

Abortion: The Problem of its Legalization in Timor-Leste

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Received: 1 May 2023; Accepted: 5 May 2023; Published: 12 May 2023

Citation: Artur Natalino Corte Real Araújo. Abortion: The Problem of its Legalization in Timor-Leste . AJMCRR 2023; 2(5): 1-10.

ABSTRACT

Introduction: This article aims to address abortion in general and the existing abortion modalities in Timor-Leste. Thus, abortion is defined as the interruption of the pregnant woman with the destruction of the product of conception of the human relationship. Abortion can be classified into two models, such as spontaneous and induced abortion.

Objective: To hold analyses and examine abortion and the problem of its legalisation in the context of the institution and cultural aspect in Timor-Leste.

Methodology: We used the deductive methodology in this elaboration, because all the research is done through the library and other references were consulted on the internet as an auxiliary means.

Discussion: In spontaneous terms and when the abortion happens naturally and the induced is when the pregnant woman is interrupted by the will of the woman or mother. For many, the possibility of having an abortion is not fully supported by the legal system and the Catholic religion. Therefore, each place has its own process and seeks to solve it in a way that is more appropriate to the environment in which it lives, not forgetting that the laws are the same instruments of implementation. Thus, this study is to discuss the legal aspects of the legality of abortion according to the Penal Codes and Constitution of the Democratic Republic of Timor-Leste (CRDTL) in force.

Conclusion: The criminalization of abortion is related, historically, as social, political, religious

and economic interests depending on the time and locality, in addition to being adequate also with the cultural understanding of what it is to be a woman, the meaning of pregnancy and the baby, in a public health condition cited by (Tilman CB & Araújo A. N, 2023).

Keyword: Induced Abortion Modality legalization in the Pregnancy of the Legal Aspects.

INTRODUCTION

Overview about abortion in the whole world, really since the remote areas, the practice of abortion has never ceased to exist and evolves according to the evolution of medicine and nursing of mainly the environment in which we are inserted. Nevertheless, Abortion emerges as a well-known behavior widely used in many cultures. In ancient Greece, Aristotle indicated abortion as a method of controlling the Greek population, limiting births. Plato, for his part, argued that abortion should be obligatory, and responsibility for eugenic reasons, for women over 40 and to preserve the purity of the race of warriors. Socrates recommended that the practices of midwives facilitate abortion for those women who desired it. For the Romans abortion was a common practice, and considered a natural right of the father, who decided on the life or death of his children, born or not. Although this is a permitted practice among the peoples of antiquity, it could be interpreted from different perspectives depending on the time in a given cited by (Tilman CB & Araújo A. N, 2023).

The general view on abortion in Timor-Leste, the issue of abortion is controversial and difficult to discuss by the mother is criminal aspect. But all Timorese women have the rights like other women in the world, but access to these rights is not equal even among women, it is created for all, but in practice it is not for all. Just as there are also women

who still cannot, for various reasons, decide on their own life because economically they are not yet independent fund their parents, some condition base on medical indication to save the mother life. According to the opinion of the Ombudsman's Office for Human Rights and Justice (PDHJ), pregnant and single adolescents are subjected, by parts of their families, to the end of their education and the threat of violence. Girls often decision to unsafe abortion, usually involving toxic or non-sterile procedures and performed by unqualified practitioners. It is important to intensify efforts for Timorese society to understand the issue of women as subjects of rights and to establish a coherent discussion on the subject of abortion in Timor-Leste. The Catholic Church condemns abortion, in any and all situations, abortion is considered as murder. Thus, religion becomes a significant political force that imposes moral value above Human Rights cited by (Tilman CB & Araújo. A. N, 2023).

The Ministry of Health of Timor-Leste should seek an implementation of policies on the reduction of maternal and infant mortality. This condition presupposes the right of each individual to be informed and to have access to methods of family planning of their decision of choice, which are safe, effective and acceptable, as well as to well-suited health services that allow women to have a safe pregnancy and childbirth. This is not a religious issue, but a public health issue that has happened. No one will

be forced to have an abortion, to except the medical indication to the save mother life, it's an individual decision. But it is up to the State to provide the basic conditions of care and important information for those who decide to appeal to it. In issues related to sexual and reproductive rights are part of the broader theme of Human Rights. Health is among the fundamental rights, guaranteed by the Constitution of the Democratic Republic of Timor-Leste

(CRDTL). In this context, women's health care can be seen as a result of the health policies implemented in Timor-Leste, through the launch of the sexual and reproductive rights policy, including the expansion of the offer of contraceptive methods applied in the health system cited by Tilman CB & Araújo A. N, 2023).

