

Analysis Of Abortion Legislation from The Perspective Of "Good Law" And "Bad Law"

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Abstract. This comprehensive analysis delves into the intricate landscape of abortion legislation, examining it through the contrasting perspectives of "Good Law" and "Bad Law." It embarks on a philosophical journey, dissecting the very nature of legal systems and challenging the notion of whether "bad law" can legitimately be considered as law. Abortion, a contentious and emotionally charged issue, serves as the focal point for this exploration, allowing for a nuanced examination of the implications arising from imperfect and inconsistent legislation. The study commences by unraveling the age-old debate between natural law principles and legal positivism, akin to the timeless enigma of Goldbach's Conjecture in legal philosophy. This debate, poised to persist indefinitely, forms the backdrop against which abortion legislation is scrutinized. It navigates the intricate labyrinth of abortion laws worldwide, revealing the inherent imperfections and incompleteness of titles such as the United States' varied state regulations. Some states still enforce outright abortion bans, but this raises poignant questions about whether such bans are conducive to the well-being of unborn children, their readiness to face the external world, and the suitability of prospective parents. This analysis underscores the pivotal role of law in evolving societies and advocates for legal frameworks that adapt, strengthen, and align with the dynamic values, attitudes, and circumstances of a world in flux. It ultimately champions the cause of "Good Law" by emphasizing the necessity of enhanced abortion legislation that respects individual rights, societal needs, and cultural nuances.

Keywords: Abortion legislation; Good Law; Bad Law; legal philosophy; reproductive rights.

1. Introduction

Abortion is a global problem and a very sensitive topic, characterized by its sensitivity and profound ethical dimensions. According to the World Health Organisation, the number of abortions in the world exceeds 50 million per year, averaging around 150,000 abortions per day. However, beyond the statistics lies a contentious debate. Some argue that abortion not only terminates the potential life within the womb but can also jeopardize the life of the woman carrying that life. Abortion is not merely a medical procedure; it is a deeply nuanced topic with far-reaching implications.

Research conducted by the Guttmacher Institute, a U.S.-based organization specializing in sexual and reproductive health research, indicates that approximately 70,000 women lose their lives each year from induced abortions and an additional five million women require post-abortion medical care. Each country approaches this issue with its own unique perspective. In the U.S., abortion remains a subject of intense debate, with opposing camps advocating both for its protection and for its prohibition. South America is polarised, with seven countries allowing abortion and another six banning it. In Europe, only three countries prohibit abortion, even if the mother is threatened. In Asia, abortion is generally legal with varying regulations, except in the Republic of the Philippines, where it is strictly prohibited but subject to specific regulations. Over time, perspectives on abortion have evolved, and many regions now grapple with contentious viewpoints on the subject. Even for those who claim neutrality often have nuanced perspectives on this complex matter. Consequently, the question of whether specific abortion laws and regulations are necessary or whether they amount to "absurdities" becomes increasingly relevant.

This essay seeks to examine the abortion issue through the lens of "good law and bad law" to evaluate the merits and drawbacks of abortion legislation. The essay will be structured as follows:

Firstly, it will give an overview of the "good law and bad law" and then an evaluation of the "abortion" issue, analysing them together. Secondly, it will raise questions about the existence of legislation. Thirdly, it will propose potential solutions to the challenges posed by this issue. Finally, the essay will conclude by summarizing the key findings and insights presented throughout the analysis.

2. "Good Law and Bad Law" and the Fundamentals of Abortion Legislation

2.1. The Concept of "Good Law and Bad Law"

In the realm of jurisprudence, the concept of "good law evil law" serves as a moral and legal framework for evaluating the ethical nature of laws. Various standards exist worldwide to measure what is "good" and what is "evil", often shaped by individual perspectives. Some people perceive what benefits them as "good," while others equate "good" with actions that do not harm others [1].

