complex to limit to one article or study. According to the Royal College of Psychiatrists[15] (2008) abortion needs to be dissected in detail to fully resolve the dilemma as to whether such a procedure would affect women's mental health or not.

There are other reasons why emotional experiences and psychological effects cannot be isolated from one another as there is no dividing line between them. This is because there are many factors or variables which interlude between one sphere and another and so there is a lack of clarity with regards to those who have experienced abortion. Author bias may also influence the reader through the information provided. It is imperative for the reader to remain impartial and to maintain a critical approach to women's psychological effects after this procedure. The decision to have an abortion it is not to be taken lightly nor is it easy. This would be the accumulation of individual emotions and circumstances which may not be understood by the general public

According to Argent, guilt feelings from post-abortion arise when the to be mother would have already made an attachment to the child and pregnancy.[16] However this is also a subjective conclusion as the attachment which the mother to be would develop towards her unborn child is difficult to assess.

However, this declaration may be considered as an explanation as to why women would feel a sense of loss after an abortion. Furthermore, parental attachment is again a complex concept because some parents or those to be, form a strong and affectionate relationship with their children or foetuses. However, this is not always the case. This may also be the reason why some women feel conflicting emotions to the idea of doing an abortion. Some women may not be interested in the idea of motherhood and this view is one that should be respected. The author of this paper believes that not every woman wishes to give birth and become a parent as she may prefer her career to motherhood.

There have been situations where women delay abortion due to feelings of denial and ambivalence especially for younger women. This situation also arises where initially the pregnancy is accepted but later due to a shift in perception decide to have an abortion.[17] It seems that according to the Marie Stopes Organisation such a delay would increase the emotional harm, physiological and physical risks. Other literature confirms that delaying a decision to go for abortion increases the risk of harm and so psychological implications are even more complex at this point.[18]

Furthermore, how the level of grief depends on how much the woman was attached and wanted the child before she decided to have an abortion. The psychological effects may even increase when post-abortion women revaluate their life choices and their changing circumstances. This may result in either the woman can process the fact that she had moved on after having the abortion as if she was never pregnant or elsed keep thinking about the procedure and be overcome by negative emotions, thinking about the aborted child who would have had shared in her life.

Moreover, in some societies women are not adequately given the support needed when they choose to abort and this assistance would have been given to them if they may have miscarried and not when they decided to terminate.[19] In some cultures women are not able of expressing their feelings of grief, sadness, loss or any other particular emotion in regards to this procedure because their act and loss is considered wrong or even unacceptable in the eyes of the people as they believe that children or in this case unborn children are to be protected. This seems to be the prevailing situation in Malta. Although there are some people of different ages who are in favour of abortion many others are against it.

Interestingly not just in Malta but in other countries, there were instances where religion was used as a barrier for abortion to remain illegal. As history shows in Malta religion was and still is used as a barrier against many policies, particular situations or even new ideologies which have been debated at different periods.

So, if a woman is unjustly perceived or condemned because of an abortion than the physiological effects arising from grief, mourning, loss, isolation, shame and others would increase as this loss cannot be expressed, it is concealed and there is no one to help or support the person. Due to inadequate post abortion help or fear of being shamed hide their procedure from their families and friends.[20] Such thought suppression may lead to destructive emotions and introvertion, being less open with others and start to keep to one's self. This would increase negative emotions and the related psychological effects.

This evaluation of abortion literature is a complex process and proposes responses which are both complex and profound. The emotions of post-abortion are experienced differently by every woman who has carried out such a procedure. This is due not only because of social perception but also because of the psychological, emotional and cultural aspects. There are different ways to describe the situation and what the results of post abortion. Unfortunately this cannot be fully understood without experiencing at first hand this situation.

Many terms are used to portray post abortion negativity, apart from those previously mentioned. Some of these references are emotional problems, mental health problems and others. Not every word defines the same level of distress and sometimes even the term 'anxiety' can be used to portray a negative mental health post abortion. Some literature studies even use vocabulary which portrays serious mental harm such as 'suicidal thoughts'. This shows the various ways used to portray the women's current situation and after effects of such procedures.

Other authors expressed more diverse views in their literature. One of such is Dagg of the Department of Psychiatry in Mount Sinai Hospital based in Canada. He emphasised the psychological effects on women who had undergone abortion and the effects on the child and the mother if the abortion was not allowed to be performed or denied. His research showed that any psychological after effects occurred when the women were denied this procedure and that such effects had already begun before such an ordeal. According to his findings a percentage of mothers who had to give birth instead of abort transmitted negative feelings towards their children. He further stated that children born in an unwanted motherhood or pregnancy would later develop social and personality difficulties as they grew up.[21]

One should consider how these children would feel once they had learnt they were to be aborted but their mother was stopped or denied. They would experience feelings not only of rejection by one's own guardian who is supposed to love them unconditionally but also emotions and feelings of sadness but that of being unwanted or even to blame as in some cases the mother would suffer psychological trauma such as postpartum depression. Other authors state that if a woman decides to have an abortion it would be most likely that this decision is the best for them in their situation.

Other literature defines that not every woman would suffer from severe psychological responses and some suffer more than others. According to the American Psychological Association (1989)[22] younger and unmarried women who have no other children are more likely to suffer than others who have already given birth and are older. Furthermore, the association produced literature which stated that where there is a relationship and it is strong between the partners the mother would be more likely to feel a sense of regret. A study by Clare and Tyrell published in 1994 in the Irish Journal of Psychological Medicine was analysed by Margret Fine-Davis and together they complied different literature views in relation to such topic.[23]

Anthony Clare, a clinical Professor of Psychiatry at Trinity College, Dublin, and formerly a Medical Director, St. Patrick's Hospital, Dublin, together with Janette Tyrell, Psychiatric Registrar, St. Patrick's Hospital, wrote a literature review on the psychiatric aspects of abortion. According to their research, women who have very strong cultural and religious perspectives which are against abortion would not only oppose abortion but would harbour negative feelings towards those who opted for to abort or those in favour of such a procedure.

They would not accept the option to abort if needed and if they did, their negative psychological stress would be much greater and more severe than in those who do not embrace such beliefs or traditions. They further stated that for those who were forced to give birth and not allowed to terminate the pregnancy, the resulting psychological and emotional distress would not just be inflicted on the mother but also on the offspring as stated above.

Another interesting view is that of Bonevski and Adams (2001) of the Newcastle Institute of Public Health in Australia. The most interesting point which arose from this study was that contrary to other research articles when one voluntarily terminates a pregnancy there would almost never be any enduring or instantaneous psychological effects.

Furthermore, they proposed factors which could predict negative psychological outcomes. These were personality traits like; impulsivity, low self-esteem, psychiatric illness before pregnancy, conflicting beliefs in relation to religion and culture and others. Also, if the woman who aborts is an adolescent, the effects would be less and would not last long.

Furthermore, it has been also documented that when a woman is accompanied by her partner during the abortion procedure she would be able to cope better. This means that such support would create a positive outcome. Also, a partner who is supportive and helpful not only during the procedure but even before it would lessen feelings of loneliness. This highlights how less supportive partners and crumbling relationships increase the chance of having an abortion. Women who decide to undergo an abortion because of genetic abnormality are more at risk of feelings of shame, failure and depression as they blame their genetics for the termination of the child.

Thorp, Hartmann and Shadigian(2002) analysed not only the psychological effects of abortion but also physical aftereffects.[24] Adolescents who were pregnant and who had decided to abort became less anxious and there was a significant increase in self-esteem as time went by after the procedure.

Further research or literature showed that while some women experience psychological problems after abortion others benefitted from such procedure and felt satisfied. Other literature states that abortion has not only longer but sever adverse mental health affect with feelings of loss, guilt, shame and others. Abortion was also found as the contributory procedure which would lead to mental disorders resulting in substance abuse, depression, bipolar and others.

According to Fergusson the evidence which portrays the link between abortion and mental health is weak while in some cases this was not evident. However, as previously mentioned, researcher bias is evident in the literature that conveys different ideologies. The scientific research carried out by Fergusson dealt with the examination of the links or relationship between abortion and mental health in young women between the age of 15 and 25 years of age.

Information regarding the pregnancy of each participant and mental health history was made available or gathered. The study showed that those who had an abortion had a high rate of mental issues such as suicidal behaviours and other disorders. This suggests that those who opt for abortion at a tender age are more susceptible to mental health disorders. Fergusson stated that there are variables which no one has control over such as the effects of childhood and family. These may affect the person in different ways and the end result of how one would feel after an abortion would be different in every situation.