Society, culture and religion are determining factors, which harm Timorese women, to be afraid, ashamed and feeling of pity, to resort to abortion because the Timorese mentality is still narrow in relation to this issue. But we cannot deny that in Timor-Leste there are many cases of abortion, and it is still difficult to obtain reliable information on the subject because they are considered as cases that have to do with people's privacy and it is a secret that should not be published. In the year 2021, the National Hospital Guido Valadares Dili, recorded one hundred fifty-six cases of abortions. Thus, in 2021, 145 cases of abortion entered HNGV, and this number decreases, significantly, these data are recorded in the hospital, but there are cases that are not registered or anonymous because some women do not go to the hospital. In 2022, only 15 cases were recorded in the months of January to October, so we cannot say that there are no cases of abortion.

Family planning is the right of all citizens and it presupposes a set of health education actions in which all accepted resources for conception and contraception are considered. The right to plan the number and spacing between children, requires access ensuring contraceptive methods for all people of reproductive age, according to their needs couples, adolescents, adults and people with disabilities.

Family planning aims to expand women's and men's access to information on contraceptive options, ensure the provision of contraceptive methods for the population of reproductive age and stimulate the participation of men and adolescents in planning actions. Contraceptive methods are methods used by both women and men to prevent pregnancy. Just as there is no definition of the completely effective method, there is no definition of the contraceptive method to be adopted. This is due to the fact that each couple lives a different reality, and factors, such as health and the value of the method, the desire to have children in the future, must be analyzed. The contraceptive method consists of controlling conception, that is, preventing pregnancy from occurring. Therefore, several methods are used that allow its main objective in the application of the same type accordingly cited by (Tilman CB & Araújo A. N, 2023).

The problem of abortion in Timor-Leste

In Timorese society, the law, religion and customs, which entails in this way, the emergence of debates on the current ones must be observed from different perspectives and also creating a division of opinions that perpetuates to the present day. In this sense,

there was intense diversity in its treatment over means and without knowledge of the pregnant time, sometimes being considered legal by certain woman to have an abortion is punished with im- regions and periodicals, sometimes being harshly prisonment of 2-8 years. In paragraph2 it says who punished and punished cited by (Tilman CB & by any means and with the consent of the pregnant Araújo AN, 2023). Thus, precisely because it is woman to have the abortion is punished with im- considered a controversial issue in which the prisonment or imprisonment up to 3 years. And in Church, the State, Health and society itself differ point 3 the pregnant woman who gives consent to on, it is necessary to first conceptualize abortion in the abortion performed by a third party or who, by the face of some views over the years and how this her own fact, is having an abortion is punished with is currently seen the condition of Timor-Leste. imprisonment up to 3 years of article 141 of the penal code of Timor-Leste.

Objective: To analyses and examine abortion and the problem of its legalisation in the context of the institution in East Timor.

THEORETICAL INQUIRY

Fundamental Notions of Abortion: "Concept of abortion. Before we get into the topic, we must first understand the meaning of the word. According to (Arnaud, 2008; cited by Tilman CB & Araújo A. N, 2023), the word abortion is a Latin term (abortus) are derived from a composition of which reflects the root of abortions, which means the birth of a baby or child. So, its meaning would be deprivation of the newborn, but we can say that abortion is the death or death of a child in the mother's womb, produced during some moment of the pregnancy, from the beginning of fertilization until the predicted moment of birth. Thus, abortion is an interruption of pregnancy can occur in a spontaneous or induced way, which putting the end of the life of the fetus, through various techniques and methods there is a possibility of being considered a crime when it is not carried out in accordance with the existing law in the country. According to the concept of abortion number 1. Whoever, by any

