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- ❖ COURSE: HEALTH LAW II

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QUESTION

A 30 – year old lawyer, Charity is happily married and has a good income. She has just discovered she is pregnant. She does not want children at some point but has also just been nominated for promotion at work. She knows she would not get the promotion. If she told her boss she was pregnant.

She decides that, at this times in her life, the promotion is more important to her than having a baby. She consults her general practitioner(GP) a few weeks later, having finally decided that she would like to have an abortion. She asks the GP whether she has a right to an abortion.

- a) What are the grounds for lawful termination of pregnancy?
- b) Does the potential father have any legal rights in this decisions?

The legal issue for embedded in this question borders on abortion and the health law rights that are directly related to the abortion such as the right to autonomy, right to life and the right to human dignity. The term abortion is derived from the Latin infinitive “aboriri”, which means “perish”, but literally translated as the loss of foetal life. Abortion, in its most common usage, refers to the voluntary or induced termination, generally through the use of surgical procedures or drugs and as a result of that, birth does not take place. An abortion is the removal or expulsion of an embryo or fetus from the uterus, resulting in its death.

Abortion may be induced or non-induced. Abortion is induced when the act is intentionally carried out throughout the period of gestation. Gestation is the time lapse between conception and delivery. While abortion may be non-induced where Abortion is non-induced when it occurs spontaneously, in such case as miscarriage. This may be affected by a disease or some defects or mal-functioning in the woman’s physiological system. Such an abortion is neither intended nor is it aided in any way at all.

Abortion in Nigeria is indeed a social phenomenon and has spurred discussion for the general public. Whilst many scholars have come up with their opinions abortion remains a crime in Nigeria as various provisions in the penal and criminal code have prohibited it. More so, the Constitution of the Federal Republic of Nigeria is pro-life. This is because most of its provisions are life sensitive but more because in its section 36(3) the right to life is pre-eminent. The provisions of the Criminal Code on abortion can be seen in sections 228, 299, 230, 297, and 309.

According to Sections 228 and 299 of the Criminal Code any form of induced abortion or attempted abortion is a felony. Also any unlawful supply of drugs or instrument for abortion with the knowledge for which such drug or instrument is intended to be used for is a crime and offenders once prosecuted is liable to three (3) years imprisonment according to section 230.

Abortion is permissible in Nigeria where the child when born would be seriously handicapped. Where the pregnancy is a result of rape or incest. Section 297 also serves as an exception to the illegality of abortion in Nigeria as it exonerates a medical practitioner who performs an abortion for the preservation of the life of mother of the unborn child.

However, such medical practitioner must be a registered medical practitioner and there must have been a medical opinion of not less than two registered medical practitioners that such abortion is being done in good faith;

- That the pregnancy has not exceeded its 20th week and the continuing of pregnancy would invoke risk greater than if the pregnancy were terminated.
- That the termination of pregnancy is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman.
- That the continuance of the pregnancy would involve risk to the life of the pregnant woman greater than if pregnancy were terminated.
- That there is a substantial risk that if the child were born It would suffer from physical or mental abnormalities as to be seriously handicapped.
- To those circumstances where the foetus or the unborn child is not capable of being born alive.

From the foregoing, it is safe to say that abortion is illegal in Nigeria and is only permissible in certain circumstances which have been clearly spelt out. The reasons given by barrister charity to terminate her pregnancy would not suffice as they do not tally with the exceptions earlier stated and it would be a crime if she goes ahead with her plans. Thus if she aborts the child it would be a crime.

Take for instance if her reasons for the termination of the pregnancy exonerated her from any form of illegality. The potential father of the child doesn't have a say in this matter as it all boils down to the mother's right of autonomy along with her right to dignity of person which gives her the right to determine what happens to her body. This is the position in Ghana, South Africa, and the United States of America. However, if it were to be in China then the potential father has a say.

In conclusion, abortion is a criminal offence in Nigerian jurisdiction and is only permissible in some circumstances which has been stated above. Also where abortion is permissible the potential father has no say in the matter as the mother's right to dignity of person and autonomy overrides his right. Although some countries like China allow the potential father to have a say the position in majority of countries that have legalized abortion is that the mothers right to dignity of person and autonomy overrides the potential fathers right