Furthermore, in this research women who were not pregnant were not taken into consideration as this would shed a different light with regards to mental health. There are two ways in which mental health and abortion can be linked. First of all, due to existing mental health problems before pregnancy which could lead the woman to abort. On the other hand, abortion could lead to mental health problems. The study concluded that those chose this procedure had poorer mental health than women who were not pregnant or had been pregnant before but did not have an abortion.

> *What this tells us is that the women in this study who had an abortion had a higher risk of mental health problems, leading the authors to conclude that their findings would indicate ;a possible causal linkage between exposure to abortion and mental health problems*[25].

Even though this test was one of the most interesting, accurate and vigorous it still had some limitations that cannot be put aside as otherwise the conclusion of the link between mental health and abortion would not be precise and accurate. Fergusson's research portrayed the traumatic event that some women expose themselves to which may increase mental disorders.

The study showed that psychological harm is not low for those who have an abortion but quite the opposite. However, still the issue of whether abortion leaves harmful mental and psychological effects on one's health needs to be further examined.

An important factor common to many of the literature reviews is that the legal termination of pregnancy would hardly cause any negative psychological after effects in healthy women. If these happen they would not be long lasting and transient. Furthermore, it was stated that only a small number of women experience such effects. In addition, if such psychological problems were to occur, they were more likely to occur to those who kept the child rather than those who abort.

On the other hand, some papers state the opposite. They vouch that abortion would have longer and harsher mental health affects so feelings of guilt, loss and low self-esteem would arise but these researches are somewhat incomplete or manifest shortcomings. Other research shows that demographic factors also play a part especially if one is supported by their family and partner. Also, fatal abnormalities or genetic reasons will also contribute to a women's mental health in an abortion.

It is worth examining whether such a procedure would be helpful to a woman's mental health. According to Patricia Casey[26] who conducted research in Britain many women said that continuing the pregnancy would be a greater threat than ending it. This may indicate that women would benefit more from abortion than having an unwanted child.

It would be opportune to measure and demonstrate how abortion may positively impact women in such a situation. Doctors should measure the women's level of distress, however to measure one's distress there would be a lot of factors to be analysed.

This very emotional and hotly debated topic is extremely polarized and no agreement is in sight between both sides of the divide. However, there are factors which are common in regards to post-abortion mental health problems. There would be poor social support, abortion at a young age, coerced abortion, strong mental instincts, abortion because of foetal anomaly, late abortion and others.

In the author's point of view, there is the need for new and more accurate methodical studies in this field. Again, the author believes that not every woman who aborted would experience the same feelings, emotions or psychological effects as the others. Impartiality is paramount to understanding how a woman would feel in this situation and what her situation is without jumping to conclusions and not analysing all the aspects. By evaluating the different literature reviews and research methods one can develop an unbiased and informed opinion on the subject.

Finally, the last point is whether abortion can lead to mental health issues and its association to other factors will give rise to much broader issues. When one evaluates mental health issues or disorders, even though these apply to a small vulnerable group this does not mean they do not exist. This can be also applied to the after effects of abortion where the risks and vulnerabilities involved should not invalidate the feelings of such women. As aforementioned the decision to terminate is very complex and the woman who decides to abort will have been influenced by many factors such as personal internal conflicts.

To understand the mechanisms leading to abortion and the psychological consequences is important. These must respect the individual circumstances of the woman without bias or judgement. Irrespective of this, any woman who needs support not only in deciding whether such a procedure would be beneficial for her but also during the procedure should be assisted and not overlooked. Unfortunately, it is still common practice for women to be left without support or guidance and to find themselves alone in this situation. This is one of the main reasons for negative psychological effects.

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THE ETHICAL CONSIDERATIONS

INTRODUCTION

Primum non nocere: "First, do no harm."

This phrase, commonly attributed to the Greek physician Hippocrates, sets an expectation that all doctors should follow.

This Latin maxim provokes much discussion in the realm of abortion, although the latter existed long before the former. Information regarding abortion appears in medical texts dating back to Ancient China in the second millennium BC, as well as Egypt circa 1500 BC.[27]

THE NOTION OF PERSONHOOD

At what point does a foetus become a person? This is among the main questions which spring up in the abortion debate. If one considers a foetus to be a person, it makes sense to want to protect it. On the other hand, if someone deems a foetus as less than or not a person, then the will to protect it diminishes greatly. Different schools of thought set different standards to determine at which point a foetus can be classified as a person.

Before modern medicine, the determination of whether the foetus possessed *individual life* was based on whether the mother could feel the unborn child moving within her womb. This was known as *quickening*, and has been used by jurists such as William Blackstone to designate the beginning of life, and therefore, to delineate the point where the termination of pregnancy invokes legal repercussions.[28] Various Greek philosophers had differing opinions as to when the soul enters the foetus.

A more practical approach as to when a foetus is to be considered as a person is whether it is able to survive outside of the womb, that is whether it is viable. This is actually the basis of the majority opinion in *Roe v. Wade*[29], where the justices decided that within the first trimester, the decision whether to have an abortion is at the discretion of the woman and her physician. Nineteen years after deciding Roe, the Supreme Court of the United States reaffirmed the right to abortion in Planned *Parenthood v. Casey*[30], but moved away from the trimester framework to a *"more workable"* system dependent on the viability of the unborn. If the foetus is capable of surviving outside of the womb, it is capable of living without the necessary connection to the mother and therefore is deemed to be under the protection of the State.

POTENTIALITY PRINCIPLE

Some argue that the viability of the foetus is immaterial. The foetus, if left in the womb to pursue its natural course, will eventually mature into a fully-fledged person endowed with experiences and memories. Therefore, whether the foetus is a person or not is not subject to discussion, as at some point in time it will be a person.

This is the essential idea behind the potentiality principle, which revolves around the potential for personhood whether the foetus is a person or not at any particular point. This argument however can be extended to contraceptives, as by blocking the possibility for fertilisation, the potential for life is being eliminated - therefore this argument would also prohibit the use of contraceptives, which is deemed necessary in modern society.

RELIGIOUS VIEWS

Some religions, specifically the three monotheistic religions, speak of a concept known as *ensoulment*, which is the point when the soul is encapsulated in the foetus. Early Islamic teachings forbade abortion after the soul enters the foetus, but there was no consensus when this occurrs, with estimates between 40 and 120 days after conception.[31] Modern Muslim jurists agree that the foetus becomes a person after four months of pregnancy and any abortion thereafter is banned.[32] There is no consensus however on the permissibility of abortion during the period before ensoulment.

Those who subscribe to the teachings of the Hanafi school allow abortion before the lapse of 120 days from gestation, whereas those of the Maliki school prohibit abortion altogether.[33]

According to the Catechism of the Catholic Church, life begins at conception and therefore an abortion is tantamount to murder even at early stages.[34] No exceptions are made even if the mother's life is at risk. Early Christian teachings however created a distinction between a formed and an unformed foetus, classifying the abortion of the former as homicide.[35] This was because an unformed foetus would still lack a soul and therefore there was nothing prohibiting its termination.

Jewish teachings explain that in certain cases, such as if the mother's life is at stake, it is the foetus which is trying to kill the mother and therefore, since the mother's life is at stake, it is permissible to terminate the pregnancy for *"her life takes precedence over [the foetus's] life"*.[36] Maimonides argues that in the case where the life of the mother is at risk, the foetus acts as a pursuer known as a *Rodef*. If the *Rodef*'s head has emerged however, then nothing can be done, as it is not permissible to *"set aside one life for another"*.[37]

THE DIFFERENT REASONS BEHIND AN ABORTION

Health of the Woman

A number of jurisdictions make an important distinction in the reasons behind the procurement of an abortion. Particular focus is given to preserving the life of the woman. In Roe, although the court leaves the regulation of abortion at the discretion of the states during the second and third trimesters, exception is made when the *"life or health of the mother"* is at risk, where they are barred from prohibiting the procedure at any point.[38]

This principle was tested in the case of *Stenberg v. Carhart*[39], where a Nebraska law prohibiting a certain procedure of abortion failed to make exception for when the health of the mother is at risk. In this case, the court followed the precedent of Roe and Casey, and affirmed that the failure to make exception for situations where the health of the mother is at risk is a breach of precedent.[40] Interestingly, a similar Federal law was upheld in Gonzales v. Carhart seven years later.[41] This judgement, which does not make exception for the health of the mother, argues that the particular procedure is never absolutely necessary, stating that *"there is uncertainty over whether the barred procedure is ever necessary to preserve a woman's health"*.[42]

Locally, the Maltese Criminal Code does not make any such distinction and categorically outlaws abortion.[43] It can be argued that in the case where the life of the mother is at risk, it is reasonable to terminate the pregnancy in order to save the mother, rather than having both the mother and the foetus dying. It is unclear whether the Constitutional Right to Life extends to safeguard the life of the mother in this scenario. The European Court of Human Rights in *Ogur v. Turkey*, stated that Article 2 of the Convention, which enshrines the right to life, extends to the positive obligation to protect life and therefore this principle contemplates the obligation to perform an abortion to save the life of the mother, something which is not yet permitted in Malta.[44] Is it the case that Maltese society gives more value to the life of the unborn rather than the life of the mother?

