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RIGHT TO LIFE AND ABORTION: COMMON LAW AND ISLAMIC LAW PERSPECTIVES

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Introduction

The practice of abortion dated back to the ancient times. Pregnancies were terminated through a number of methods including the administration of abortifacient, herbs and the use of sharpened objects. Others are application of abdominal pressure and other techniques¹. The first recorded evidence of induced abortion was from Egyptian "Ebers Papyrus" in 1550 B.C.² Chinese recorded a number of royal concubines who had abortion between the years 500 and 515 B.C.³ According to Chinese folklore, the legendary emperor Shennona prescribed the use of mercury to induce abortion nearly 5000 years ago.⁴ Many of the methods employed in early and primitive culture were non-surgical physical activities like strenuous labour, climbing, peddling, weightlifting, fasting, bloodletting, pouring hot water into abdomen and lying on heated coconut shell.⁵ Abortion through gynecological procedure was primarily within the province of women who were either midwives or well-informed lay people. Plato in his *Theatetus*⁶ mentioned a midwife's ability to induce abortion in the early stage of pregnancy. In South East Asia, the technique of abortion involved the application of pressure on the pregnant abdomen which was practiced for centuries. One of the major reliefs decorating the temple of Angkor Wall in Cambodia, dated back to 1150 B.C depicts a demon performing such an abortion.⁷

In Islamic world during the medieval period,⁸ physician in the Islamic world documented the list of birth control practices including the use of abortifacient commenting on the effectiveness and prevalence.

The nineteenth century to present day saw the advancement in the field of surgery, anesthesia and sanitization. In the same era, the American Medical Association lobbied for ban on abortion in United States and the parliament in the United Kingdom passed the Offence against a Person Act, 1861.

The legal history of abortion dated back as far as early 1760 BC. In the Code of Hammurabi which prescribed fine for crime of causing miscarriage through assault without varying according to the social rank of the prospective mother.⁹

In 1803, the United Kingdom enacted the Malicious Shooting or Stabbing Act, making abortion after quickening a capital crime and providing lesser penalty for felony of abortion before quickening.¹⁰ In 1821, Connecticut passed first statute that forbids the use of poison to induce abortion or miscarriage.¹¹ In 1861, the parliament of the United Kingdom passed the Offence against Person Act. The Act outlaws abortion and made abortion or attempt to procure miscarriage illegal in any circumstance.¹²

In 1820-1900, through the effort of physicians of the American Medical Association and legislators, abortion in the United States was outlawed.¹³ In 1959, America drafted a model state Abortion Law to make legal abortion accessible. Most American

states adopted this Model Penal Code up to 1970. In 1971, the Indian Parliament under the Prime Minister ship of lady Prime Minister, Indira Gandhi passed Medical Termination of Pregnancy Act. Thus, it became the earliest nation's Act.

In 1973, the United States Supreme Court in the case of *Roe v. Wade*,¹⁴ declared all individual states ban on abortion during the first trimester to be unconstitutional. It is allowed by states to regulate but not to prescribe abortion during the third trimester unless abortion is in the interest of the woman physical or mental health. The court legalized abortion in all trimester when a woman's doctor believed that abortion is necessary for her physical or mental health. In the case of *Planned Parenthood v. Casey*,¹⁵ the Supreme Court of the United States overturned the trimester framework in *Roe v. Wade*, making it illegal for states to prescribe abortion after the point of viability except in instance that would risk the woman's health. In 2003, the U.S enacted the Partial Birth Abortion Ban Act. In the case of *Honzales v. Cahert*,¹⁶ the Supreme Court held that: "the Act does not violate their (Women) constitutional right to abortion."

In the light of the aforesaid, Borokinni opined that:

*It is imperative to understand that Africans do not only attach great importance to children but also regard them as wealth and treasure. Consequently, abortion is not legalized in most African countries.*¹⁷

He expressed that only Togo and Tunisia that legalised abortion on request. Economic reason, religious belief and traditional norms of Africans have affected legalization of abortion in Africa.¹⁸ In Namibia, abortion is allowed in cases of incest, rape, foetal deformity and pregnancy endangering the mother's life.¹⁹ In Kenya, abortion is allowed if the mother's life is at risk. Abortion is legal if the existence of pregnancy endangers the mother's life in countries like South Africa²⁰ and Nigeria.²¹

