AN ANALYSIS OF NIGERIA'S RESTRICTIVE ABORTION LAWS AND THE NEED FOR ITS REVIEW

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Abstract

Abortion is any interruption of the continuous development of a foetus from the point of conception to when it is capable of surviving outside the mothers' womb. Induced abortion is expressly criminalised under the Nigeria penal legal system. The criminalization of induced abortion is argued to be a factor that has by implication denied women access to safe abortion procedures and expose them to the risk of unsafe abortions. There are however agitations for the liberalisation of abortion laws in Nigeria having regards to its negative effect on women in Nigeria, occasioned by the lack of access to safe abortion and resort to clandestine abortion procedures, due to the restrictions in the Nigerian penal codes. Adopting the doctrinal research approach, this paper examines the position of the law on abortion in Nigeria, as well as the agitations revolving around it. This paper further examines the negative effect of unsafe abortion on the reproductive health of women, the limitations on their reproductive right as posed by the Nigerian restrictive abortion laws. This paper finds that induced abortion is prevalent in Nigeria and it is been carried out in unsafe and unprofessional environments because of the restrictive laws. It recommends that abortion laws in Nigeria be relaxed and induced abortion be regulated by law.

Keywords: Abortion, Pregnancy, Induced, Terminate, Life.

1. Introduction

Abortion appears to be one of the most divisive topics of discussion in contemporary time particularly with respect to the reproductive health of women and the right to life.[457] In Nigeria, abortion is not out rightly banned but rather restricted, meaning that there are circumstances where abortion is permitted and may be carried out lawfully while there are also circumstances where the procurement of an abortion will amount to an offence. The word abortion is not confined to instances where there has been induced termination of pregnancy but rather, it extends to when the abortion occurs naturally, accidentally or by medical intervention. However, induced abortion which is the direct and deliberately destructive ejection of a foetus from its seat in the womb is expressly prohibited by law in Nigeria.

The incidence of unsafe abortion is high in developing countries like Nigeria due to the wide spread ignorance and restrictive abortion laws. The agitation for the liberalisation of abortion laws in Nigeria is aimed at affording women with unwanted pregnancies the opportunity of seeking for abortion in safe and professional environment and nothing more, because it will reduce the non-access to safe abortion.

2. What is Abortion?

Abortion is generally regarded as the termination of pregnancy before term. [458] It could be induced or it could occur spontaneously. The Black's Law Dictionary defines abortion as the spontaneous or artificially induced expulsion of an embryo or foetus.[459] The Black's Law Dictionary further explained the term abortion as follows:

> The word "abortion" in the dictionary sense means no more than the expulsion of foetus before it is capable of living. In this sense, it is a synonym of "miscarriage".
>
> With respect to human beings however, it has long been used to refer to an intentionally induced miscarriage as distinguished from one resulting

[457] A.O. Echekwube , *Contemporary Ethics: History, Theories and Issues* (Spero Books Limited, 1999) 195
[458] Echekwube (note 1) 187
[459] B.A.Garner, *Black's Law Dictionary* (8th ed, Thomson West, 2004) 6

> naturally or by accident. There has been some tendency to use the word to mean a 'Criminal Miscarriage'…[460]

At common Law, abortion is the misdemeanour of causing a miscarriage or premature delivery of a foetus by means of any instrument, medicine, drug or other means.[461] It is also defined as the contrived interruption of a pregnancy.[462]Medically, an abortion is a loss of pregnancy due to the premature exit of the products of conception that is the foetus, foetal membranes and placenta from the uterus due to any cause.[463]

Ebeigbe Peter,[464] also explain abortion to mean the spontaneous or induced termination of pregnancies before the age of foetal viability. According to him, there are regional variations in the gestational age at which the foetus is taken to be viable. To this author, this is determined primarily by the availability of modern neonatal care facilities and expertise.