Genetic Testing

Advancements in genetic testing have allowed doctors to detect certain abnormalities as early as 10 weeks from gestation.[45] In such a situation, across those jurisdictions where abortion is permitted, the mother is presented with two options: either terminate the pregnancy or run the concrete chance of subjecting the unborn child to a life of difficulty.

There are some circumstances where the child is anticipated to live a brief, painful life. Some argue that not only is it permissible, but even *'morally required'* to administer an abortion in order to limit the suffering as much as possible, considering that the foetus will not live more than a few minutes or hours anyway.[46] Those who advocate for disability rights oppose this, arguing that allowing selective abortion in these cases sends a message to those who suffer from disabilities that they should never have been born.[47]

ABORTION - A HUMAN RIGHT?

Many who advocate for abortion say that it is a human right on the basis of the right to privacy. In fact, in Roe, it was decided that the right to privacy *"is broad enough to cover the abortion decision"*.[48] The state should have no say in what goes on inside the womb of a woman and therefore, any decision as to whether to terminate the pregnancy or not should be taken by the woman and the woman alone.

Since the introduction of Roe v. Wade, the death rate of the woman during abortion procedures has dropped from four deaths per 100,000 abortions to 0.5 deaths per 100,000, which can be attributed to the decrease of illegal and unsafe procedures, which have a much higher chance in resulting in the death of the woman when compared to more modern regulated techniques.[49] Therefore, Roe was not only a victory for the right to privacy of the woman, but also for the public health sector as regulation now affords women with access to safer abortions.

The fact of the matter is that *"[a] complete ban does not stop Maltese women from seeking abortion."*[50] The main thing which a complete ban does is that it pushes women to either seek unsafe procedures or incentivises those who afford to travel to more liberal countries where they can have a safe procedure administered by a professional. Those who avail of an illegal abortion are not only doing so with great risk to their health, but also risk the possibility of imprisonment and a criminal record.[51]

> *"Legalisation of abortion probably resulted in a small-to-moderate increase in the number of abortions, but appears to have greatly decreased the incidence of abortion-related infertility and death."*[52]

The European Court of Human Rights discussed whether the right to private and family life bestows upon the citizens the right to an abortion.[53] The Court came to the conclusion that the issue of abortion was not included in private and family life and it was up to the member states to decide on such an issue. The court argued that the woman's right to privacy *"was not absolute, nor was pregnancy a purely private matter"*.[54]

This is quite different from the decision reached in *Roe v. Wade*, where the right to decide whether to seek an abortion is encompassed under the right to privacy as specified under the United States Constitution.[55] One can plainly see that different jurisdictions have different interpretations on how wide this right is.

In the case of *Tysiąc v. Poland,* the European Court of Human Rights argued that although it is not within the competence of the Court to discuss the legality of abortion, if abortion was allowed, as it was in Poland under certain circumstances, here relating to the mother's health, it was prejudicial to her human rights to create procedural difficulties, after confirming that her case falls under an exception under the Convention. This is similar to the undue burden test as specified under *Planned Parenthood v. Casey*.[56]

Comparative analysis of different states in America

After Roe, states have the option to regulate the matter of abortion provided that they do not contradict the principles of Roe and Casey, mainly that the state cannot interfere if the foetus is not yet viable. In certain states however, this principle is not exactly upheld.

Alabama, one of the most conservative states in the United States, approved a law which bans abortion admitting an exception only *"in order to prevent a serious health risk"* to the woman.[57] This law clearly goes against the principles established by the United States Supreme Court and has actually been blocked by a United States Federal Judge.[58]

A relevant law in Texas, known as House Bill 2, was passed in 2013. This law was successfully challenged in the case *Whole Woman's Heath v. Hellerstedt*[59], where the court decided that the said law exerted unnecessary pressure citing *Planned Parenthood v. Casey*. The provisions which were included in this law were not concerned with the woman's health and posed *"a substantial obstacle to women seeking abortions and constitutes an 'undue burden' on their constitutional right to do so"*.[60]

In a more liberal state, such as the state of New York, abortion laws are not nearly as strict. The law in New York provides the right to an abortion when the foetus is under 24 weeks gestation, when there exists the *'absence of fetal viability'* or in order to protect the pregnant person's *'life or heath'*.[61]

This new law also removed abortion from the criminal code of the state, a step closer towards tackling abortion as a public health issue as opposed to a criminal one.[62] In California, the law is similar to that of New York. For abortion to take place, the foetus must not be viable and if the foetus is viable *"continuation of the pregnancy [poses a] risk to life or health of the pregnant woman"*.[63]

As can be seen, different states have varying views on the definition of the inception of human life, with conservative states seeking to outlaw abortions, while liberal states attempt to protect this right. It all comes down to the beliefs of the majority of the people in the state in question, with liberal states leaning pro-choice and conservative states leaning pro-life.

Father's Rights

If the father and mother disagree on the issue of whether or not to have an abortion, conflict is inevitable. One argument must naturally supersede the other and due to the fact that, at least in the United States, the abortion debate revolves around the right to the privacy of a woman's medical decisions as laid out in numerous Supreme Court cases starting with Roe, the woman's right always prevails.

Marsha Garrison, a professor at Brooklyn Law School, stated that the *"embryo is in the woman's body, it's within her and can't be separated from her, so it's not just her decision-making about whether to bear a child, it's about her body."*[64]

In many countries, if a man has a child and decides not to raise them, he has a legal obligation to pay an amount of money to contribute financially towards the child's upbringing, commonly known as *'child support'*. It is argued that if a man wants the pregnant woman to perform an abortion and therefore does not wish to raise the child, and the woman decides to proceed with the pregnancy, he should be exempted from paying any form of *'child support'*.

However this would also result in the woman losing her autonomy in deciding on her own health issues. Therefore it seems reasonable to discard this argument and support the woman's ability to choose what she wishes to do with her body.

Doctor's Rights

When discussing human rights in light of abortion, one cannot help but look at the Italian system, where a doctor may declare himself or herself a conscientious objector and may refuse to administer an abortion due to personal moral reasons.[65]

In 2019, over 65% of gynaecologists made such a declaration, drastically limiting the availability of abortion in Italy, sometimes with only one doctor available in a whole region. It is important to note that such a restriction cannot prevent a doctor from performing an abortion if it is to save the life of the woman, therefore the woman's life still has precedence.[66]

In the recent judgement of *Grimmark v. Sweden*,[67] the European Court of Human Rights examined a case where a midwife refused to perform abortions, which in Sweden was required of those who wish to occupy the post of midwife. The applicant pleaded a breach of articles 9, 10 and 14 of the Convention, claiming that her freedom of conscience and freedom of expression were contravened, as well as alleging that she was the victim of discriminatory treatment.[68]

The court however was of the opinion that the treatment she received of losing her job had nothing to do with her beliefs and any midwife who refused to take part in abortions, whatever the reason, would have suffered the same treatment.[69] If the profession one chooses entails the responsibility of performing abortions, one must accept that this will include the administration of abortion.

CONCLUSION

We have depicted the entire spectrum of various societies" views of abortion and with the polarised segregation in various countries with extreme views on both sides it is exceedingly difficult to reach consensus where both sides are satisfied.

Every attempt to change abortion legislation around the world has met resistance with counterarguments, but the discussion remains open; is abortion the woman's human right or should the foetus" right of life supersede it in any case?