Concept of Abortion

Abortion has been defined as "any acts of destruction of the fertilized ovum (zygote or foetus) before birth."²² Black's Law Dictionary defines abortion as "an artificially induced termination of pregnancy for the purpose of destroying an embryo or foetus."²³ It also defines it as "the spontaneous expulsion of an embryo or foetus before viability; miscarriage."²⁴

Oxford English Dictionary defines it as "the deliberate termination of a human pregnancy or the natural expulsion of a fetus from the womb before it is able to survive independently or as the arrest of the development of an organ especially a seed of fruit."²⁵ Furthermore, The National Right to Life Organisation (NRLO), abortion could be defined as any premature expulsion of a human fetus whether naturally spontaneous as in miscarriage or artificially induced as in a surgical or chemical abortion.²⁶ Medically, abortion is postulated as the premature existence of the uterus. It is the lost of a pregnancy and does not refer to why the pregnancy was lost. It has further been defined as the termination of pregnancy by the removal or expulsion from the uterus of a foetus or embryo prior to viability.²⁷

Islamically, abortion is firstly understood as an interference with the role of Almighty Allah as the ultimate owner and decider of life and death. Human life is valued because it is made by Almighty God.²⁸ According to Imam Ghazali:

*Abortion is a crime on the existing being. And for each level that sperm is in the worm and it mingles with water of a woman and it starts to accept the life, the spoilage of that is a crime. If it becomes an embryo and a blood clot, then the crime is worst, and if the spirit blows in it and the creation is maintained, crime increases in offence.*²⁹

School of Hanafiyyah has defined abortion as "a crime of murder of uncompleted life being which even though, it is not amounted to homicide or murder against human being, it can stand as it own on separate headline."³⁰

Right to Life and Abortion

It is important to state here that the Right to life is one of the cardinal rights provided for in the United Nations Universal Declaration of Human Rights, 1948, in the Organisation of African Unity now African Union as well as in the Nigerian Constitution.³¹ Right to life is guaranteed in all legal systems whether religious, national, or international. According to the Universal Declaration of Human Rights: "Everyone has the right to life, liberty and security of person."³² International Covenant on Civil and Political Rights says: "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."³³ The Nigerian Constitution provides that: "Every person has a right to life and no one should be deprived of his life save in execution of the sentence of a court in respect of which he has been found guilty."³⁴ Islamic law also provides for the right to life, liberty and security of person.

The idea of the right to life raises some fundamental and difficult societal issues. Such issues touched on problems such as euthanasia, capital punishment, abortion, killing in self defence and killing in armed conflicts. The questions that arise with regard to abortion are even more controversial than those relating to capital punishment. For example, whether abortion is morally wrong? Whether it should be legalized and thereby be controlled? Whether the unborn child or foetus has right to life, that is, to be born. Whether a pregnancy could be aborted at will at any stage of the pregnancy.³⁵ In most legal system, induced abortion is a crime.

However, in recent times, there is disconcerting trend to condone or to legalise abortion. An interesting illustration of trend of legalizing abortion through judicial legislation by way of statutory interpretation can be seen in the U.S. case of *Roe V. Wade*.³⁶ It was argued in the case on behalf of a pregnant mother that she had an absolute right to privacy guaranteed under the United States Constitution to terminate her pregnancy at any stage and by any means and for whatever reason. The Supreme Court (U.S.) struck a balance between the constitutional rights of individual mother and state interest in protecting the mother, the fetus and the health of society at large by holding that:

- i. pregnant mother is entitled to exercise her right to privacy by terminating her pregnancy but this is not absolute; and
- ii. this right is limited by the right of the state to limit.

Such right is justified by compelling state interest depending on the stage of the pregnancy. In other words, while permitting freedom to abort at the early of pregnancy, the court disapproved abortion at a time when the fetus has substantially developed except on strict medical grounds.³⁷ Although, the above decision was vehemently criticised by those who said that, in effect, the court has licensed murder. It would appear clearly that by the decision of 1973, abortion is allowed in Texas. But it is remarkable to state that even the woman in favour of whom the judgment was given have reacted in part to it, this is because, it was the belief of the feminists that there is need for the law to recognise the social connection between the pregnant woman and the fetus. The feminists therefore see the case of *Roe V. Wade* as embodying a correct result reached for the wrong reasons. These reasons according to the feminists are derived from the opinion of Justice Blackmun³⁸ who said that women have a general constitutional right to privacy from which it follows that they have a right to abortion (before the end of the second trimester of their period of pregnancy).