Therefore, abortion can rightly be described as any interruption of the continuous development of the foetus from the point of conception to when it is capable of surviving outside the mothers' womb.

3. Types of Abortion

Abortion is classified here into 3 types, these are:

i. Spontaneous Abortion
ii. Therapeutic Abortion
iii. Induced Abortion.

These 3 types of abortion can be further classified into lawful and unlawful abortions having regard to the provisions of the laws in respect of abortion in Nigeria. A lawful abortion is an abortion occurring or carried out under circumstances permitted by law in Nigeria, that is, the

[460] *Ibid*
[461] *Ibid*
[462] J.A. Dada, *Legal Aspect of Medical Practice in Nigeria*(University of Calabar Press, 2013)177
[463] W.M. Jay (ed*)* 'Medical definition of Abortion Written by our Doctors' <https//www.medicenet .com/6/3/217 accessed 21 September 2021
[464] N.P. Ebeigbe, *Foundation of Clinical Obstetrics and Gynecology in the Tropics* (Mindex Publishing Co. Ltd; 2015) 187

spontaneous abortion and therapeutic abortions. Any other abortion procured in Nigeria other than these two is an induced abortion and it is unlawful in Nigeria.

3.1 Spontaneous Abortion

This is commonly referred to as miscarriage. Spontaneous abortion occurs unexpectedly without the pregnant woman or anybody interfering with the pregnancy with the intention of terminating the pregnancy.

This spontaneous abortion in most cases is a source of sorrow to the pregnant woman who carries the feeling of losing the chance of having an expected child.[465] Spontaneous abortion is not criminal because it was not deliberate or induced by anybody.

3.2 Therapeutic Abortion

Therapeutic abortion is lawful and justified, it is an abortion carried out for medical reasons. According to the Black's Law Dictionary,[466] it is an abortion carried out for the purpose of saving the mother's life. Section 297 of the Criminal Code,[467] provides that;

> a person is not criminally responsible for performing in good faith and with reasonable care and skill surgical operation upon any person for his benefits or upon an unborn child for the preservation of the mothers' life, if the performance of the operation is reasonable having regards to the patient's state at the time and to all the circumstances of the case.

Therapeutic abortion may be necessary for several reasons like chronic diseases in the mother, abnormality of the ovum or for the sake of the mental and physical stability of the mother as in the case of *R v Bourne*,[468]where a young girl of 14 years was raped and impregnated by some soldiers. The medical opinion was that the pregnancy be terminated because of the mental and physical health of the girl having regards to the circumstances of her case. The medical doctor, Bourne was charged to court for aborting the pregnancy. It was held that the surgeon was not guilty of the

[465] Echekwube (note 1)188.
[466] Garner (note 3)
[467] Criminal Code, Cap. C38, Laws of the Federation of Nigeria (LFN) 2004
[468] *R v Bourne* (1939) IKB 687.

offence charged as the probable consequence of the continuation of that pregnancy was to make the 14 years old girl a physical and mental wreck.

It is therefore clear that abortion may be permissible on health ground and accordingly health has been defined by Abubarkar[469] to mean a state of complete physical and mental wellbeing and not merely the absence of disease and infirmity.

3.3 Induced Abortion

This is the direct and deliberately destructive ejection of a foetus from its seat in the womb.[470] It is criminal to induce an abortion in Nigeria. Induced abortion may be procured and carried out by a third party, or by the pregnant woman herself.[471]

4. Laws Governing Abortion in Nigeria

Both the Criminal Code applicable in the southern part of Nigeria and the Penal Code applicable in the northern part of Nigeria make provision for circumstances and case where abortion may attract criminal sanctions.

The word abortion is not confined to instances where there has been induced termination of pregnancy but rather, it extends to when the abortion occur naturally, accidentally or by medical intervention.