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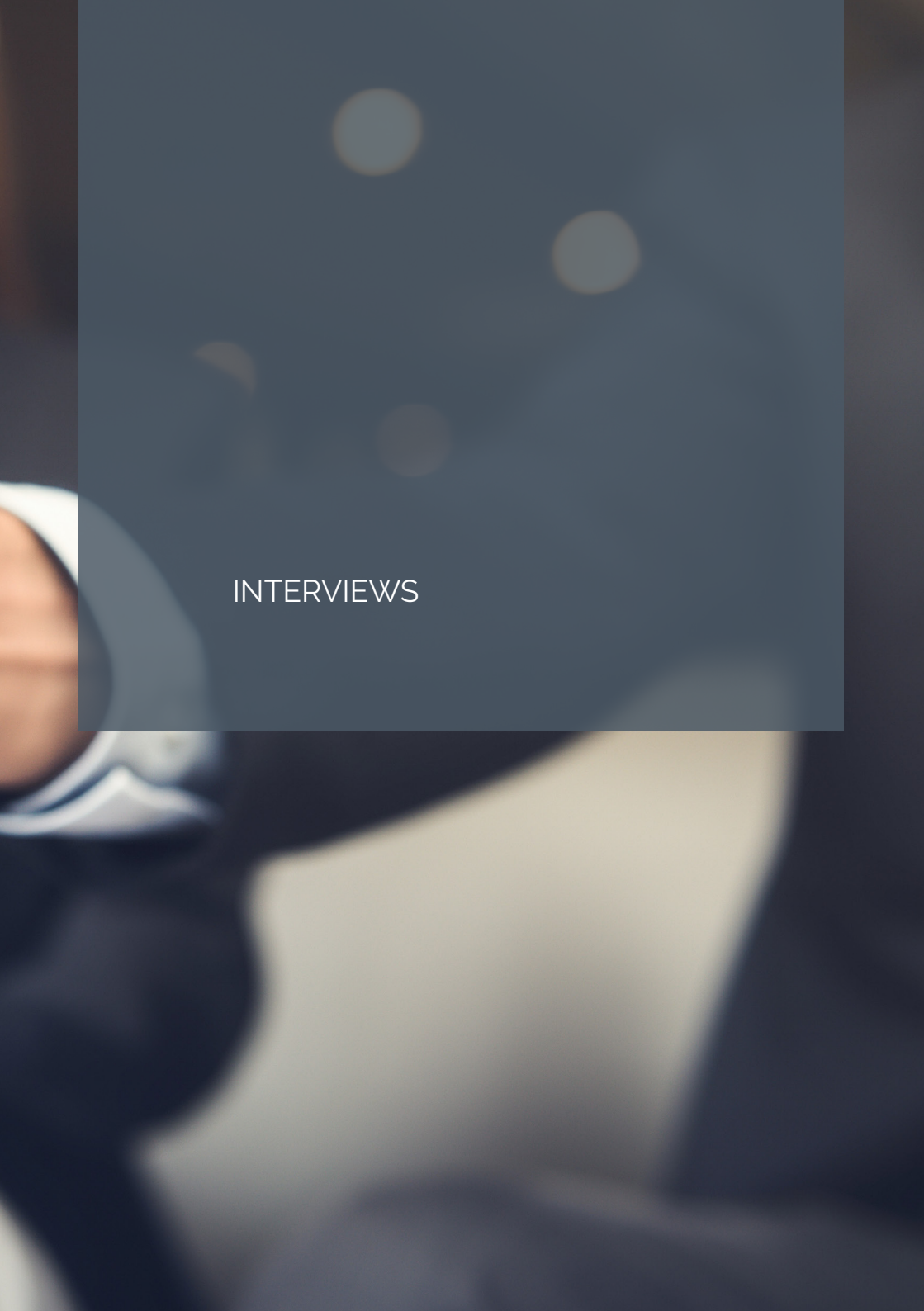

INTERVIEWS

INTRODUCTION

In order to obtain further insight into the discussion on Abortion from a lawyer's point of view, GħSL interview two members of the legal profession who have expressed differing opinions on the subject matter: Dr. Lara Dimitrijevic, and Dr. David Zammit.

INTERVIEW - DR LARA DIMITRIJEVIC

Dr Lara Dimitrijevic is on the Board of Governors of the Women's Rights Foundation of Malta, and has formed part of the coalition "Voice for Choice'; a coalition of groups advocating for legalisation of abortion in Malta. She is a lawyer specializing in Family Law, Human Rights Law and Immigration Law, and she also teachers Gender and the Law at the University of Malta.

For the information of our readers, you have aligned yourself with the pro-choice end of the spectrum when it comes to the on-going debate on abortion. abortion is often referred to as a 'fundamental human right', not just by abortion providers and NGOs but also in legal literature. Are there any express legal provisions that classify abortion as a human right, and if any, is Malta a signatory to them?

LD: Let us begin by saying that I am not aware that there are any specific international treaties that have said that abortion is a fundamental human right - more often than not, they discuss how the access to safe and legal abortion is a fundamental human right.

This emanates from a number of conventions. One that comes to mind would be CEDO; you also have the UN Children's Rights Convention, and last year Malta was slammed for not having access to safe and legal access to abortion. The Disability Rights Convention also makes reference to it - there are a number of conventions, even general recommendations.

Malta is however signatory to some of them, however there are reservations - if one had to look at the CEDO, Malta has made a reservation in that regard.

When we joined the European Union in 2004, Malta did a derogation that emanates from the European Union, regarding sexual reproductive rights, particularly abortion, in that such regulations will not apply to Malta. I believe that although Ireland had a total ban, it was not as extreme as ours. As an activist, I have also slammed the European Union for such a stance. When talking about trade, they made repeated attempts at having a civilized conversation, but when discussing fundamental human rights, particularly those that pertain to women, it did not bat an eyelid.

The case of *Roe v. Wade* has established that abortion is a constitutional right in America. According to you, should the state have a say as to the notion of personhood, and when a foetus in the womb is established to be a 'human being'?

LD: I would like to clarify that *Roe v. Wade* was not the first judgement ever, there were previous judgements.

So this judgement per se was the turning point?

LD: It was the tipping point yes - it said it's a personal right and a right to privacy, which is why it was so great in its own accord. When it comes to the notion of personhood, it is more of a sticky situation and a moral issue. There has been a judgement by the House of Lords, the "Society for the Protection for Unborn Children vs. Secretary of Health" decision. This judgement specifies and goes into different laws relating to abortion - it goes into the medical aspect, the scientific aspect. It must be mentioned that this was related to contraception, however the same principles apply.

When you look at the legal aspect, the Civil Code of Malta case in point, the Civil Code applies to that point in time where the foetus is independent and viable from the mother - even international treaties show that anything beyond that point should be regulated. Now, if the foetus has a conscious, if it is a human being or otherwise- this has an ethical issue which has a lot of religious influences as well and this is where I don't feel it would be wrong if legislation had to then dictate upon others" morality.

We have seen that in the past, laws have been discriminatory, because they did regulate to the point where they discriminated against minority groups. A case in point that comes to mind would be the Apartheid Regime in South Africa, and the Jim Crow Segregation Laws in America, the anti LBGTI+ legislation which is still present in Russia. So what may be morally right for you may not be morally right for me, but when there is legislation that imposes this - it is saying that the fundamental human right to safe and legal access is in itself inherently wrong.

From a Philosophy of Law perspective, Ronald Dworkin says that the abortion debate can be settled between both abortion groups once there is unity in the belief that life has intrinsic value. To what extent do you believe this statement and from your perspective as a pro-choice academic, what does one mean by 'life has intrinsic value'?

LD: I don't think it's something that the law should touch upon at all - what life is, whether there is intrinsic value or not, is different to every society.

What is inherently wrong, is when legislation starts to control those values and morals of the individual. We can go into a whole religious debate about this, and how Dworkin talked about this and his beliefs. We are talking about an "idealist" situation, it has been up for debate formany centuries. Although, we know that if we were to go for the religious aspect of it, that up until the 1700-1800s, abortion was available.

It was then through the theologians, such as Thomas Aquinas, who even spoke about the "quickening" - meaning when the mother starts to feel the movement of the foetus, there was no soul. So essentially, we can go into many debates, but what I find hard to believe is that after so many debates and discussions, we will find common agreement. But again, from a legal perspective, the law should not impose.

Now, let's get a little more familiar with the legal sphere. GħSL is aware that you have released a policy paper advocating for the decriminalisation, as well as the legalisation of abortion. Is there a specific legal model, for example, the United Kingdom abortion Act of 1967, that would be most suitable, socially and legally for Malta?

LD: The Women's Rights Foundation issued this document in 2018. Currently, the Voice for Choice coalition, is working on a policy document encompassing different aspects of the debate. We came up with 7 recommendations and we, at that point in time given we were the only organisation for this, stuck to what the committee from CEDO always recommends to Malta - which is having abortion available in these 4 circumstances, which are:

1) The right to save a mother's life
2) To preserve the physical and mental health of the woman
3) In cases of rape and incest
4) In cases of severe foetal impairment.

These are all specific situations cases where the legalisation of abortion is the very least that should happen. When you look at other models, I do not agree with the British Model - due to the fact that the British model still calls for criminalisation. There have been a lot of discussions in this regard, however abortion still remains criminal unless it is done in certain circumstances.