It is therefore the concept of the privacy that has been attacked by some feminist jurists. They regarded it as a dangerous illusion: for according to them, freedom of choice concerning abortion in a male dominated society ought to rest not on principles of privacy but on a wider concept of sexual equality. They argued further that the "privacy" argument ignores the uniquely creative role of the women in pregnancy. Her right to abortion ought not to derive from the insubstantial rhetoric of privacy. It should arise from "her responsibility to make a complex decision she is in best place to make," they concluded.

In other words, the feminists are of the opinion that women's right to abortion should be on fact that she has a responsibility to make complex decision she is best placed to make and not on the basis of any constitutional right to privacy.³⁹

Islamic Law guarantees the right to life in many verses of the Holy Qur'an. Some verses forbidden specifically infanticide. For instances, Almighty Allah says in a verse as follows: "*And kill not your children for fear of poverty. We shall provide for them as well as you, surely, the killing of them is a great sin.*"⁴⁰

Furthermore, it is provided thus:

*That is why we prescribed to the children of Isreal that whoever killed a person except for another person or corruption on the earth, it shall be as if he had killed all humans. Whoever revived it, it shall be as if he had revived all humans.*⁴¹

The question that arises here is whether the foetus has the right to life and at what point the conception begins or once God has breathed the soul? It should be noted that neither the Holy Qur'an nor the Sunnah mention abortion. The classical and modern Muslim jurists however used the elements given in these two sources concerning the life and the soul of the foetus to determine whether abortion could be said to be a violation of right to life.⁴²

Jurists like Ibn Qudamah, Ibn Hazm, Shawkani and al- Gazali held that "a foetus prior to ensoulment is like lifeless matters or blood and its termination do not amount to

taking a human life but abortion after ensoulment could be said to amount to taking of life as if it is a greater crime.⁴³

In common law jurisdiction, the basic position in relation to the legal status of the unborn child is subscribed by what is known as the born alive rule. This rule ordains that a person cannot be held responsible for injuries inflicted on a fetus in uterus until is born alive. On a charge of murder or manslaughter, it must be shown that the person killed was one who was being. It is neither murder nor manslaughter to kill an unborn child while still in its mother's womb.

Legal Position of Abortion under Common Law

In England and Wales, the governing law on abortion is contained in the Offences against the Person Act of 1961. The law provides thus:

Every woman, being with child, who with intent to procure her own miscarriage, shall unlawfully administer to herself any instrument or other noxious thing; or shall unlawfully use any instrument or other means whatsoever with the like intent, and whosoever, with intent to procure the miscarriage of any woman, whether she be or not with child, shall unlawfully administer to her or cause to be taken by her any poison or other noxious thing; or shall unlawfully use any instrument or other means whatsoever with the like intent, shall be guilty of an offence; and being convicted thereof shall be liable,...to imprisonment for life.⁴⁴

Then, a few years later, another Act was enacted governing the offence to destroy a child capable of being born alive. The Act is known as Infant Life Preservation Act, 1973. In the case of *Roe v. Wade*,⁴⁵ the Supreme Court of the United States decided that the American Constitution gave a woman a right to privacy which encompassed her decision whether or not to terminate her pregnancy.

However, the court also declared that the right was not absolute and that the law could regulate the conditions for abortion between the end of first trimester (or three months) of the pregnancy and the stage of viability and moreover, once viability had been reached, the law could prohibit abortions altogether except those necessary to preserve the life or health of mother.⁴⁶

Contrary to situation in country like Malaysia where the court only recognised the defence of consent of a woman where the abortion is performed for the purpose of saving her life, the court in common law had appeared to extend the permission to cover the miscarriage to prevent grave permanent injury to the physical or mental health of the pregnant woman.⁴⁷ This is in line with the provisions of Islamic Law, Penal code and Shari'ah Penal Code of Nigeria as to when abortion is permissible.