2.1.1 Definition and characteristics of good law

A good law is one that aligns with societal needs by restraining behaviors that infringe upon others while safeguarding the interests of the majority. Conversely, a bad law fails to consider democratic societal needs and imposes restrictions, permitting only behaviors conforming to its provisions. In summary, therefore, laws that tend to limit or diminish the power of government and promote or protect the rights of the people are known as "good laws", while laws that tend to strengthen the power of government and limit or diminish the rights of the people are known as "bad laws" [2].

2.1.2 Definition and impact of bad law

The theory that "bad law is still law" can be traced back to Socratic philosophy, notably exemplified in Plato's "Apology of Socrates." Socrates utilized his conduct to assert that even laws considered bad retain their legal status. However, the existence of this theory has far-reaching consequences. Some argue that laws devoid of a human nature, failing to serve society's educational purpose, can become instruments protecting wrongdoers [3]. This viewpoint persists, leading to ongoing societal disparities, evidenced by historical cases such as the 1994 Simpson trial and contemporary discussions like "The Curious Case of the Cave." Many countries grapple with ambiguous abortion laws, caught between the dichotomy of good and bad. Consequently, abortion legislation remains a legal grey area, sparking extensive debates and continued uncertainties about its ethical and practical implications.

2.2. Overview of Abortion Laws

2.2.1 Comparison of abortion laws in different countries

Abortion laws vary significantly among countries, reflecting diverse viewpoints on the issue. In the United States, abortion laws are complex, with each state enacting different regulations. Some states, like Arkansas, Ohio, Alabama, Kentucky, Oklahoma, have declared abortion illegal following U.S. Supreme Court rulings, while others permit a woman to choose abortion within the first three months of pregnancy. And in most Asian countries abortion is legal up to 21 6 days of pregnancy. In European countries abortion is almost legalised. However, outside the U.S., these regions typically impose fewer mandatory regulations and deadlines for abortion.

2.2.2 Historical evolution and current status of abortion laws

Historical variations in abortion laws stem from cultural and historical influences. Abortion practices were widespread in ancient societies, with diverse approaches, including religious or moral considerations. For example, ancient Egyptians used drugs, the ancient Greeks and Romans utilized various methods, and ancient India allowed abortion under specific circumstances. In contrast, medieval Europe, influenced by Christianity, considered abortion a crime, equating it with murder. The Renaissance marked a shift as medical advancements led to the study and improvement of abortion techniques. Attitudes toward abortion evolved over time, reflecting changing social, medical,

and cultural perspectives. However, despite these transformations, the legalization of abortion remains a contentious topic.

2.3. Moral and Ethical Standards and Abortion Legislation

2.3.1 Different religious and cultural views on abortion

Religious and cultural factors wield significant influence over abortion perspectives. In the majority of religious doctrines, abortion is deemed both a moral transgression and a legal offense, warranting severe censure. These belief systems frequently place paramount importance on safeguarding the sanctity of fetal life and unequivocally oppose any form of abortion. Religions such as Buddhism, Taoism, and Christianity classify abortion as both a moral and legal breach, underscoring the sanctity of human life. Conversely, certain other belief systems endorse abortion under specific conditions, provided the act doesn't harm others or contravene social interests. These religions might advocate for abortion in cases where women autonomously choose this option to preserve their reproductive rights and personal freedoms.

2.3.2 Moral and ethical influences on abortion legislation

Diverse ethical viewpoints regarding abortion lead to differing stances within the legal context. While some contend that abortion infringes upon the right to life and call for stringent limitations, they underscore the equal safeguarding of the foetus and the pregnant woman [4]. In contrast, others hold that abortion is a moral choice, part of a woman's autonomy and individual rights, that women should have the right to make their own decisions about whether or not to continue with their pregnancies and childbearing, and that society's responsibility should be to support and protect these choices. This ethical diversity significantly influences the development of abortion laws, making it a complex and contentious issue to address.