The ideal model is the Canadian model. This is not only my belief, but the belief of many pro-choice activists, as well as many pro-choice doctors, who reckon that abortion is a health issue to be regulated under a Health Act and something similar to this.

The Canadian system regulates abortion under the Health system. New Zealand has also recently changed its legislation and abortion is now being regulated under the Health Act. The reason why I agree this is the model that should be enacted is because at the end of the day- this is a health and medical issue, it is a decision that has to be taken by the pregnant person and the health professional, and no one and nothing should interfere in that decision.

As it stands, Malta has a total ban on abortion, being the only country in the European Union to have a total ban, whilst Poland poses the strictest laws in the European Union. Some people are also not aware of the notion of supremacy in European Union Law, whereby EU law supersedes national laws. That being said, realistically, is there a way in which abortion can make its way into Maltese legislation through European Union?

In the previous sections, of this policy paper it was mentioned that a political party said that abortion will become legal in Malta through European Union Law, however this was later debunked by the fact that public health is not an exclusive, nor is it a shared EU competence. So from that get-go, can it realistically make its way in?

LD: As you very well mentioned, the European Union has no competence in this regard. There was discussion before this political campaign happened, that the European Parliament wishes to start tackling sexual and reproductive rights. However, again, the EU does not have competence, even if it does have competence, within the treaty agreement that Malta did, we have a specific derogation. So unless there are changes, or unless that derogation is removed it will not have an impact and that legislation, despite the fact that European Union Law is supreme, it will not directly affect us.

The article regulating abortion in the Criminal Code, provides for a complete criminalisation, and prescribes punishment on any woman or physical who partake in an abortion, more specifically 18 months- 3 years. It is no secret that women still wishing to have an abortion travel to other countries in the EU to access safe and legal abortion elsewhere. From your experience, whilst remaining loyal to confidentiality, do such women return to Malta with anxiety that they will face legal consequences, and is there an association that provides help for such women should they need any post-abortion care?

LD: It is important to clarify that Malta has no jurisdiction for activities that happen in other countries - therefore the provisions of the Criminal Code are only applicable for cases that happen within Maltese jurisdiction.

So that is debunked?

LD: Yes, there are a lot of myths that if one travels for an abortion and when they return to Malta they will be held liable. This is something that the coalition I form part of has done a lot of fantastic work to raise awareness about.

Abortion Support Network is there to help women and a lot of women have reached out for help. Based on the research that has been done by Lisa Caruana Finkle, I can guarantee you that none of them have said that they suffer from any trauma. There is fear of course, but not to the point where this is effecting them in any way. When it comes to post-abortion care, we wish to provide it because it is not illegal to provide post abortion.

In your opinion, do you feel that the criminalisation of abortion is a contributing factor to the lack of balance in Maltese Gender law, and ultimately, gender equality?

LD: Most definitely- I think it goes way back as well and this is something that its source was colonialism. I believe that in the 1970's, during the time that former Prime Minister Dominic Mintoff was in office, there was a discussion, and there existed a good reproductive health care system - there were family planning clinics in the health centres and they used to provide contraception and it was recognized as being a right to women. However then, there was a change of government, so it was not just a situation of gender equality but also one of regression in terms of political beliefs of the back-then government.

We still live in a patriarchal society. A lot of people ask if this is because of the prevalent influence of the church. I would say, it's not so much so the influence of the Roman Catholic Church, but rather the values that emanate from the Church and Religion.

You mean things like marriage and the traditional family?

LD: No not necessarily, for example we still have the sanctification of the 'Madonna' - this immaculate person who sacrificed her life and will do anything for her children. It is something that becomes indoctrinated in our culture - in that we were brought up thinking that we must sacrifice our lives for our children and we, as women, are there to bear children. So, as a society we still see a lot of this.

I do believe that the younger generation is moving forward, and the older is perhaps becoming more understanding. However this is still very much engrained and this is a contributing factor to the existent gender inequality. We have done great strides in addressing this gap, but I believe that we are not even close to scratching the surface in this country.

Per se its not just the Maltese country, it's the law and at the end of the day, law is influence by societal behaviours and needs. When one mentions the comparative analysis, we are talking about fundamental rights and we cannot put fundamental rights akin to what other countries are doing because they are intrinsic to each and every individual.

Do you think perhaps the North-South Divide in Europe, in that anthropologically our behaviours might be a contributing factor?

We cannot simply reason that because a state opted to this, then we simply cannot follow suit just because we do not believe in it. This is a fundamental human right and the state should not dictate and control fundamental rights. Secondly, I think when it comes to argument of "southern" I think that is quite a fallacious argument.

In a legal anthropology unit we studied societal behaviours and laws in Southern Europe when compared to Continental Europe, so I thought it would be give some insight to see if it was a contributing factor...

LD: I see- well the reason being for my belief is that we, as a country, have proved ourselves that when it comes to LGBTQ+ rights we are at the forefront, not just in Europe, but internationally and globally and that is quite an achievement. So I think it's a matter of not wanting or having the political will and whatever that reason may be.

Months ago, a film called "Unplanned" which is a pro-life biographical film about an ex-Planned Parenthood worker, was signed by the President of Malta to be shown in cinemas, however it would only be shown in one cinema. Does the President of Malta have the discretion to do so and, should he oppose to signing a pro-choice film to be shown, what legal remedies would you put forward?

LD: That the President took this decision is wrong in itself, because I believe the President is there for the whole of the Republic and not only for what he believes in. Therefore, the way the President is taking a stand is incorrect.

You mentioned the film "Unplanned', however the President has had meetings with anti-choice activists, whereby he gave them a platform in his palace because that is what he believes in.

I don't think legally, he has discretion to stop something from being screened. If you're faced with a situation where a pro-choice film is not being allowed to be screened - then you need to see why it's not being permitted and who is not permitting it, because that would be discriminatory.

We came out against this decision due to the harmful effects this film might cause, and the fact that it has been debated as scientifically incorrect. But if the company screening was happy to screen this and had we, as a pro-choice coalition wished to screen this and we are told no, then the case would be against the directors of St. James Cavalier - but I do not think there are any legal remedies that can be directly taken against the President of Malta.

From a legal and policy perspective, there is also a discussion on the legal rights of another party: The doctor or physician in question: specifically, his or her right to opt out of such a procedure. This in turn has led to a quasi-absurd situation, like in Italy, which simultaneously has one of the oldest laws permitting abortion in Europe, but also a lack of doctors willing to commit this medical procedure.

Should there be laws or policies in place, such as the Principle of Necessity (that a doctor is forced to commit to doing a medical procedure when all other doctors available have opted out)? Or would this be a breach of their fundamental rights as practitioners?

LD: What is often cited by medical professionals, is the right for consciousness objection. Abortions in Italy are provided in public hospitals, but they are also still provided in private clinics - so one would wonder if this is merely for the money. Italy is often advertised as an abortion tourism for Maltese women. There was recently a case of the "Swedish Midwives" whereby they used this in their arguments in front of the European Court of Human Rights.

I believe that it is wrong, I believe that as a professional, you must see this as a health issue and it is the choice of the person asking for an abortion. If you do not wish to carry out an abortion, then you should not be obliged to however,

I do not believe that conscientious objection should lead to a situation where, like in Italy, it is difficult to access abortion because of this argument. Therefore, should there be a law or policy? I would say no and I think one should make reference and read into the “Swedish Midwives” case to further understand this.

INTERVIEW - DR DAVID ZAMMIT

Dr David Zammit is the Head of the Civil Law Department at the University of Malta and teaches units pertaining to Civil Law at the Faculty of Laws. Apart from specializing in tort law and asylum laws, he is also an anthropologist, and often uses anthropology as a bridge to understand further the relationship between laws and societies.

First of all, for the information of our readers you have aligned yourself with the pro-life side of the spectrum when it comes to the on-going abortion debate. How would you describe the reasons behind your argument, is it ethical, legal or perhaps moral?

DZ: I think it's interesting to interrogate the question itself - in so far as you make a distinction between ethical, moral and legal. Personally, my concern about the debate at the moment is that it has very much become a debate about what law can do or cannot do - so this is a worry. I am also concerned that the line of argumentation one may use. For example, one might say this is, or is not a right - whether talking about the right to life or whether the right to choice - and therefore because of that, there is nothing more to say about the matter. So in essence my worry is that the legalistic mentality, as expressed through the language of human rights might actually prevent people from thinking about this.

I think that neither law nor human rights should put an end to moral thinking and I also think that it is very important to defend a space for argumentation, which is not dictating what the law says, or dictating what people should think, but to try and find out what people do think- so from that, my inspiration is moral.

Then I would go a bit further and I would say that there are two other ideas which are at the back of my mind - one is the true meaning of freedom. When I was younger, I remember debates in the 70s about the impact of what was then called "women's liberation" and what impact it would have long term on society..