The penal code provides thus:

Whoever voluntarily causes a woman with child to miscarriage shall, if such miscarriage be not done in good faith for the purpose of saving life of the woman, be punished with imprisonment for a term which may extend to fourteen years or with fine or both.⁴⁸

This penal code further provides thus:

Whoever does any act in such circumstances that, if he thereby caused death, he would be guilty of culpable homicide and does by such an act cause the death of quick on unborn child be punished with imprisonment for life or less term and shall be liable to a fine.⁴⁹

Where a person knowing that he is likely to cause the death of a pregnant woman, does an act which if it cause the death of the woman would amount to culpable homicide. The woman is injured but did not die; the death of the quick unborn child shall be punished with imprisonment for life or for a less term and shall be liable to fine.

The penal code punishes for offences against child before birth in case where pregnancy has advanced beyond the stage of quickening where the death is caused in the quicken or before the birth of the child.⁵⁰ This is the same with sections 312 and 262 of penal code of Pakistan and Sudan respectively. The offender may be the woman herself or any other person. The section requires two essential features:

- a. *Voluntary causing of the woman miscarriage; and*
- b. *The miscarriage should not have been caused in good faith for the purpose of saving the life of woman.⁵¹*

The English case of *R v. Bourne*⁵² shows that there is no difference between saving her life and preserving her mental health. In this case, a doctor was charged with using an instrument with intent to procure an abortion of a fourteen years old girl, a rape victim. His defence was that, the operation was not unlawful as if the operation had not been performed; she would have suffered a complete mental collapse. Mc Naghten J. was of the opinion that, not only there is right but is a duty to perform the operation.⁵³

The Church, through Late Pope John Paul II stated succinctly on abortion that the direct and voluntary killing of an innocent human being is always gravely immoral. The foetus according to the Clergy is seen as a person with a right to life. Such right is always in existence from the very moment of conception. The POPE went further to say that abortion is characterised as an insult to the sanctity of human life and therefore to be condemned absolutely, the Late Pope concluded. It is important to note that many non-Catholic Christians accept this view of the rights of the unborn child and the consequent interpretation of abortion as unwanted homicide.⁵⁴

Legal Position of Abortion under Islamic Law

The Islamic law position on the issue of abortion is in total concord with the view of the Christianity, particularly, the position of Roman Catholic Church as stated by Late Pope John Paul II. Abortion in Islam is understood as interference with the role of Almighty Allah as the ultimate owner and decider of life and death. Human life is valued because it is made by Allah.⁵⁵ Almighty Allah stated in the Glorious Qur'an as follows:

O Prophet; When believing women come to you, give you their pledge not to associate anything with God in worship, that they shall not steal, that they shall not commit adultery, that they shall not kill their children, that they shall not utter slander, intentionally forge falsehood and they shall not disobey you in any just cause: then accept their pledge and pray

to Allah for their forgiveness, for Allah is often-forgiving most Merciful.⁵⁶

In the foregoing verse of the Holy Qur'an, attention should be focused on "that they shall not kill their children." In the Pre- Islamic period, the crime of infanticide was known to be committed for three reasons. The first was burial alive of female for fear of shame and females were considered to be inferior because they cannot fight in battle field. The second reason was in fulfillment of pledge to their idols if a wish is realised while the third is poverty, inability to sustain a new child.⁵⁷

The historical fact was that this crime was always committed by men never by women. In scrutinizing the pledge given by believing women not to kill their children, the three reasons for killing as afore mentioned have gone out of historical context. Therefore, it leaves us to believe that infanticide carried out by women are forbidden by this verse of the Holy Qur'an, meaning that, the practice of abortion at that time was perpetrated by women only.⁵⁸

The word abortion was not specifically mentioned in the Holy Qur'an. However, there are several Qur'anic verses that centred on the prohibition of killing of children. The Holy Qur'an provides thus:

*Come, I will recite what God has really prohibited you from. Join not anything as equal with Him. Be good to your parents. Kill not your children on a plea of want; We provide sustenance for you and for them. Come not near to shameful deeds whether open or secret. Take no life which Allah has made sacred except by ways of justice and law. Thus, does not He command you that you may learn wisdom?*⁵⁹

Another verse of the Holy Qur'an where the Almighty Allah prohibits killing of our children on the ground of financial restrain is as follows: "Kill not your children for fear of want: We shall provide for them as well as for you. Verily, the killing of them is a great sin."⁶⁰