3. Existing Problems with Abortion Legislation: the Shadow of "Bad Law"

3.1. Conflict between Government Intervention and Abortion Rights

Abortion legislation grapples with a fundamental and contentious issue: Does a foetus inherently possess the right to life? This question receives varying interpretations on a global scale. For instance, Article 9 of the General Principles of the Civil Code establishes that the capacity for natural persons' rights begins at birth. Here, capacity forms the bedrock for the establishment of rights [5]. Given that a foetus is yet to be born, it lacks capacity, and consequently, the right to life. Referring to the Argentine Civil Code's concept of "from capacity to person," the foetus is denoted as a "person to be born," in contrast to an already "concretely existing person." Consequently, determining the foetus's right to life isn't a straightforward matter, as this perspective lacks universal consensus.

In stark contrast, specific belief systems, like the Catholic ethic, contend that life commences at conception. According to this view, pregnancy represents a nine-month process that metamorphoses an organism into a living being. These differing outlooks bring forth inquiries regarding the precise onset of life, whether it transpires earlier or later during the developmental progression. The determination of this pivotal moment hinges on individual viewpoints and cultural convictions.

Examining the US government's view on abortion, for example, the landmark case of *Roe v. Wade* provides insight. In this case, Ms. McCorvey asked for an abortion during her third pregnancy on the grounds of rape, but her request was denied under Texas law. However, a Supreme Court decision, with a 7-2 vote, declared the Texas and Georgia laws banning abortions unconstitutional. This ruling established that a woman's right to terminate pregnancies is protected by the U.S. Constitution. It allows abortions within specific timeframes, with restrictions on government interference during different stages of pregnancy. The legal rationale for this decision rests partly on the Due Process Clause of the Fourteenth Amendment, which grants Americans the right to privacy, including the right to choose whether or not to have an abortion.

The Chinese government has always implemented interventions to intervene in fertility, and the goals and measures of management fluctuate according to time and population. After realising the pressure on resources that an increasing population would bring, China shifted its approach towards advocating for fewer births and promoting birth control measures. For example, the family planning policy introduced after 1979 strictly limits births in terms of its intrusion into women's bodies, especially coercion in abortion, birth control and sterilisation. A significant development in China's fertility policy occurred on 31 May 2021, when the Political Bureau of the Central Committee of the Communist Party of China (CPC) convened a meeting to consider the Decision on Optimising Fertility Policy to Promote Long-Term Balanced Development of Population [6]. This decision signaled a commitment to further enhancing fertility policies. Under this decision, couples were permitted to have up to three children, and complementary support measures were introduced to facilitate this policy change. Subsequently, on 20 July 2021, the Decision of the Central Committee of the Communist Party of China and the State Council on Optimising Reproductive Policy to Promote the Long-term Balanced Development of Population was published, reaffirming the government's commitment to fostering balanced population growth. This illustrates the dynamic nature of China's fertility policies, reflecting the evolving needs and priorities of the country in managing its population over time.

3.2. Social Equity and Abortion Legislation

Abortion rates and access to reproductive healthcare also varies considerably by region, leading to important disparities in healthcare outcomes. The most notable variations exist in Latin America and sub-Saharan Africa, where countries have unintended pregnancy rates of 41 to 107 per 1,000 women and 49 to 145 per 1,000 women, respectively. In contrast, Europe, most of the countries with unintended pregnancy rates above the regional average are classified as high-income countries, while the two countries with the lowest estimates are middle-income countries. These disparities underline the existence of barriers to accessing comprehensive sexual and reproductive health services, affecting both resource-rich and resource-poor settings [7].

Numerous elements underpin these discrepancies. Take, for instance, countries like India and those in Africa, where diminished abortion rates stem from a confluence of factors, including limited access to specialized medical equipment and challenging economic circumstances. Cultural customs and traditions sometimes exert influence as well. In cases where there's a prevailing preference for male offspring, regardless of economic hardships, continued childbearing persists.