Was this a national debate or was it global?

DZ: No this was very much global- but I remember there was a streak of thought, which basically argued that feminism did not mean that women adapt to a male mentality and a male kind of approach, but it meant a change in the way people relate to one another, the way people work and the way how people treat their bodies, which to some extent involved also re-analysing what was concerned as feminine. Part of the promise was this, that it could restore men to their feminine side and help form a balance however this is not what I see happening in the abortion debate.

I actually see woman hankering to be more like men, even physically, in a sense of being able to treat their own bodies in a way which a man would. In a protest recently I had seen a sign saying "We are not birth giving machines" and that suggested to me a kind of utter contempt to the role of women in reproducing the human species. The idea that this is something mechanical and that it can be done by a machine and that the same machine breeds without thinking, to me it runs completely counter to what I would like to see.

I would like to see men thinking of their role in human reproduction and valuing it more - we cannot keep more producing more and more things, it would be far better to focus on reproducing human beings who feel loved and cared for. I am aware though that this argument can then go on the flipside.

Then the other thing that is very much at the back of mind is this: again, when I was younger there was always this feeling that the revolution was around the corner and that there will be a revolution and everything will change and all the hierarchies will be gone, people will have a much more relaxed life- and that is completely gone. It has been replaced by this neo-liberal approach which is all about working like mad, trying to accumulate as much money as possible. To me it is a horrible let down to think that the only freedoms being promised at the moment are those which don't cost anything for anyone. On the contrary, those which prepare people even more for working in the labour market, which does not involve creating time where one can be at home.

The case of *Roe v. Wade* has established that abortion is a constitutional right in America. According to you, should the state have a say as to the notion of personhood and when a foetus in the womb is established to be a 'human being'?

DZ: When you think about the directionality of this argument, you start with a core judgement. On the basis of this core judgement you will establish certain rights, and you are suggesting the legal notion of personhood should then dictate how one responds to something - and that is fine from a legal point of view.

My problem, having training both in Anthropology and Laws, is this: first of all, I think that law masks its own productive law and law itself produces subjectivities in personhood, and law itself can deny subjectivities. Rathen than catering for such subjectivity, this case is presenting it as an automatic matter.

I prefer this question because the second part of the question seems to open up more about the productive role of law and the relationship between rights and persons. Whilst normally you say you are a person and you have rights - by giving rights you can consider something as a person. Marianne Glanden, who was for a long time a US Ambassador for the Vatican had written a book about the language of "rights'. She attacks this language because it was peremptory, it did not allow space for any other debate and it tends to kill off moral debate.

I feel more frustrated with the arguments waged by pro-lifers who say that the foetus is a person and therefore it has rights. The arguments of the pro-choice stance say it is not a person and it does not have any rights. I actually think that with the notion of personhood, I actually think that the foetus does not fit in within the legal concept of personhood, however having said that, it is irrelevant whether or not the foetus is a person because at the end of the day, I think the whole point of abortion being something bad is based on the fact that you are killing off the potentiality of personhood emerging.

The way I see it, abortion is more of a crime against one's own body and for this reason, I believe a woman who goes for an abortion is harming herself in ways in which she herself might fully understand - one is introducing death to the part of her body which is designed in a way to bear life, - and this is a bit of a contradiction which is being embraced, allowing violence to be internalised.

I do understand the argument of cases of rape- shouldn't you be allowed to reject this? But then the problem is, how can you respond to violence with violence without getting trapped by the cycle of counter revenge?

I have seen interviews carried out with women after an abortion and they have said that their feeling of anger or guilt, and the sense of being misunderstood and their disappointment in people not saying that they would feel this way, then I see others who are different and say they did not go through these same feelings. I accept both testimonies but I think that those type of women who do not feel anything can also to some extent, render themselves more insensitive than they could otherwise be, so for me, that goes against the whole idea of paying attention to your body and environment and being in tune with it.

Abortion to me has the same modernist logic where you get people who just plant a block of apartments in a valley with no remorse, it is the same kind of non-alertness of the signals being given to you.

From a philosophy of law perspective, Ronald Dworkin says that abortion debate can be settled between both abortion groups once there is unity in the belief that life has intrinsic value. To what extent do you believe this statement and from your perspective as a pro-life academic, what does one mean by "life has intrinsic value'?

DZ: What is being resisted here is the thought that "life is a means to an end" so for example, a tool to achieve something else. If you think that life has intrinsic value, I think that means that even somebody who is bound on his death bed should not be killed. I think that this means that at the end of the day, nobody should think about their academic work as being something that you should do just because it is your job or about preparing students to occupy a functional role in the labour market.

I believe our aim is also to form students' values to some extent, and the way one can do that is by striving for consistency and coherence between your values. For example: I was asked by an NGO to act as a specialist expert in relation to an annual human rights report. For some time I carried out research but in time, the NGO came out very much pro-choice which they saw as being consistent in human rights - I could not occupy this role anymore without being consistent.

The aforementioned case of *Roe v. Wade* established that for America, abortion is a "constitutional right'. The pro-choice stance often argues that abortion is a human rights issue, however there is debate as to whether it is a fundamental human right. What is your perspective on the matter?

DZ: For some schools of thought, declaring something to be a human right means that you are declaring that this is a fundamental part of humanity, a right to be entitled to and protected, which is universal and based on natural law, which goes beyond certain particular cultures which one might inhabit. Speaking as an anthropologist, I am aware that there are many cultures which have practiced infanticide, which goes beyond abortion. One cannot really, if one were to base this idea of natural law on this, then you can come up with arguments one way or the other.

I think that whether or not human rights reflect human nature or not, the process of declaring a human right is a man-made social process which people are reaching through certain times of discussion.

In reality, what we see is that at one point something is a sacred human right. For example, the right to family life, which is being completely ignored when it comes to migrants who are separated from their children in the United States, a country that at a certain point in time used to praise itself for the embracement of human rights. In this context, I do not think we can talk about human rights, purely as if it was as self-explanatory - I think the moral side of it should always be open for discussion. This is why I am more interested in the long-term moral argument rather than the mechanics, in that it is foreseeable that abortion could be declared to be a human right by an authoritative body.

Human rights are best for basic human needs, such as the right to habitation and the right to life, freedom of expression. But before protecting other rights, protecting the aforementioned rights must be safeguarded first.

I think that in order to prevent abortions there should be a recipe for a welfare state. I believe that to be consistently pro-life, you have to be anti-war, anti-death penalty and you have to be in favour of the provision of adequate services, including adoption services and so on - so it is possible to redevise the question of choice.

Presently, Article 241 of the Maltese Criminal Code provides for a complete criminalisation and prescribes punishment on any woman or physician who partake in an abortion, namely 18 months-3 years imprisonment. Do you believe that Malta should step aside from punishing vulnerable women in order to preserve their health and should the legislator take a gentler approach?

DZ: My understanding is that at the moment, it has been a while since someone has been prosecuted for an abortion in Malta.

There have been reports in the media that some people have been selling fake mifepristone and misoprostol pills (abortion pills) and as a result, informing the authorities. This obviously carries legal consequences with it, especially when taking into account the principles of criminal law, as this can constitute an attempt by having the means. The question is however, should there be aid for women rather than prosecution and imprisonment and for physicians, should he be exempt from continuing his medical practice- ergo, should there be a gentler approach in the law?

DZ: We should keep in mind that law sometimes make statements simply by being there, even if it is not enforced directly. In terms of this statement which the law makes at the moment, it basically states that abortion is a criminal offence akin to murder, because there is a termination of a human life - I am definitely sceptical, like many others, that a foetus where insemination occurs just a few days before constitutes as a human right, however I am aware that the debate of the emergency contraception pill was around this issue.

There was scepticism as to whether the emergency contraceptive pill produces the same outcome as an abortive pill. However this has been medically debunked and is said to have the same effect as the regular contraceptive pill, but the hormones in the different pills vary...

DZ: Yes exactly - but even if it were, to my mind it would still be a different matter when it is just a few days old to talking to an 8-month old foetus.

Does that bring about the question of viability, given that this is a blanket provision?

DZ: As far as I am concerned, if a woman and a doctor abort an 8-month-old baby, I would personally think that a criminal penalty should be made for that. I believe that there is a gap between the law and its enforcement, which is okay, because the law can remain consistent then by not enforcing it hardly ever, one is effectively recognizing that this in fact is draconian in its nature. On the other hand, it is also making a statement.

So, instead of perhaps arresting a woman, should there be an agreement and discussion with NGOs to help women, instead of enforcing a criminal penalty - similar to how the current prostitution debate in Malta is going about?