It is obvious from the above two verses that poverty, whether experienced or anticipated cannot be justified for killing one's children. In contemporary practices, some people resorted to abortion on flimsy excuse in order to avoid the responsibility of upbringing of their children or not to destroy the beauty of a woman. This paper intends to examine whether Shari'ah allow such practice or not. In fact, it depends on stage of embryonic development. Based on Qur'anic exposition, a foetus in uterus undergoes through four stage, that is, fluid (*Mutfah*), something which clings, (*alaqah*), tender flesh (*mudghah*) and a full growth child. It is after the stage of *mudghah* that spirit is breathed into it. The jurists agreed that it is after the stage of *mudghah* that abortion is prohibited. At this stage, in no circumstance shall abortion should be resorted to unless it becomes absolutely momentous, especially when the pregnancy poses serious threat to the mother's life. In other words, the Muslim Jurists unanimously agreed that it is unlawful to carry out abortion after the breathing of soul into the expected child unless on medical advice to terminate the pregnancy because such act in Shari'ah amounts to killing which the Almighty Allah has prohibited.⁶¹

The infusion of soul into a baby is said to occur after 120 days. Abortion before this period, if not necessary has generated a lot of controversies among the Muslim scholars.⁶² However, majority of the jurists had prohibited abortion at any stage of human development. Imam Ghazali, one of the proponent scholars from Shafi's school of thought was of the opinion that termination of pregnancy or an act of abortion at any stage from contraction is a crime. Its destruction is serious if it passes the stage of blood clot and it becomes a more serious crime if it is destroyed at the stage of becoming a foetal lump. Lastly, it becomes more heinous crime if abortion is carried out after the beginning of life.⁶³

Some of Shafi and Hanafi's jurists advanced the view that once sperm is deposited in the uterus and is ready for receiving the property of life; its termination is optimistically blameworthy.⁶⁴ Therefore, from this general position of Shari'ah on abortion, it can be argued that, in no circumstance that the termination of foetus of four months old is allowed. In other words, Muslim jurists have agreed unanimously that after the foetus is completely formed and has been given soul, abortion is forbidden (*Haram*) because it constitutes an offence against a complete living human being.⁶⁵

Conditions for Abortion

Under Islamic law, killing of baby before its birth is prohibited. But there are some conditions or instances where Islamic law permits abortion. Abortion is allowed when a competent and trustworthy medical practitioner advised that, continuation of pregnancy will cause harm or claim the life of the pregnant woman. In other words, abortion will only be allowed if continuation of pregnancy will endanger the life or health of the expectant mother, or if there is proven serious congenital anomaly in the embryo or foetus.

Abortion can be done prior to 120 days from the day of conception which is considered according to the saying of the Prophet (SAW) to be the time of ensoulment. However, if the life of the expectant mother is endangered and not only her health, abortion or pre term delivery can be performed at any time of pregnancy to save the life of the mother.

Al- Qaradawi opined that abortion is allowed on the condition that, "continuation of the pregnancy will result to the death of the mother." To him, based on Islamic jurisprudence, the principle of a lesser of two evils applied in situation as:

*The mother is the origin of foetus. Moreover, she is established in life with duties and responsibilities and she is also a pillar of a family. It would not be possible to sacrifice her life for the life of a foetus which has not yet acquired a personality and has no responsibilities or obligations to fulfill.*⁶⁶

The mother of a developing foetus is considered as the root while the foetus is the offshoot. The latter could be sacrificed if it is necessary to save the life of the former. There are also some jurists who allowed abortion for social reasons. For instance, rape or where continuation of pregnancy will affect a nursing child and where a nursing mother is not available to the father or the father is too poor to afford a wet nurse " Prominent

among those who allowed abortion are Sunni school of jurisprudence who will allow abortion on social and minor medical reasons in the first 120 days of conception. Some jurists of Hanafi, Hambali and Shafi schools equally follow suit with minor restrictions.⁶⁸

Effects of Abortion

The effect of abortion is diverse. It depends on the age of pregnancy and type of abortion. The risk of complication increases with gestational age.⁶⁹ Some complications appeared in the first hour following the abortion while others may take days, weeks or even years before manifestation. Such complications are classified into short term and long term complications or physical and psychological health effects. The following are some of the effects⁷⁰ of abortion:

Infection: This can be manifested by cramping fever discharge and pelvic discomfort. An ultrasound of the pelvic may determine whether or not there is any retained product of conception in conjunction with the infection. It is imperative to determine whether infection is confined to the uterus (*endometritis*) or it has extended beyond the uterus (*parametritis salpingitis* and/or *peritonitis*) when at this stage the patient is usually hospitalized. Parental antibiotic can be administered. If post abortion infections such as pelvic infection are not given active adequate treatment, it could lead to infertility in the future.⁷¹

