

Objective Look at Abortion Legalization: The Case of Nepal

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ABSTRACT

Abortion remained one of most debatable issue across the globe. In most countries there exist pro and anti-abortion groups. In countries where abortion is regarded as abominable act, there are some window of opportunity for women to terminate pregnancy based of medical ground While others made termination of pregnancy null and void. But in all situations the moral and human right issue underpinning abortion is how the act is classified (a murder or not murder). The anti-abortion movements support the right of fetus to life and pro-abortion movements support the right of mother as the determinant of the right of fetus to life or not.

Researchers have further expanded the argument to the point of where does life begins? If life begins in the womb, then abortion can be classified as murder. Legalizing abortion is religiously unacceptable but pro-abortion groups tried to established the fact that, what is in the womb is not yet human, it has no human name and cannot enjoy human right. pro-abortion movements have achieved some successes as many countries have fully legalized or conditionally permit abortion. Currently countries around Asia, Africa, Europe, America which does not allow abortion have softened their stands against. China, Nepal and other have removed any barriers against abortion and with the creation of enabling environment that enhances it.

This review paper examined abortion law in Nepal under very section and pinpoint some of the gains and the shortfalls.

KEYWORDS: *abortion legalization, nepa, objective look at abortion*

INTRODUCTION

Abortion is defined as the removal of embryo before its survival outside the uterus as a result of which, the pregnancy is ended. The practice of Abortion has a long history and it is universal as well. However, some differences exist in its political, social and cultural perspective. The abortion law varies in different locations of the globe; in some nations, it is easily accessible to women on their request, while it is totally outlawed in other parts of globe.(1)

It has already been more than two and a half decades since the global gathering at Nairobi to address the high maternal mortality by executing the initiation of Safe Motherhood. The data is quite high; 22 million women seek unsafe abortion in developing world each year whereas 13 percent maternal deaths is due to unsafe abortion globally.(2)

In low- and middle -income countries, unsafe abortion is the major cause of maternal mortality; in Nepal, the figures show that it is the third leading cause of maternal death.(3) The active movement and efforts to liberalize the abortion law in Nepal was initiated during the 1970s. Nepal being co-signatory to 1994 International conference on population and development (ICPD) and the 1995 Beijing conferences on women also provided the platform to accelerate the women's rights movement in Nepal.(4)

The termination of pregnancy was made a legal access in 2002 in Nepal, on introduction of the Safe Abortion Act; this

was to address the public voices and the high maternal mortality due to unsafe abortion. Women can seek abortion up to 12 weeks of gestation upon request without any indication, up to 18 weeks of gestation in case of rape or incest, and they can abort at any time during pregnancy if women's life is at risk. From 2004 to 2014, more than half a million women underwent safe abortion in Nepal.(2) Until the liberalization of abortion law in Nepal, the termination of pregnancies was strictly prohibited irrespective of those pregnancies being the result of rape or incest, or threatening the life of women; they were charged for murder, homicide or willful killing and were imprisoned for life, for undergoing abortion.(4)

The women's movement in different times and in different countries, whether it be the feminist movements of France in 1960s or the women's group at the international levels in the periods of 1990s, had raised voice for the rights to abortion. They had shouted powerful slogans viz. "My body is mine", "My body, my choice", and the concluding remarks of their movement was to protect their right to control their own bodies and decide whether to have children or not independently.(1)

Though the abortion has seen legal acceptance, it still is an ethically contentious subject in the world. There have been wide arguments in favor of, as well as against abortion, and the debate lies in the contrasting questions related to rights, autonomy and the way in which society views abortion. This

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can be clarified by the process of deductive reasoning; the most common anti-abortion argument. (5)

Public Health Challenges

World Health Organization (WHO) and international conferences like ICPD and women's conference in Beijing had notified that unsafe abortion was one of the major threats to public health. There has been advancement in SAS (safe abortion services) but still the statistics showed that about 25 million unsafe abortions (45% of total abortion-56 million each year) occurred every year between 2010 and 2014; this is quite unacceptable and very alarming to public health paradigm.(6)