DZ: I think aid should be offered for sure. I believe that a lot of women go for an abortion out of a sense of respectability- there is a stigma, and it is horrible because it ultimately puts people in a position where they have to commit a much worse crime in order to keep some sort of respectability. The situation there, in prostitution like you mentioned, is quite different.

If you look, even, at the Laws of Malta we have actually started from a position, under the Knights, where the law favoured prostitution on many levels. There were rules which prevented a husband who allowed his wife to act as a prostitute - it is a dark side of Maltese history. Law per se, as it stands, does not make prostitution illegal. What it prohibits is prostitution in public spaces.

Abortion is different, because if one starts making exceptions to this rule, there is no turning back - that being said I think the current rule should remain applicable when applied to extreme late term abortions and any other such extreme cases. Whether people travel or not, the fact that our law is the only law left which is making these very clear statements, it sends a good message. Even if it were the case that you make exceptions

You teach a legal anthropology unit at the University of Malta, namely Law, State and Society in Southern Europe, where you seek to understand Southern European laws and societal behaviours and adopt a comparative approach to Continental Europe. Do you believe that Malta's reluctance to discuss the topic, and its complete exclusion to embrace it in its is legislation has some sort of relation to Southern European culture?

DZ: From an anthropological perspective, what is most important is to state your difference, it does not matter on what basis you are stating your difference. During the Serbian-Croat war, there was an issue as to how to pronounce the "Our Father'- Serbs pronounced it one way, Croats pronounced it differently, and there were cases of people who were imprisoned or killed if they said the "Our Father.." depending on the accent it was said in.

On the other hand, I believe it is a good thing, because there is an idea that nationalism is always bad, and that nationalism means refusal to develop a universal human consciousness. I believe that the starting point has to be people reasoning things over and thinking them over - and if such distinction did not result, then I suspect that in Malta, one would always be able to say that if the rest of the world is doing something, we should follow suit. This makes us reflect on our own circumstances, and it makes us develop a stance where we reason whether something is applicable for Malta. The result should be to promote better debate.

In reality, there was a generation whose whole idea was "In Malta we do not have standards that people abroad have" but I believe that is now beginning to gradually diminish. I think the danger is much more that people seeking to homogenize and seeking to be like everyone else and in the process think they have values, rather than aggressive nationalism.

A few years ago, the Human Rights Commissioner of the Council of Europe made recommendation to Malta that a debate should take place on the future of abortion in Malta. Do you believe that this if this debate goes forward in the foreseeable future, it can be an opportunity for both sides to make their point and have a mature discussion or do you believe stance to put forward either of their belief s and foundations?

DZ: I believe it very much depends on who sets up the debate, what process it is linked up to - any debate whereby there is a conclusion, I believe cannot be a debate so I think one can only debate that one's own views will change as a result of the debate. Quite often, there is a contradiction and pro-lifers might be guilty of this, an example would be being pro-life and being pro-war. On the other hand, pro-choicers have a tendency to reason that tend to challenge pro-lifers" intelligence.

One has to beware of the elitism which might be smuggled into such debates because the public's intelligence should not be underestimated either, from both sides. Also, it depends what constitutes as a debate. Strictly speaking, we have had a debate for quite a long time and we do not realize it.

I believe the question of legality of abortion was brought up last year in the European Parliamentary Elections however this was debunked because public health is a state competence.

DZ: That means one is putting the issue of abortion as a public health issue, which I understand to a certain extent, which I believe is a popular way of framing it, however I believe there are different ways of framing it. Depending on how it is framed, there might be a different relation with the European Union.

We have to start thinking of a coherent system of ethics which is based on solidarity, not just between humans, but between humans and animals. It is disappointing that such an argument sometimes translates to the same vocabulary used when discussing property rights.

From a legal and policy perspective, there is also a discussion on the legal rights of another party: The doctor or physician in question, specifically, his or her right to opt out of such a procedure. This in turn has led to a quasi-absurd situation, like in Italy, which simultaneously has one of the oldest laws permitting abortion in Europe, but also a lack of doctors willing to commit such a medical procedure. Should there be laws or policies in place, such as the Principle of Necessity (that a doctor is forced to commit to doing a medical procedure when all other doctors available have opted out)? Or would this be a breach of their fundamental rights as practitioners?

DZ: I think it is precisely because of this issue that Maltese law offers clarity - the moment one starts entering into arguments. Doctors and Medical Professionals enter into oaths which they take, which require them specifically not to conduct an abortion, which is the basis of medical ethics. But then how can you allow for Freedom of Expression and Freedom of Opinion of the doctor when you cannot allow them to act according to their opinion?

I personally would not be in favour of this necessity principle, and the very fact that one would contemplate this, shows how dangerous it could be once abortion is considered as a right, because a point might be reached where no compromise is possible and it progressively becomes more difficult to hold a pro-life view - eventually the pro-life stance becomes a minority and it can either be respected from the confines of this minority - so bit by bit I think this poses a threat for other human rights.


BOV

PROPOSALS

DEFINITIONS

In these proposals, unless the context provides otherwise, the following terms shall have the following meanings:

"Abortion" means the termination of a pregnancy through the expulsion of a foetus, whether by medical substances or surgical methods, before it is capable of independent survival.

"Civil Society" refers to society that is considered as a community of citizens linked by common interests and collective activity.

"**Criminal Prosecution"** means the act of commencing legal action against a natural or legal person accused of a crime.

"**Decriminalisation"** refers to the action and/or process of ceasing to treat something as a criminal classification.

"**Hate Crime and Speech Unit"** refers to the Hate Crime and Speech Unit, a specialised Unit within the Malta Police Force, which offers complementary therapeutic and legal services to victims of hate crime and speech.

"Gender" means the socially constructed roles, expectations, activities, behaviours, and attributes that society at any given time associates with a person of any sex, assuming any form of gender identity, or gender expression.[1]

"Gender Equality" refers to the equal participation of women and men in different life domains.

"GħSL" refers to the Għaqda Studenti tal-Liġi, the largest and longest standing student organisation in Malta

"Gynaecologist" means a medical professional, namely a Doctor of Medicine and Surgery, specialising in the treatment of women's diseases especially those concerning reproductive organs.

1 Chapter 581, Laws of Malta, Gender-Based Violence and Domestic Violence Act, P. 3. 2018.

"Journalist" means any person who collects and writes news items and columns for newspapers, magazines, radio, television, or online media.

"Post-Coital Contraceptive Pill" refers to medication taken orally by a woman within the stipulated dates after sexual intercourse, which reduces the probability of a pregnancy.

"Prophylactics" mean devices, such as condoms, used to prevent venereal infections that can be transmitted through sexual intercourse, as well as pregnancy.

SECTION 1: LEGISLATIVE REFORM

1.1 Demands the immediate and urgent removal of Articles 241 and 243 of the Criminal Code, Chapter 9 of the Laws of Malta.

1.2 Calls upon Government**,** in parallel to **recommendation 1.1** above, to:

- reinforce the principle of 'good faith' for medical professionals and any person opting, considering, discussing, or having had an abortion;
- remove and quash any ambiguities surrounding the legality of abortive procedures done outside the jurisdiction and territorial waters of Malta;
- work towards the erasure of the taboo surrounding the abortion debate in civilized conversation.
- provide adequate training and resources to satisfy the demand and deliver the necessary care, for persons requesting family planning, or post-abortion care services.
- provide a safe and therapeutic environment for patients who might have been in anyway abused, either verbally, sexually, or psychologically abused, and as a result, traumatized, by catering for their needs in a stigma free and understanding environment.

1.3 Recommends that an independent entity is established for any persons considering abortion, with the mandate to provide counselling for pre-abortion decisions and adequate family planning, as well as post-abortion counselling, without bias, judgment, or stigma,

1.3.1 Re-instates that counselling is the ideal option for women and any medical professionals at any stage of the process of considering an abortion, rather than face criminal prosecution.

SECTION 2: HOUSE OF REPRESENTATIVES REFORM

2.1. Calls upon the House of Representatives to establish a new standing Committee, titled '**Women's Rights and Gender Equality Committee.'**

The Committee is to have the following functions:

- To consult with professionals, Non-Governmental Organisations and legal experts on all matters pertaining to women's rights and gender equality;

- To consult with all relevant stakeholders prior to the promulgation and enactment of any bill which may be related to the topic of sexual and reproductive rights

- To review legislation in order to identify discriminatory provisions;

- To promote gender mainstreaming in all policy sectors.

- To consult, on a monthly basis, with the Commissioner of Police on updates stemming from improvements and matters needed to be addressed in the Legislature from the Domestic Violence Police Unit.