However, what the Nigerian Criminal law prohibits is the deliberate termination of a pregnancy by a third party or by the pregnant woman herself, with or without the aid of another person. Section 228 of the Criminal Code provides that:

> any person who with intent to procure a miscarriage of a woman, whether she is or not with child, unlawfully administer to her or cause her to take any poison or other noxious thing or uses any force of any kind, or uses any

[469] M.M. Abubarkar 'An Analysis of some Legal Challenges to Reproductive Health Rights in Nigeria' [2013-2014](5) *JHTLRR*, 35
[470] Dada (Note 6) 178
[471] Section 229 Criminal Code

> other means whatsoever is guilty of a felony and is liable to imprisonment for fourteen years.

Section 229 of the Criminal Code on the other hand makes provision in cases where the pregnant woman induces the abortion herself as follows:

> Any woman with the 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 any other means whatsoever, or permits any such thing or means to be administered or used on her, is guilty of a felony and is liable to imprisonment for seven years.

Section 230 of the Criminal Code also makes it unlawful for any person to supply or procure for any person anything whatsoever, knowing that it is intended to be unlawfully used to procure the miscarriage of a woman, whether she is or is not with a child, such person if found guilty is liable to imprisonment for three years.

The above provision is to the effect that, any third party, whether a skilled or unskilled medical practitioner or any other person whatsoever, including the pregnant woman herself who participate actively or passively by way of assistance to procure and induced an abortion except for therapeutic reasons is criminally liable.

Therapeutic abortion is however permissible under the Nigerian legal system having regards to the provision of section 297 of the Criminal Code which provide that a person is not criminally responsible for performing in good faith and with reasonable care and skill 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 regards to the patient's state at the time and to all the circumstance of the case. According to Emiri [472] the Phrase "life of the mother" as provided for in section 297 of the Criminal Code has been treated to be inclusive of her physical or mental health in the case of *R v. Bourne*.[473] In *R v. Bourne's* case,[474] a young girl of 14 years was raped and impregnated by some soldiers. The medical opinion was that the pregnancy be terminated

[472] F.O. Emiri, Medical Law and Ethics in Nigeria (Malthouse Press Limited, 20120) 135
[473] *R v. Bourne* (note12)
[474] *Ibid*

because of the mental and physical health of the girl having regards to the circumstances of her case. The medical doctor, Bourne was charged to court for aborting the pregnancy. It was held that the surgeon was not guilty of the offence charged as the probable consequence of the continuation of that pregnancy was to make the 14 years old girl a physical and mental wreck. This case was decided in line with the abortion Act of 1967 as amended by the Human Fertilization and Embryology Achievement 1990 which provides for abortion under the English Law. By the provision of this law, abortion is allowed where two medical practitioners agree that the pregnancy have not exceeded its 24th week and constitute risk of injury to the physical or mental health of the expecting mother. The *R v. Bourne's* case which upholds the legality of therapeutic abortion represents the current position of the Nigerian criminal law on abortion.[475] Emiri in his work however notes that determining risk to physical health is medically easy but it becomes problematic to determine what constitute risk to mental health.[476]

This paper is of the view that it is problematic to determine risk or injury to mental health because mental health connotes a lot of issues basically psychological. In order to ascertain what may likely constitute injury to mental health, we must first ascertain what mental and physical health is in this paper. Mental health refers to cognitive, behavioural and emotional wellbeing, it is all about how people think, feel and behave. People sometimes use the term mental health to mean the absence of mental disorder.[477] Some of the factors that can injure mental health are social and financial circumstances. Biological factors and lifestyles choices can also shape a person's mental health.[478] Thus when there is an injury to the mental health of a person it can affect his daily living, relationship and apparently his physical health. This is because, the physical health has been held to correlate with the mental health because a good physical health leaves a better personal feeling in the long term.[479] Physical health on the other hand might traditionally be understood to mean the physical body being free of disease or disability. A more accurate definition of physical health in this contemporary time having regard to improved health care system is the ability to perform daily tasks and live comfortably in one's body.[480]

[475] Emiri (note 16) 135.
[476] *Ibid*
[477] F. L. Adam 'What is Mental Health?' < Medical News Today.com> accessed 10 August 2021
[478] N. Nayma 'Health and Fitness: Physical Health Definition' <hyyps:// theworldbook.org> Physical health definition > accessed 10 August 2021
[479] Ibid
[480] Ibid.