Abortion was also used as a method of regulating fertility in past and contemporary demographic transitions in some of the countries. In Bulgaria, abortion was used as population control instrument where there were lack of contraceptive devices in second half of the twentieth century. These policies raised the abortion rate and in China there used to be forced abortions as a part of the one-child policy in the late 1970s.(1) Unintended pregnancy is one of the major causes contributing to induced abortion which may be due to lack of contraception use or from failure of contraceptive methods. In two-thirds of the countries, contraceptive failure contributed to abortion whereas remaining one-third nations' unmet need for family planning contributed to abortion; the data from cross sectional studies of 18 different countries showed strong negative correlation between abortion and use of contraceptive methods.(6)

Almost one-fifth of pregnancies (19%) is unintended in Nepal which is a really high figure. Among these, 12 percent were mistimed and nearly 7 percent were unwanted. This indicates that women use safe abortion as a method of contraception which is most alarming for women's health. But still the data is lacking to show the exact figure about the burden of unplanned pregnancy to family and economy of nation due to failure of contraceptive methods.(6)

World Health Organization (WHO) has estimated that globally, unsafe abortion accounts for at least 13 percent of maternal mortality. Prior to the 2002 law, Nepalese women used to be charged with infanticide and imprisoned for more than 20 years for terminating pregnancies. The odds of using contraception had declined by almost 3 percent when an abortion facility was initiated in women's district. This evidence shows abortion is a substitute for modern contraception and vice-versa.(7) After liberalization of abortion in Nepal in 2002, this has contributed in scaling down maternal death, declining from 548 deaths per 100000 live births in 2000 to 258 in the year 2015. This figure does not clearly say the attribution portion after abortion legalization but supports the conclusion on the downtrend of maternal morbidity which is closely related to abortion-related complication.(8)

Ethical Implication

There is wide and intense controversy on the challenging issue of liberalization of abortion. Access to abortion is defended as a human right, a women's right, a sexual and reproductive right; while opponents condemn it and raise voice in the name of the embryo's right to life. Despite the continuation of abortion, the legitimacy of resorting to it is still seen as problematic which has raised many ethical,

philosophical and scientific questions.(1) No matter how legally permitted and enabling environment created for safe abortion, society may still termed the act as unethical.

Liberalism and Autonomy

The structure shaped for individual interactions in the society where he lives, on the basis of a set of rights that need human beings to respect liberty and equality of each other, is the ideology of liberalism.(9) This liberal perspective promotes the right of freedom of individual and permits them to take action as per their own conception of the services.(10) The women's reproductive freedom has clear mark on liberalism that has deep root on "natural right" to property in goods; no third person to decide to the very principle of nature, and of the rules of equity and justice between human beings.(11) The liberalization movement of women in the decades of 60s and 70s liberal individual matter of equality, rights and choice was merged into the subject matter of reproductive control.(12) This liberal agenda has helped in reducing maternal mortality and morbidity, and practice of unsafe abortions.

Autonomy literally means "self-rule" and is central to the welfare of the women, the reason being that childbearing takes place in women's bodies. If the state of pregnancy is regarded as a morally neutral phase, no reason lies behind preventing women for abortion.(13) In a broader view, there are two distinct classes of conflict: one is "pro-choice", and other is "pro-life". The former statement defends women's rights and human rights, but the latter one considers the life of fetus and defends it without giving any argument or consideration to women's lives. "Pro-life" raises the question about the time when a life begins, and whether the rights of fetus is same as those of human beings who have already been born.(1) The issue of equality and autonomy are referred to as reproductive freedoms which are integral parts of reproductive rights. Within the liberal frame, rights are individualizing but there is a dilemma situation; the mother's right to choose seems to threaten the fetus's right to life, and on the other hand, the right to life of fetus seems to block the mother from having a choice.(12) Thus, the debate over abortion is not as simple as thought and cannot be condensed to simply pro-choice or pro-life standpoints.