Retained Product of Conception (POC) Intrauterine Blood Clot

The retention product of conception in the womb is one of the complications that occur as a result of abortion. The presence of intrauterine blood clot following a trimester abortion usually requires a repeated Dissect and Cutting (D & C). This occurs immediately or up till nine days following the abortion. It manifests by severe cramping pains, that is, painful uncontrollable cramping of the muscles. Bleeding through retention of product of conception (POC) could lead to blood shortage in the body which could result to other complications in the body and finally lead to death.⁷²

Continuing Pregnancy: This is as a result of inadequate uterine curettage in an early procedure in an attempt to terminate the pregnancy. Continuing pregnancy is recognised by continuation of symptoms of pregnancy and by a large uterus at the follow-up examination.⁷³ It could be as a result of abnormal uterus or an ectopic pregnancy. It can destroy womb which could lead to infertility.⁷⁴

Cervical or Uterine Trauma: This is as a result of the perforation of the uterus and /or laceration of the cervix.⁷⁵ Depending on the severity, treatment ranges from simple observation to the removal of the uterus may be required. In most cases, persons under the age of seventeen are more prone to the increased risk of having cervical injury.⁷⁶

Hemorrhage/Bleeding: This is another short term effects of abortion. In most cases, the affected female died in the process.⁷⁷ When products of conception are retained in the womb after birth of abortion it can lead to bleeding. Proper or total evacuation of the products of conception within an hour of fatal expulsion is colossal to prevent blood loss.⁷⁸

Breast Cancer: Studies have revealed that women who have undergone abortion (s) are more exposed to danger of having breast cancer later in life. A study that summarised findings in medical study revealed that abortions either multiple or occurring before the first full pregnancy have shown to be significantly associated with breast cancer.⁷⁹

Women who have abortion increased their risk of getting breast cancer by 50%. The risk is more than double if a woman's first abortion takes place before the age of 18 or after the age of 30.⁸⁰

Miscarriage and Premature Birth in Subsequent Pregnancies: The reason for the increased in miscarriage and premature births in pregnancies after abortion is the cervical incompetency as a result of too early forceful (stretching open) of the cervix (mouth of the womb).⁸¹ In the process of abortion, cervical muscles must be stretched open to allow the surgical instrument to penetrate the uterus. There is no harm in the D & C performed because of spontaneous miscarriage as the cervix is usually soft and open. More so, no rarely any damage caused by D & C performed by a woman for excessive menstruation. When a normal well rooted placenta and a growing baby is scraped out of a firmly closed uterus protected by a long green (unripe) cervix. This cervix is often torn. If enough muscles are torn, the cervix is permanently weakened. The most damage could be done if the abortion is carried out on a woman's first pregnancy.⁸²

Conclusion

It is revealed from his study that Common law and Islamic law frown against abortion because it is considered as crime against humanity and recourse can only be made to it when a qualified medical practitioner advised that, the continuance of the pregnancy will endanger the life of the mother.

It is equally revealed that right to life is recognised by all our laws including the United Nations Charter, the Treaty of the Organisation of African Unity now the Constitutive Act of the African Union, the African Charter on Human and Peoples Rights, the Constitution of the Federal Republic of Nigeria, etc. The prominent two religions, Islam and Christianity equally recognised the right of its adherent to life. What is however obscure to the law and religions is the right to abortion at any stage as argued by the feminists' jurisprudence school of thought. Although, both religions subscribed to abortion when the life of the expectant mother is in danger, the two religions at the same time vehemently opposed abortion at any stage of pregnancy saying that it is unwarranted homicide.

Notes & References

1. Adisa, S.S. "The Last Abortion Clinic Frontline." <<http://www.pbs.org/wqbh/pages/frontline/clinic.web>>, accessed on 12th March, 2012.
2. Malcorn, C.M. "History of Contraceptive Gynecology and Obstetrics." <<http://www.beg.benkly.edu/fphp.web>>, accessed on 12th March, 2012.
3. Ibid.
4. Ibid.