If the provisions of the criminal code and penal code restricting abortion to the necessity to preserve the life of the mother is considered alongside the decision in *R v Bourne* with particular reference to the interpretation of the phase 'mental health' and the "preservation of mothers' life" in Nigeria, then there will be no need for the resort to unsafe abortion using clandestine means by women carrying unwanted pregnancies. This is because they can now resort to proper medical facilities and professionals who will have to evaluate not just the injury to their physical health but their mental health as well. It is the further view of the researcher that a proper and genuine evaluation of the factors compelling some of these women to induce these abortions will show that, the probable consequence of the continuance of such pregnancies will inflict mental injury on the pregnant woman, thus permitting them to benefit from the provision of section 297 of the Criminal Code.

There has been cries over the years for the liberalisation of the abortion laws in Nigeria either by legislative enactment amending the existing abortion laws to entertain reproductive choices right or alternatively judicial activism.[481] This judicial activism can be achieved by a broader interpretation of some of the existing constitutional rights such as the right to liberty, private and family life.[482] Adeleke in his article has notes that the abortion laws in Nigeria are too restrictive thus forcing tens of thousands of women to resort to unsafe abortions. To this writer, there is no justification for the State to continue operating these strict laws in defiance of the call for the liberalization of these laws, because secret and unsafe abortions account for a significant proportion of maternal deaths in Nigeria and this should form the basis for its liberation particular in cases of unwanted pregnancy resulting from rape, sexual assault or incest.[483]

Prior to the recent decision in *Dobbs v Jackson Women's Health Organisation,*[484] there existed an era of a liberalised abortion law spanning 50 years in the in United States of America particularly in the State of Texas where abortion was illegal except it was done to save the mother's life. The law was liberalised by judicial intervention and broader interpretation of the constitutional right to privacy in the case of *Roe v. Wade.*[485] In this case, the Supreme Court had to decide on the right of

[481] F. Adeleke, 'Constitutional and women reproductive Right to abortion: an over view' [2011] (11) (1) *The Constitution,* 38
[482] Sections 34, 35 & 37 Constitution Federal Republic of Nigeria (CFRN), 1999 (Amended)
[483] Adeleke (note 25) 39
[484] *Dobbs v Jackson Women's Health Organisation* (No. 19-1392)
[485] 410, US. 113 (1973)

a woman to choose and have safe abortion notwithstanding the Texas law that allows only therapeutic abortions. During the era prior to *Roe v. Wade*, only American women with financial means obtained abortion by traveling to other countries where abortion was legal to procure same or pay exorbitant fees to doctors for illegal abortions. In 1969, Norma Mc corney a Texas woman in her early 20s who was known in court document as Jane Roe sought to terminate an unwanted pregnancy. She had grown up in a poor and difficult circumstance. She was unmarried and pregnant for the third time with an unwanted pregnancy of which the children from the two previous pregnancies were given up for adoption. Jane Roe was indigent and had made several unsuccessful illegal attempts at aborting the pregnancy. She was referred to two Texas attorneys, Linda Coffee and Sarah Waddington who challenged the abortion laws on behalf of Roe and others against Henry Wade, the District Attorney of Dallas County where Jane Roe lived. While the case was on, Jane Roe gave birth and put up the child for adoption, on January 22, 1973, the Supreme Court in a 7 to 2 decision struck down the Texas law banning abortion thus effectively legalising abortion nationwide in the United State of America. The court held that a woman's right to an abortion was implicit in the right to privacy protected by the 14th amendment. The court acknowledged that, being forced to continue a pregnancy put a lot of women on the risk of their physical health, mental health, financial burden as well as social stigma.[486] The right to abortion as enunciated in *Roe v. Wade* was however a non-absolute right. The court balanced the interest of the State in protecting the woman's health as well as the prenatal life of the foetus. This the Supreme Court did by dividing the term of pregnancy into three trimesters of twelve weeks each. The Court declared that the choice to end the pregnancy in the first trimester was solely up to the pregnant woman, while in the second trimester, the State may regulate abortion although not banning it in the interest of the pregnant woman, but in the third trimester, the State interest in protecting the potential human life outweighs the woman's right to privacy unless the abortion is necessary to save the life or health of the pregnant woman.[487]