2.2. Calls upon the House of Representatives to establish a new sub-committee, titled "Sexual Health and Education" under the current '**Health Committee'.**

2.2.1 The sub-committee shall be composed in the following manner:

- The sub-committee shall have a Chairperson chairing every session of the sub-committee.

- The sub-committee shall meet on a monthly basis.

2.2.2 The committee shall have the following functions:

- To review the National Sexual Health Policy for the Maltese Islands and make reform, this is labelled as an urgent and dire matter.

- To consult with professionals from different professional fields to make improvements on the same National Sexual Health Policy and amend accordingly

- To ask the Minister of Education at the time for updates on every school falling under the Education Act on the Sexual Education Curriculum and any such educational activities emanating from it.

- To make recommendations on any such matters relating to Sexual Education with regards to the National Curriculum.

- Make recommendations to the Health Committee on any such matters pertaining to issues relating to Sexual Health and Sexual Health Education that are considered as a Public Health Investment on matters pertaining to contraceptive care.

- Give priority to medical, peer-reviewed scientific evidence.

- Oversee and ensure that works and actions emanating from the newly reviewed National Sexual Health Policy for the Maltese Islands are carried out in a consistent manner.

2.3 Suggests that in political matters, the topic of abortion is brought up to discussion or on the agenda of a party's manifesto or a party branch proposal, by the Superintendent of Public Health at the time or through recommendation of the entities stemming from the institutions of the European Union and/or The Council of Europe or through a referendum for the Citizens of Malta and all those eligible to vote or in any way a concrete suggestion/ remark has been made.

2.3.1 The discussion of the topic of abortion shall not be used for the purposes of subjecting minorities to scandal and/or ridicule in such political campaigns by any such political party.

2.3.2 No entity, political party or organisation, shall use the topic of abortion as a means of scaremongering and/or provide false scientific information which might misinform the opinion of the general public.

SECTION 3: EDUCATION AND POLICY REFORM

3.1 Recommends that every secondary and tertiary education institution should have a Sexual Health Officer, to assist students with any questions pertaining to sexual health, on a confidential basis.

3.1.1 **Further suggests** that any information exchanged by students to such Sexual Health Officer should not be shared for any purpose whatsoever, so as to build a relationship of trust between the said Officer and student.

3.1.2 **Suggests** that the Sexual Health Officer is to have the discretion to make a referral to a certified General Practitioner, Gynaecologist, or Urologist should the need arise.

3.1.3 **Maintains** that should a minor or incapacitated person, within the remits of the law, be in danger or the possibility thereof, or exposed to scandal, ridicule, abuse, defilement, sexual harassment or abuse, the Officer shall immediately inform the competent authorities of the situation.

3.2 Calls for a structured, compulsory, sexual health education curriculum, which should:

3.2.1 Be factual and scientifically accurate, withmmout any form of religious or moral bias;

3.2.2 **Embrace the reality that teenage students may have an active sex life, and** discuss sex as a fact of life, as a pleasurable activity for both sexes, and as a varied activity for all sexual orientations;

3.2.3 Educate students on all forms of contraceptive methods available for both sexes, and actively promote their use for a healthy sex life, including, among others, through age-appropriate, relatable material;

3.2.4 Distinguish between contraception and abortive medication in a clear and distinct manner;

3.2.5 Discuss abortion neutrally, openly, and factually, explaining the procedure, its legal status, as well as both sides of the argument, without judgment, and without the use of outdated, biased, material.

SECTION 4: VISIBILITY AND AVAILABILITY OF CONTRACEPTIVES

4.1 Calls for the distribution of vending machines in all tertiary education institutions, containing both **prophylactics** and **lubricants**, available at a fee, to be established by the merchant. The easy access and visibility of these products encourages healthy sex activities.

4.2 Calls for the provision of complementary **sanitary products**, including but not limited to, tampons, sanitary towels, and sanitary wipes, in the following establishments:

4.2.1 All educational institutions as established by the Education Act (Chapter 372, Laws of Malta);
4.2.2 All National Hospitals and Health Centres;
4.2.3 All Government buildings;
4.2.4 All Open and Detention Centres accommodating Asylum Seekers;
4.2.5 Corradino Correctional Facility;

4.3 Calls for the inclusion and provision of orally ingested contraceptive pills within the Pharmacy of Your Choice scheme, upon the recommendation of a general practitioner, gynaecologist, or obstetrician.

4.4 Calls upon Government to ensure that access to contraception should not be limited or hindered due to socioeconomic, policy, or legal restrictions, among others.

SECTION 5: JOURNALISTIC STANDARDS

5.1 Recommends to the Institute of Maltese Journalists to uphold journalistic standards in accordance with the Media and Defamation Act.

5.2 Further recommends that the aforementioned institute of Maltese Journalists updates it's Code of Journalistic Ethics to publicly emphasize the importance of ensuring that the discourse related to any such sensitive subject matter and published on printed or audiovisual media is truthful and based on scientific fact.

5.3 Maintains that freedom of expression is an imperative pillar in a democratic society, in lieu of Article 10 of the European Convention on Human Rights.

5.4 Calls upon the Institute of Maltese Journalists to draft guidelines on reporting related to abortion, sexual health, and reproductive rights, based on the principles of factuality, sensitivity, and accuracy, and decrying the use of such topics for the purposes of click-bait and sensationalism.

5.5 Calls upon the Institute of Maltese Journalists to appoint independent fact-checkers to review media pertaining to the topic of abortion, and any ancillary issue, sensitive to controversy and misinformation, and oblige the provider of such media to include a disclaimer where such information provided is proven to be medically, scientifically or psychologically false.

SECTION 6: THE MORNING AFTER PILL

6.1. Urges the Malta Chamber of Pharmacists, the Malta Medicines Authority, and the Department of Public Health to publicly declare and emphasise that the emergency contraceptive pill or the post-coital contraceptive pill, is indeed a method of contraception, and not abortifacient.

6.1.1. Any such claims on the emergency contraceptive pill thereof, not being backed by factual scientific and/or medical research, shall be deemed as false information by the aforementioned entities

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6.1.2. Urges the Malta Chamber of Pharmacists to investigate recent reports which revealed that only an average of 64% of pharmacies open on Sundays and Public Holidays sell the Emergency Contraceptive Pill2.

6.1.3. Appeals to the Directorate for Pharmaceutical Affairs to include the following methods of emergency contraception in the Hospital Formulary List, with specifications as to the Medical Department which the methods are available:

- Levonelle® 1500 microgram tablet (Levonorgestrel)
- Escapelle® 1500 microgram tablet (Levonorgestrel)
- ellaOne ® 30 micrograms tablet (Ulipristal Acetate)
- Intrauterine Device (Hormonal IUD or Coil)

2 https://www.maltatoday.com.mt/lifestyle/health/105648/we_called_120_pharmacies_buying_the_morningafter_pill_on_sunday_is_an_arduous_task#.X9z4yhNKjq1

6.1.4. Further demands that the Emergency Contraceptive Pill is made available to patients, following the general procedures on the Guidelines for Pharmacists on the Safe Supply of non-prescription Emergency Contraception, in the following departments at Mater Dei Hospital:

- Mater Dei Hospital Pharmacy;
- Accident and Emergency Department and Observation Wards (A&E);
- GU Clinic.

6.2. Suggests to the Ministry for Health to considerably increase the resources allocated to the GU Clinic.

6.2.1 Calls upon the Ministry for Health to open a GU Clinic in Gozo.

6.3 The Malta National Sexual Health Policy has not been amended since 2010- admittedly, the Maltese Islands have gone through tremendous societal changes, thus calling for adaptable legislative changes to take place. The current provisions of the act, while adaptable for the time in which they were suggested, in today's society might be perceived as archaic and in dire need of review and amending.

CONCLUSION

CONCLUSION

The outcome of the research carried out for this paper is two-fold: on one hand, a reflection of the facts, experiences and laws emanating from the practice of abortion in different jurisdictions; and secondly, an examination of the current needs in Malta, which have been taken into account and encapsulated in the proposals that this organisation is putting forward.

GħSL would like to call upon the members of the House of Representatives and the Parliamentary Secretary for Equality and Reforms to take the proposals put forward into consideration for any such national debate, or legislative insight. It calls upon stakeholders to take part in the discussion of the proposals, as well as the use of GħSL's paper as an imperative point in the ongoing debate and the sharing of ideas. After all, our organisation believes that such a discussion is one of the many aspects that ensures a functioning democracy.

GħSL would also like to urge the general public and civil society to engage in civil and mature discussion when pursuing this topic, and to maintain respect for any such counterparts with conflicting views.

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