5. George, Devereux, "A Typological Study of Abortion in 350 Primitive Ancient and Pre Industrial Societies." <<http://www.popline.org/docs/607051web>>, accessed on 12th March, 2012
6. Ibid.
7. John, M.R., "History of Abortion." <<http://www.abortion.com/wikipedia/web>>, accessed on 12th March, 2012.
8. Sheikh, Shaltout, "Family Planning, Contraception and Abortion in Islam." <<http://www.abortionessay.com/file/yourancestor/htm.web>> accessed on 12th March, 2012
9. John, M.R. "History of Abortion." <<http://www.abortion-history.com/Wikipedia/web>>, accessed on 21st January, 2013
10. John, K., "Some Aspects of the Legal Regulation of Abortion in England." <<http://www.abortionessay.com>>, accessed on 23rd January, 2013.
11. John, M., "History of Abortion." <<http://www.abortion.com/wikipedia/web>>, accessed on 2nd February, 2013.
12. Section 58 of Offence against Person Act, 1861.
13. Ibid.
14. 410 US 133 (1973).
15. 508 US 388 (1992).
16. 550 US (2007).
17. Borokinni, A., *The Law and Politics of Abortion*. (Law, Justice and Good Governance, Essay in honour of Hon. Justice J.A. Ajakaye of Ekiti State, 2003), pp. 315-327.
18. Ibid, p.318.
19. Ibid.
20. Section 18, Abortion and Sterilisation Act, 1975.
21. Section 332 of Penal Code and Section 207 of Shari'ah Penal Code.
22. Encyclopedia Americana, Vol.1, p.44.
23. Garner, B. A., *Black's Law Dictionary* (7th Edin) St Paul Min, West Publishing Company, 2000), p.6
24. Ibid.
25. Horby, A.S, Et al, *Oxford English Dictionary*. (6th edn), p. 2
26. Melisa, C.S., "Miscarriage (Spontaneous Abortion)." <<http://www.medicinenet.com/miscarriage/page1.htm.web>>, accessed on 13th March, 2013.
27. David, G., "Unsafe Abortion; the Preventable Pandemic." <<http://www.thelancetglobalhealthnetwork.com/web>>, accessed on 3rd January, 2013.
28. Sami, A. Al-Majid, S., "Abortion in Islamic and Arab Law." <<http://www.sami-aldeeb.com>>, accessed on 3rd January, 2013.
29. Al- Ghzali, "Ihya Ulumuddin." in Yakubu, I.D, *Principles of Islamic Family Law*. (Lokoja: Eneyo Printing and Publishing Limited, 2005), p.90.
30. Ibid.
31. Section 33 of the Constitution of the Federal Republic of Nigeria, 2011 as amended.
32. Article 16 (3) of Universal Declaration on Human Right.
33. Article 6 of International Covenant of Civil and Political Right.
34. Section 33 of the Constitution of the Federal Republic of Nigeria, 2011 as amended. This is line with Article 4 of the African Charter on Human and Peoples' Rights.