Have reveals highlights another dimension of inequality. that only half of the world's female population is in paid employment [8]. Many have to pay an economic price for motherhood. And unnecessary discrimination, such as "paid leave" for mothers, is felt by many to be unnecessary and unfair. Differences in income and work between men and women can result in unequal opportunities for women. When there are unequal opportunities, women are unable to enjoy their reproductive health and rights. For example, there is no money to buy contraceptives and talk does not count when there is no money. She therefore has no control over her own body.

Furthermore, customs and cultural differences have a significant impact on women's reproductive health and rights. In some Southeast Asian countries, early marriage and childbirth are common practices [9]. Tragically, this leads to high maternal mortality rates among young girls, exacerbated by harmful cultural beliefs, such as attributing deaths to superstitions and resorting to dangerous, non-medical methods during childbirth. Economic and social inequalities, in turn, exacerbate inequalities in women's enjoyment of reproductive health and rights.

3.3. Negative Impact of "Bad Law"

Abortion is scientifically necessary because, firstly, there are cases of ectopic pregnancies that are dangerous to women's health, and failure to intervene can result in the death of the foetus and the woman at the same time. Secondly, 10-15 per cent of normal pregnancies are aborted spontaneously, and the argument that the foetus is a human being does not hold water, otherwise spontaneous

abortion would be tantamount to female homicide, and would result in the wrongful death of the woman who had the spontaneous abortion. Whether or not the foetus is a person is only a matter of interpretation by the Supreme Court, which has previously denied the human rights of the foetus through this provision and rejected an appeal by the State of Texas [10]. In these debates, the Supreme Court's decisions extend beyond the concept of fetal personhood. They delve into personal liberty rights and the relationship between the foetus and the pregnant woman. This perspective regards the foetus as a part of the pregnant woman's body, and decisions about how to manage one's body are considered a fundamental aspect of personal liberty. Consequently, the Supreme Court has concluded that there exists a "right to abortion," even though the Constitution itself does not explicitly provide for such a right. The core issue at hand remains whether the foetus possesses human rights, and this complex interplay of legal, ethical, and philosophical considerations underscores the contentious nature of abortion legislation. Assertions that "the Constitution gives women the right to abortion" without thorough consideration of these intricate matters oversimplify the complexities involved in this contentious debate [11].

4. Strategies for Abortion Legislation: Transitioning from "Bad Law" to "Good Law"

4.1. Strengthening "Good Law"

A number of world commissions have called for the criminalisation of abortion and for legal abortion to be permitted at least in cases of rape, incest, threat to the life or health of the pregnant woman and severe foetal impairment. This approach acknowledges that women must have access to safe and legal abortion and post-abortion care to reduce maternal mortality rates. Such measures encourage women to seek abortions in reputable healthcare settings rather than resorting to unsafe, clandestine procedures. Furthermore, they help prevent teenage and unwanted pregnancies and uphold women's fundamental right to make autonomous decisions about their own bodies.

Comprehensive sexuality education is a curriculum-based pedagogical process that explores the cognitive, emotional, physical and social dimensions of sexuality and breaks away from the narrow concepts of the past. It not only enhances sexual and reproductive health outcomes by reducing rates of HIV infection and adolescent pregnancies but also fosters greater access to education. It can dismantle harmful gender norms and advance gender equality, helping to reduce or prevent gender-based violence. Equally important, it equips adolescents with the knowledge and attitude needed to navigate complex sexual and reproductive issues responsibly. Prioritizing sex education for adolescents can serve as a cornerstone in the prevention of unwanted pregnancies and, subsequently, the reduction of abortion rates [12].