The essence of the declaration of the right to abortion as non-absolute in *Roe v Wade* was to protect the foetus once it becomes viable, that is the foetus ability to survive outside the mother's womb. The Supreme Court made this clarification in 1992 in the case of *Planned Parenthood v Casey*.[488]

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[486] *Roe v Wade (Supra)*

[487] L. Teme, A. Marshal '*Roe v Wade* case Summary, What You Need to Know' <https//supreme.find law.com> accessed 13 September 2021

[488] (1992) 505 US. 833.

It is worthy to note that, the recent decision of the Supreme Court of the United State of America in *Dobbs v Jackson Women's Health Organisation*[489] did not out rightly ban abortion in the United States of America, rather it passed the duty to legislate on same to the respective States, thus not making it a federal law as in the case of *Roe v Wade* that was applicable in the whole country. Following this development, Wyoming governor signed a bill prohibiting abortion pills on March 17, 2023.[490] It must be noted that prior to the Supreme Court upturning of the *Roe v Wade* decision in the USA, the most common form of abortion in the USA is the use of abortion pills and this is what Governor Mark Gordon of Wyoming seek to prohibit by the bill.[491]

The agitation for the liberalisation of the abortion laws in Nigeria is aimed at affording women with unwanted pregnancies the opportunity of seeking for abortion in safe and professional environment and nothing more and this paper aligns itself with same.

Liberalising abortion law in Nigeria does not indirectly open a floodgate to abortion on demand but reduces the non-access to safe abortion thus reducing maternal mortality in Nigeria. In Nigeria previous efforts at ensuring legal backing for abortion have been resisted on socio-cultural and religious grounds despite the fact that Nigeria is declared to be a secular State.[492] It is the submission of Bashiru[493] that the two most notable religion in Nigeria, Christianity and Islam agree that abortion can be embarked upon when the life of the pregnant woman is in danger but vehemently oppose abortion at any stage of the pregnancy on the ground that it is unwanted or unintended because it is to them unwarranted homicide and violate the sanctity of human life.

5. The Effect of Unsafe Abortion in Nigeria

Abortion, particularly induced abortion is a contemporary issue that continuously seems to agitate the global space within the broad topic of the right to life and the reproductive right of a woman. This is because of the negative effect of unsafe abortion on women globally.

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489 *supra*

490 NBC News 'Wyoming Governor Signs Bill Prohibiting Abortion Pills' <https//www.nbcnews.com> accessed 19 March 2023.

491 *Ibid*

492 R. T. Femi 'The Need for Legal Backing for Abortion: Responses for Young Woman in Nigeria[(2008](1)(1) *MJFDHL* 24

493 B. Omipidan ' Right and Abortion: Islamic Perspective' [2004 – 2006](3) *AL –Maslaha Journal of Law and Religion* 234

The Word Health Organization (WHO) defines unsafe abortion as a procedure for terminating an unintended pregnancy either by an individual without the necessary skill or in an environment that does not conform to minimum medical standards or both.[494] Unsafe and induced abortion is a major consequence of unintended pregnancy in many low- and middle-income countries that restrict abortion such as Nigeria. Abortions are often performed under unsafe conditions and result in women dying or suffering serious injuries. It is estimated that there are over 22 million unsafe abortions each year approximately 47,000 deaths from this unsafe abortion and 5 million women suffer injury and disabilities from such unsafe abortions.[495]