35. Medically, there are at least two distinct stages of pregnancy, namely: the embryo stage and foetus stage legally, whereas, the embryo, that is, the pregnancy which is less than three months old is not considered to be a person. The foetus, that is, pregnancy which is three months old and above is considered to be a person
36. *Roe v. Wade* (US, SC.) 11, 35; L, (2nd edn), 147 (1973). *Affirmed Panel Parenthood v. Cassey*, U. S. Lexus 4651 60 us, L.W. 4795, 1992. Cf Adaramola, "The Impact of the America School of sociological Jurisprudence on the American Legal System (1992, Mimeographed in America Library of Congress, Washington DC, USA (A Senior Full Bright Scholar)
37. Abortion, though known to be widespread, is criminalized in Nigeria. See for example, Sections 228 and 229 of the Criminal Code.
38. *Roe v. Wade* (Supra).
39. See Bashiru A. Omipidan, *Right and Abortion: Islamic Perspective in Women, Gender and other Issues in the Shari'ah*, Essay in memory of Late Hajia Faoziyya Kehinde Ali (Al Maslaha, Journal of Law and Religion, A Publication of the Nigerian Association of Muslim Law Students (NAMLAS), University of Ilorin Chapter, Vol.3, 2004-2006) pp.230-236.
40. Q.17: 31.
41. Q. 5:32.
42. Sayed, Sikandar, Haneef, *Integration of Scientific Knowledge into Islamic Juridical work: The Search for a Unified Legislative Framework*. (Revelation and Science, 1 2011), pp. 75-83.
43. Ibid.
44. Section 58 of the Offence against Person Act, 1961.
45. 410 US. 113 (1973).
46. Lewis, J. et al, "Abortion in English Law." <<http://law.jrank.org/Abortion-abortion-in-English-law.html>>, accessed on 12th December, 2012.
47. Nor Adisa Noor, M.A.N. et al, "The Detrimental Crime of Abortion: A Comparative Study between Malaysia Law and Common Law." (Journal of Law and Conflict Resolution, Vol.2 (3)), pp.46-52
48. Section 236 of Penal Code (Northern States) Federal Provision Act, Cap p3, Laws of the Federation, Vol.13, 2004. This is *pari material* with sections 228 and 229 of the Criminal Code.
49. Section 236 of the Penal Code (Northern States), Federal Provision Act, Cap P 3, LFN, Vol. 13. 2004.
50. Richardson, S.S. *Notes on the Penal Code Law*. (Ahmadu Bello University Printing Press, Zaria, 1987), p.55
51. Ibid.
52. (1939) 1 KB, 687.
53. Nor Adisa Noor, M.A.N. et al, "The Detrimental Crime of Abortion: A Comparative Study between Malaysia Law and Common Law." Op cit.
54. See Bashiru A. Omipidan, *Right and Abortion: Islamic Perspective in Women, Gender and other Issues in the Shari'ah*, Essay in memory of Late Hajia Faoziyya Kehinde Ali (Al Maslaha, Journal of Law and Religion, A Publication of the Nigerian Association of Muslim Law Students (NAMLAS), University of Ilorin Chapter, Vol.3, 2004-2006) pp.230-236, p.232.
55. Jima Imana. org JIMA, Vol.42, 2010, p.103.

56. Q. 60:12.
57. Nor Adisa Mohd Noor, M.A.N. et al, "The Detrimental Crime of Abortion: A Comparative Study between Malaysia Law and Common Law." (Journal of Law and Conflict Resolution, Vol.2 (3)), pp.46-52. <<http://www.academijournals.org/JLCR.web>>, accessed on 10th January, 2013.
58. Ibid.
59. Q.6:151.
60. Q.17:31.
61. Nor Adisa Noor, M.A.N. et al, "The Detrimental Crime of Abortion: A Comparative Study between Malaysia Law and Common Law." Op cit.
62. Ibid.
63. Ibid.
64. Sami, AAl-Majid, S., "Abortion in Islamic and Arab Law." <<http://www.sami-aldeeb.com>>, accessed on 3rd January, 2013.
65. Nor Adisa Noor, M.A.N. et al.
66. Al-Qardawi, "Abortion from Islamic Perspective" in Nor Adisa Noor, M.A.N. et al, "The Detrimental Crime of Abortion: A Comparative Study between Malaysia Law and Common Law." Op cit.
67. Ibid.
68. Ibid.
69. Wikipedia, "Self Induced Abortion." <<http://www.en.wikipedia.org/wiki/self-induced.web>>, accessed on 3rd February, 2012
70. Grimes, D., "Unsafe Abortion: The Preventable Pandemic." <<http://www.thelancetglobalhealthnetwork.com/web>>, accessed on 3rd March, 2013.
71. Ibid.
72. Ibid.
73. Keisha, Bland, "Partial Birth Control." <<http://www.ewtn.com/partialbirt.txt.web>>, accessed on 15th June, 2012.
74. Ibid.
75. Grimes, D., "Unsafe Abortion: The Preventable Pandemic." <<http://www.thelancetglobalhealthnetwork.com/web>>, accessed on 3rd March, 2013.
76. Ibid.
77. Wikipedia, "Induced Abortion." <<http://www.wikipedia.org/inducedabortion/abstracts/web>> accessed on 15th June, 2012
78. Ibid.
79. Larissa, I. Remennick, "Induced Abortion as a Cancer Risk Factor: A Review of Epidemiological Evidence." (Journal of Epidemiological Society health) <<http://www.priestforlife.org/inducedabortion/web>>, accessed on 3rd February, 2012
80. Janet, R. Dalg, et al., "Risk of Breast Cancer among Young Women." <<http://www.en.wikipedia.org/wiki/breastcancer/web>>, accessed on 3rd February, 2012.
81. Wikipedia, "Induced Abortion." <<http://www.en.wikipedia.org/induced/abstracts/web>>, accessed on 23rd April, 2012
82. Ibid.