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ANSWER

1. Abortion is seen as a criminal offense in the eyes of the law. It is well known in all parts of Nigeria that abortion is a criminal offense except where it is performed in order to save the life of the mother. In the South, the relevant or valid provisions are sections 228, 229, 230, 297, and 328 of the Criminal Code. In the North, the relevant provisions are sections 232, 233, 234, 235 and 236 of the Penal Code. For the states that have adopted the Sharia Legal System, abortion historically speaking was not an offence during the time when Nigeria was still being colonized. Historically, early abortion was tolerated by the Catholic Church, and for centuries, it was not punished under English Common Law (which has a great historical influence on the Nigerian Legal System). The first reliable or authoritative collection of Canon law, accepted by the Catholic Church in 1140 AD, was used as an instruction manual for priests until the new code of Canon Law of 1917, contained the conclusion that early abortion was not homicide but the 19th century saw to the spread of the restriction or criminalization of abortion by the Western powers (including through colonial powers) to Africa, Asia and beyond. This 19th century’s wave of restrictive abortion laws has been seen as a deviation from the norm which is more preferred in modern times.

According to THE CRIMINAL CODE Section 228, Attempt to Procure Abortion “Any person who, with intent to procure miscarriage of a woman whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means whatsoever, is guilty of a felony and is liable to imprisonment for fourteen years.” Under this provision of the criminal code, it is clearly stated that it is an offense punishable with 14 years imprisonment for any person (including the medical practitioners and the health workers) to attempt to terminate any pregnancy by any means whatsoever, even where the woman is not certified pregnant. It is also seen that in Section 229 of THE CRIMINAL CODE, Attempt to Procure Owns Miscarriage by a Woman “Any woman who, with intent to procure her own miscarriage, whether she is or is not with child, unlawfully administers to herself any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, or permits any such thing or means to be administered or used to her, is guilty of a felony, and is liable to imprisonment for seven years.” Under this provision, it is an offense punishable with 7 years imprisonment for a woman to attempt to terminate her pregnancy by any means whatsoever. It is also immaterial that the woman is, in fact, not pregnant. It would technically, therefore, constitute an offense under this provision where, for example, a woman, upon suspicion that she is pregnant (perhaps after missing her monthly period). The 1999 constitution Section 33 ,Right to Life “Every person has a right to life and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.” It has been argued that the right to life guaranteed by this provision ex-tends to an unborn child and by implication, any law which permits abortion is unconstitutional. This argument is untenable, as it seems that the Nigerian law excludes an unborn child from the class of persons capable of being killed.

There is no right to abortion due to the fact that it cannot be right to take the life of another human being that hasn’t even been born yet. According to Section 328 of THE CRIMINAL CODE, Killing an Unborn Child “Any person who, when a woman is about to be delivered of a child, prevents the child from being born alive by any act or omission of such a nature that, if the child had been born alive and had died, he would be deemed to have unlawfully killed the child, is guilty of a felony, and is liable to imprisonment for life.” This provision clearly shows that it is an offense to kill a child when it is about to be born but before it is born. The law deems it as morally wrong. However, it should be noted that the definition of abortion by the WHO does not include termination after viability, which is probably why this provision is not in the same chapter of the criminal code with abortion.

Also Section 297 of the CRIMINAL CODE, on Surgical Operation (Lawful Abortion) “Any person is not criminally responsible for performing in good faith and with reasonable care and skill a surgical operation upon any person for his benefit, or upon an unborn child for the preservation of the mother’s life if the performance of the operation is reasonable, having regard to the patient’s state at the time and to all the circumstances of the case.” Two issues of interpretation arise from the understanding of this provision. First, what is seen to qualify as a surgical operation? Does it, for example, include the administration of prostaglandins considered by many doctors to be one of the safest and most effective methods of procuring or achieving an abortion or other forms or methods of abortion like menstrual extraction or anti-progestin termination (abortion pill)? It would seem or it is seen that the term “surgical operation”, is strict and is deliberately used to indicate the necessity to save the life of the mother. It is, therefore, unlikely that the defense will countenance other means of procuring a miscarriage. Second, does the term “preservation of the mother’s life” mean that she must actually be in danger of dying? Again, Nigerian courts have not interpreted this term. However, the English case of *R v Bourne*, decided under a similar provision, indicates that the preservation of the mother’s life should include safeguarding her physical and mental health. Meaning that if a situation occurs whereby it is not possible to save the unborn child but it is possible to save the mother then this provision sees the abortion as lawful.

Although the situation of which an individual would want to perform an abortion all in the name of getting a promotion is not only barbaric, primitive and downright stupid, but also shows how low humanity values life. There is no such thing as A RIGHT TO ABORTION because any form of abortion is morally wrong and is a criminal offence that is punishable by imprisonment for the individual who performed the surgical procedure, the individual of which the procedure was done on and any other accomplice involved. In *R V Edgar,* the appellants were convicted of supplying drugs to pro- cure abortion contrary to section 230 of the criminal code. On appeal, it was held by the West African Court of Appeal in deciding the question of when it is lawful to procure a miscarriage that it is only lawful for the purpose of preserving the life of the mother. In all other cases, it is unlawful.

1. An individual considered as the father of the child if competent would not want to abort his child for any reason. According to Section 235, on Preventing a Child From Being Born Alive “Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, shall if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment for a term which may extend to fourteen years or with fine or with both”. it is also seen that in Section 328, on Killing an Unborn Child “Any person who, when a woman is about to be delivered of a child, prevents the child from being born alive by any act or omission of such a nature that, if the child had been born alive and had died, he would be deemed to have unlawfully killed the child, is guilty of a felony, and is liable to imprisonment for life.” Under this provision. It is still seen in Section 230, on Supplying Drugs or Instruments to Procure Abortion “Any person who unlawfully supplies to or procures for any person anything whatever, knowing that it is intended to be unlawfully used to procure the miscarriage of a woman, whether she is or is not with child, is guilty of a felony, and is liable to imprisonment for three years.” As well as Section 229, on Attempt to Procure Owns Miscarriage by a Woman “Any woman who, with intent to procure her own miscarriage, whether she is or is not with child, unlawfully administers to herself any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, or permits any such thing or means to be administered or used to her, is guilty of a felony, and is liable to imprisonment for seven years.” these are all provisions in the criminal code that can be used to form a compelling case against the individual who wishes to abort the child, who is also the wife of the individual known as her husband.

Conclusion

Abortion is a moral wrong which goes against the right to life as stated in the constitution and is punishable according to the criminal code and sharia law. It should not be practiced by any individual and should not be indulged by any medical practitioner except if the child post a threat to the mother’s life then it is arguably seen as lawful.