Henshaw,[496] posits that every year, Nigeria women obtain approximately 610,000 abortions, a rate of 25 abortions per 1000 women between age 15 - 44. The rate is much lower in the poor, rural regions of Northern Nigeria than in the economically developed Southern Regions. He notes that an estimated 40% of these abortions are performed by physicians in established health facilities while the rest are performed by non-physicians[497]. This finding by Henshaw[498] is further substantiated by the World Health Organization Report estimating that 97% of abortion procured in developing countries are preformed unsafely either by an unskilled provider with inadequate method or in an unhygienic environment.[499]

Unsafe abortion has been adjudged to be one of the five leading causes of maternal mortality worldwide. The incidence of unsafe abortion is high in developing countries due to the wide spread ignorance and restrictive abortion laws.[500]The mortality rate from unsafe abortion in Africa is the highest in the world where 56% of unsafe abortions occur.[501] Echekwube[502] has advised that all precautions be taken in order to avoid unintended pregnancies in order to save the mother and unborn child the ordeal and torture of abortion.

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[494] WHO 'Preventing Unsafe Abortion' <https://www.who.int > accessed 3 December 2021
[495] H. Bickerstaff, L. Kenney, *Gynecology* (20th edn, CRC Press, 2007) 115
[496] S. Henshaw 'The Incident of Induced Abortion in Nigeria' [1998] (24) (4) *International Family Planning Perspective*, 156
[497] *Ibid*.
[498] *Ibid*.
[499] World Health Organisation , Abortion <https://www.who.int > accessed 3 December 2021
[500] Ebiegbe (note 8) 187.
[501] E. K. Yegon, 'Understanding Abortion Related Stigma and Incidence of Unsafe Abortion' [2016] *Pan African Medical Journal,* 2
[502] Echekwube (Note 1) 199

The criminalization of abortion is a factor that encourages recourse to unsafe abortion practices through the back door.[503] Adeleke in his article[504] stated that one way of addressing the ethical issues in reproductive health is to look at the consequences of current laws, policies and practices and see whether the existing situations give rise to the preponderance of good or bad consequence. If the bad consequence outweighs the good ones, there is an ethical obligation to seek a change in the laws, policies or practices. The rate of maternal mortality and morbidity in developing countries make it uncontroversial to state that the harmful consequences of these restrictions outweigh the benefits.[505]

The World Health Organization has defined Maternal Mortality as the death of a woman while pregnant or within 42 days of termination of pregnancy from any cause aggravated by the pregnancy or its management.[506] Maternal death as a result of high risk teenage pregnancies either from unsafe abortion or delivery complication contributes significantly to the high maternal mortality rate recorded from different parts of the country.[507] According to Haruna,[508] a teenager who gets pregnant is confronted with several key quandaries on how to deal with the situation she find herself, her parents and the society, because of this confusion, she has to deal with the physical and psychological trauma of the uncertainties ahead of her if she keeps the baby or decides otherwise. If she decides to terminate the pregnancy, then she has to do it alone in a privately owned hospital where the services will be provided illegally and secretly so as not to expose the service provider as well as herself to the long arms of the law.[509] It is emphasized that Nigeria makes up barely 2% of the world population, but account for 10% of the world maternal death. In the Northern part of the country, it is recorded that they have 1750 maternal death from every 100,000 births, while in the Eastern part which happens to be the lowest in the country; they have 440 maternal deaths out of every 100,000 birth.[510] In the South Western part of Nigeria, it is the