4.2. Clarifying Responsibilities and Obligations

Based on the physiological characteristics of women, most women tend to undergo fertility surgeries or other special examinations and treatments with a certain degree of risk in their lives, and there are different practices in practice as to whether medical institutions must obtain the consent of female patients. In China, various practices exist concerning the necessity of obtaining consent from female patients undergoing common fertility surgeries. Chinese law now emphasizes the importance of respecting a woman's wishes in cases involving abortion, termination of pregnancy (including normal delivery or caesarean section), painless delivery, artificial insemination, embryo transfer and so on. Hospitals and medical professionals are mandated to inform pregnant women about post-abortion care and potential complications. Furthermore, they have a responsibility to dissuade pregnant women from seeking abortions if it endangers their lives. Hospitals should also proactively disseminate information about the risks associated with abortion and the optimal timing for such procedures, alleviating the burden on pregnant women in making these critical decisions [13].

However, it's not solely the responsibility of medical institutions. Government intervention is vital in ensuring the dissemination of accurate information and the promotion of reproductive health services. When the government recognises freedom of the press and freedom of speech, women can speak out against rights violations. When the judiciary is independent and impartial, it is easier for women to get justice. What the government says and does has a disproportionate impact on society, as the entire population is dependent on government policy. Therefore, it's incumbent upon governments to actively intervene and advocate for women's reproductive rights. Suggest to the education department that more information should be given about not going to illegal clinics for abortions. Moreover, the government should offer increased support for medical technologies related to abortions while simultaneously cracking down on illegal clinics, ensuring that women have access to safe and legal reproductive healthcare.

4.3. Enhancing Legislative Transparency and Participation

Legislative transparency and participation are essential components of effective and socially acceptable abortion legislation. By promoting open dialogue, involving experts, and considering the perspectives of those directly affected, countries can develop more balanced and informed regulations [14].

One fundamental aspect of enhancing legislative transparency is to encourage open public discourse. Governments should create platforms for public discussions, forums, and hearings where citizens, experts, and stakeholders can express their opinions on abortion laws. This inclusive approach allows for a broader understanding of societal values and needs, ensuring that legislation is reflective of the diverse views within a society. Expert consultation is another critical element in the development or revision of abortion laws. Medical professionals, reproductive health experts, and legal scholars should be actively engaged during this process. Their input ensures that legislation aligns with scientific evidence, medical best practices, and legal principles, ultimately leading to safer and more informed regulations.

A gender-inclusive approach is imperative in crafting abortion laws. Women, who are the primary stakeholders in matters of reproductive rights, must be actively involved in shaping these laws. Consulting women's organizations and advocacy groups ensures that the unique perspectives and needs of women are considered in the legislative process. Transparency in decision-making processes is key to building public trust and accountability. Proposed abortion legislation should be made accessible to the public, along with clear explanations of any changes and the rationale behind specific provisions. This transparency fosters understanding and trust among citizens. Finally, establishing mechanisms for ongoing monitoring and evaluation of abortion laws' impact is essential. Regular assessments help identify areas for improvement and inform future legislative changes, ultimately leading to better reproductive health outcomes and the protection of individual rights.

5. Conclusion

Behind the debate on whether "bad law is illegal" or "bad law is also law" is the centuries-old dispute between the natural law school and legal positivism, which is almost a 'Goldbach's Conjecture' in the field of legal philosophy and jurisprudence, and will continue to be debated in the foreseeable future. Abortion, as a subject, carries both advantages and disadvantages within the realm of abortion legislation. Regardless of the country, abortion laws often exhibit imperfections and inconsistencies, such as the varying regulations across states in the United States.

The question arises: is banning abortion truly beneficial for the birth of a child? Is the foetus prepared to come into the world with no knowledge of what is going on outside? Moreover, is it in the best interest of a child to be born into certain circumstances? In this ever-changing world, opinions and circumstances change, and the law must adapt and strengthen to reflect these changes. Improving abortion legislation should be a priority, one that seeks to strike a balance between individual rights, societal needs, and evolving perspectives, ensuring that the law is just and equitable for all.

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