Paternalism

Paternalism is a bit contrasting to the ideology of liberalism. It is the interference by an individual, state or society to a person against his or her choice; justifying by the claim, the interfered action will be better off or be safe from any harm.(14)

Patrilineal structure of Nepali society has deep-rooted societal gender discrimination that manifests in cultural context, and religious beliefs that value sons more than daughters. Land rights laws also favor sons; in contrast to this, dowry system in Nepal seems to be problematic to cope for parents with economic hardship. The scientific technology today available has made easy in sex identification possible. The availability of technology along with patriarchal society and sociocultural values to son preference has increased abortion in the name of sex selection.(15) Though abortion influenced by sex selection may be unethical culturally, societal drive of value for male child is likely to stimulate societal view for abortion in relation to this situation, as abortion under this circumstance may hardly receive societal condemnation.

Consequentialism and Utilitarianism

No actions or interests are born inherently right or wrong in themselves; the final evaluation can only be done by their consequences. This is what the consequentialism says, that the thing which is done must be a morally right thing based on its consequences on the larger population.(10) Unless the clarification of result being good or better than others is made through its consequences on the population, the act of judging the good or bad effects are unhelpful. Utilitarianism, which is also a form of consequentialism, states that actions must be morally right for maximum utility which heighten welfare, benefits and well-being of the larger population.(16) A woman can remove fetus from her body as it is her body and her right to continue or stop the pregnancy; but forcibly taking another person's (fetus') life who is deemed defenseless yet bears the same right to life as any infant or adult person, raises the ethical question whether to label abortion as murder or self-ownership.(17) The people who are extreme opponents of abortion opine that, the women who become pregnant must accept all the processes of pregnancy and birth no matter how much they may suffer; they cannot be allowed to kill their children. They provide the justification that the termination of fetus is an evil act deadlier than the women's sufferings.(13) The exact data are difficult to show for women who present to a health facility for sex-selective abortions, as the decision-making of women for termination of pregnancy are very complicated and multifaceted.

Stewardship Approach

In stewardship, the state is fully responsible for the protection and promotion of the health and well-being of each and every individual in the population; moreover, it also includes protecting the well-being of the disadvantaged and vulnerable population. The state is responsible not only for the dissemination of information about services, but also for the delivery of guidance and services so that community can adopt better and healthier options.

However, good stewardship requires proper actions and support to empower all individuals equally, through a holistic and sound policy formulation and implementation, legislation and program.(14) Stewardship helps to rectify all sorts of coercion coupled with paternalistic and utilitarian approaches to justify comprehensive actions to safe abortion. With regard to the principle of stewardship, the state need to protect the wellbeing of a mother who is a party in the argument and the vulnerable fetus which is also another party. The responsibility the state owns to both parties made some state not make termination of pregnancy the sole will of a mother but terminate it upon some certain conditions. Countries that have given women the autonomy to determinant a pregnancy may have failed in their responsibility to protect the vulnerable fetus provided they accept that life begins from the womb.

Conclusion

Abortion related issues generate complex and hot debate around the world with various interested parties defending and others expressing highly radical opponent views over it. But everyone has accepted abortion as a crucial public health issue which needed to be discussed and address. The termination of a pregnancy was made legal in 2002 in Nepal. Until this latest reform, abortion was prohibited by the *MULUKI AIN* and, women were imprisoned for abortion

which was related to murder, homicide or willful killing. Nepal is a model of successful scale-up of safe abortion services with remarkable reduction of maternal mortality because of abortion-related complications in a short period. Laws criminalizing abortion violate the reproductive rights of women along with their rights to health, liberty, safety, and moreover, their right to life. The successful story to share is that after abortion legalization in Nepal, women's reproductive rights are now considered as fundamental human rights, and more than that, abortion is constitutionally protected. Termination of sex-selective pregnancy is prohibited in Nepal but still needs stakeholder efforts accompanied by policies and issue specific programs to solve underlying problem of male child preferences.

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