[503] Yegon (note 45) 4
[504] Adeleke (note 25) 49
[505] *Ibid*
[506] WHO 'Prevention of Maternal Mortality: A Report of a WHO Inter Regional Meeting 1985' WHO Doc. FHE/86.1,5
[507] B. Haruna 'Advancing the right to safe motherhood under the Constitution' [2013 -2014](3)(4) *Journal of Health Law and Reproductive Right*, 212
[508] *Ibid*
[509] *Ibid*
[510] M. T. Ladan 'An Overview of Reproductive Rights and Health (Maternal Mortality in Nigeria)' *Women Aid Collective occasional working paper series,* 10, 17

finding that 30% of abortions with quacks result in the death of the pregnant woman and the trend may double in the next 20 years.[511] Apart from increase maternal death rate being part of the effect of an unsafe abortion, repeated induced abortion weakens and damages the cervix, it may also lead to spontaneous abortion in subsequent pregnancies and infertility as a result of damage to the cavity of the uterus.[512] It is true that the risk of death following complications of unsafe abortion procedures in Nigeria is several hundred times higher than that of an abortion performed professionally under safe condition.[513] It is estimated by the Society of Gynecologist and Obstetricians of Nigeria that about 20,000 women in Nigeria die from unsafe abortion each year.[514]

Ilobinso[515] has suggested that abortion policies in Nigeria be liberalised and abortion procedures properly regulated since it has been recognized as a major cause of maternal mortality, primary and secondary infertility.

6. The Competing Right between the Foetus and the Expectant Mother

The competing right between the foetus and the expectant mother are well founded and protected by law. According to Ifeoluwayimika and Olusegun,[516] every human being has a variety of rights which include the right to life, human dignity, liberty and self-autonomy, these rights extend to the pregnant woman specifically when issues of abortion are in discuss, so also does the unborn child has a right to be protected from harm and abuse, but at times there may arise conflict of interest between the competing right of the pregnant woman and the unborn child referred to as the foetus and the question as to which interest should override the other particularly with respect to the provisions of section 33 (1) of the Constitution becomes an issue.[517] Section 33 (1) of the Constitution provides that "every person has right to life and no person shall be deprived intentionally of his life." There is the argument that this provision actually protects the life of the pregnant woman as against that of the foetus. This is the obvious reason why an induced

[511] Femi (note 36) 23
[512] L. K. Ilobinso 'Policy on Abortion in Nigerian Society: Ethical Consideration' < https;//www.diva=portal.org. >28, accessed 14 September 2021
[513] *Ibid*
[514] F. Okonufua 'Risk Factors for Complication of Induced Abortion in Nigeria' [2005](10)(6) *Journal of Women Health,* 515.
[515] Ilobinso (Note 56)
[516] B. Ifeoluwayimika and O. Olusegu 'Foetal Rights and the Foetal Maternal Conflict: a Cursory Look ' [2015](1)(3) *ABUAD Law Journal*, 1
[517] *Ibid*

termination of a pregnancy may constitute a crime but such crime does not amount to murder, that is, the killing of a person. This is so because the law does not see the foetus as constituting a person and it is only a person that is capable of being killed.[518] Adegbite[519] stated that as a matter of fact, the foetus which they referred to as a developing organism is not yet a person and does not have what they say is referred to as the right to life, accordingly the law has not conferred personhood on the foetus but the mother has as existing legal personality.

Section 297 of the Criminal Code put to rest the issue of which right overrides the other between the foetus and the expectant mother, since it expressly provides that the child can be operated upon to save the life of the mother. Though the foetus has a right to be protected from harm under the Nigerian legal system, that right does not and cannot override that of the mother when S. 33 of the Constitution is considered. The right to life envisaged in section 33 of the Constitution is that of the pregnant woman and not that of the foetus.

7. Agitations for the Liberalisation of Abortion Laws in Nigeria

The agitations for the liberalisation of the laws prohibiting abortion on demand in Nigeria has been anchored on the need for women to have access to safe abortion considering the devastating effect of unsafe abortion on women occasioned by the restrictive laws. The group of people championing this course are referred to as, the prochoice group. The prochoice group has submitted that the woman's right to demand for abortion is a reproductive choice that will enable her decide on the continuation of a pregnancy or not and give her legal access to safe abortion, the absence of which has left many women with no other choice but the risk of unsafe and illegal abortions that has in turn done more harm than good.

The sole argument of the prochoice advocates is not on whether the foetus is a person or not but rather the right of the pregnant woman who is a legal person since her personhood is not in dispute, hence the campaign for the realization of women's right to reproductive choice *vis a vis* access to

[518] Section 308 of the Criminal Code defines the word killing as the direct or indirect causing of death of any person. While section 307 provides that a child becomes a person capable of being killed when it has completely proceeded in a living state from the body of its mother.

[519] F. R. Adegbite 'Refusal of Medical Treatment by Mother of the Unborn: Matter Arising' [2016](3) *UNILAG Journal of Public Law,* 158

legal and safe abortion has been ongoing for years all over the globe. To Adeleke,[520]abortion is a reproductive choice which ought to be available to every woman of reproductive age, exercisable by her based on her implied right to privacy, liberty and the dignity of her person. To this writer, the current policies on abortion restricting women from procuring abortion except on the narrow ground of saving her life is too restrictive. This paper aligns with is thought and state that laws that oppose socially prevalent views are usually bound to be ineffective even if justified as in the case of the law restricting abortion in Nigeria. Laws must be socially inclined and subject to changes in line with contemporary happenings otherwise compliance becomes an issue.

The reproductive choice right of women have been allowed via legislative pronouncement in some jurisdictions like South Africa where the constitution makes express provision for women reproductive choices,[521]the South African Constitution expressly provides that everyone has a right to bodily and psychological integrity which includes the right to make decisions concerning reproduction, decisions as to security and control over their body. In Nigeria, there exist constitutional provisions which if given broad judicial interpretation may affirm women's right to reproductive choice in Nigeria and save many women the adverse and negative effect of unsafe abortions in the long run. Some of these constitutional provisions are sections 34, 35 and 37 of the Constitution particularly section 37 which guarantees the right to private and family life.[522] This view is based on the fact that reproductive choice implies the right of couples to decide freely and responsibly on the number, timing and spacing of their children and to make this decision free from discrimination, coercion and violence.[523]

8. CONCLUSION

Abortion has been stated to be the termination of pregnancy before term. Abortion is restricted in Nigeria and induced abortion expressly criminalized. There are however agitations for the liberalisation of the laws regulating abortions in Nigeria. This is because the negative effect of unsafe abortions on women in Nigerian has been adduced to be a direct effect of the restrictions

[520] Adeleke (note 25)39
[521] Section 12(a)(b) Constitution of the Republic of South African, 1996
[522] 1999 CFRN
[523] O. Ikpeze 'Customary Perspective on Reproductive Right' [2013-2014](3) *Journal of Health Law and Reproductive Right*, 56

on abortion in Nigeria, forcing numerous women to seek for abortions in unsafe and unprofessional environments using clandestine means.

This paper analysis the Nigeria's restrictive abortion law and the need for its review, it aligns with the demand for the liberalisation of Nigerian abortion laws. This paper finds that induced abortion is prevalent in Nigeria and it is been carried out in unsafe and unprofessional environments because of these restrictive laws. This paper also finds that the risk of death following complications from unsafe abortion procedures in Nigeria is several times higher than that of an abortion performed professionally under safe condition. It is therefore suggested that these agitations for the liberalisation of the abortion laws be directed at the legislative arms of government both at the Federal and State level for a review of these laws. It is recommended that the present political dispensation gives decisive positive attention to the agitation for the liberalisation of the abortion laws having regard to the increase in the negative effect of abortion on women in Nigeria. It recommends that abortion laws in Nigeria be relaxed and induced abortion be regulated by law.