The definition of abortion in medical terms has been defined as abortion joint is the last of a pregnancy before there is viability, of a fertilization of the fetus has the ability to survive outside the uterus. (Another definition abortion means the termination of a pregnancy before fertilization and viability, before the fetus can live alone outside the ovary), the termination of pregnancy that at the gestational age sufficient to survive outside the mother's uterus, leading to destroy the baby what had happened when the embryo fails to live outside the mother's womb. Abortion can be classified into other types such as: miscarriage and induced abortion, the latter focuses on cases where there is a risk to the physical or psychological health of the mother and malformation of the fetus. Miscarriage, for this type arises when the pregnancy is interrupted without it being by the woman's will, it can happen by various biological, psychological and social factors that contribute to this situation to occur. Miscarriage is the expulsion of the fetus in a natural way that can be early, if it occurs up to twelve (12) weeks of gestation, or late, after twelve (12) weeks of gestation. The causes are many, those abortions

that occur early in pregnancy because the embryos do not develop well in the first weeks and that do not have conditions to survive, are many difficult to be predicted every day.

A miscarriage involves the death of the embryo, and it can increase the risk of same-sex abortion in future generations, that is, when an abortion happens the woman must undergo immediate treatment if not in the future it can happen again. Miscarriage is already excluded from any interest of criminal law. When for biological, sociocultural reasons or any other natural cause, the process of gestation becomes by itself unviable, occurring spontaneous abortion. The factors that cause the occurrence of miscarriage according to Anttonette T. Dulay "age over 35 years, history of miscarriage, smoking, use of certain drugs (e.g., cocaine, alcohol, high doses of caffeine), poorly controlled chronic disease (e.g., diabetes, hypertension, evident thyroid disorders) in the mother. Induced abortion, in this type of abortion happens when there are congenital malformations, when the pregnancy results from a crime against sexual freedom and self-determination, and when the pregnancy endangers the life and physical and mental health of the woman or simply by choice of woman. Induced abortion can be performed through two forms: medical or surgical. It is legal when the termination of pregnancy is carried out in accordance with the legislation in force, when done early by experienced doctors and in appropriate conditions that present a very high level of safety.

the pregnant woman herself or by another person, at her request. The interruption of pregnancy by the surgical form is when a tube is introduced through the entrance of the uterus, connecting to a vacuum cleaner that destroys the body of the fetus while extracting it cut into pieces, separated from the walls of the uterus and extracted, this means is called aspiration, performed between the sixth and tenth weeks. The second means is called dilation, to facilitate is similar to the previous method, but a curette with a sharp tip is used that cuts the fetus into pieces to facilitate its extraction. Type of illegal abortion is considered even illegal abortion is the termination of pregnancy when the reasons given are not framed in the legislation in force. Abortion is considered as a crime against human life of any kind of application on the ground, illegal and unsafe abortion constitutes a major cause of maternal mortality worldwide, unsafe abortion practiced in dangerous and clandestine situations and is a public health problem. It is usually practiced in the worst hygienic conditions and with the lack of possibilities of urgently resorting to a hospital the case of complications. Clandestine abortion refers to an interruption of pregnancy that is practiced by non-professional people and performed in places in their not unfavorable conditions, and sometimes is practiced by the pregnant women themselves, which can cause the death of the woman, this is a reality of general event that was not verified by the health professionals and judicial agent cited by (Tilman CB & Araújo A. N, 2023).

Induced or provoked abortion is the result of maneuvers practiced with the objective of interrupting the pregnancy. The maneuvers can be performed by

The reasons that lead a woman to opt for an abortion are several and different around the world. Among the various and an inadequate preparation to

educate children that may have been conceived as a early death of young people, who practice it, in des- result of a sexual violation, incest. In our case, one olation and in terrible conditions. Countries that le- of the reasons why a woman chooses abortion is the egalize abortion reduce the rate of maternal mortali- economic, cultural and religious situation. In ty, in their country that also well controlled cited by Timorese society, a woman who becomes pregnant (Tilman CB & Araújo A. N, 2023).

out of wedlock by married is considered as incon- venient. Preventing the criminalization of abortion

THE LITERATURE REVIEW

implies the vulnerability of women, because it un- The constitution of the Democratic Republic of Ti- protects women who practice clandestine abortion mor-Leste (hereinafter CRDTL), in its article 29 and in unsafe conditions. From the perspective of disclosed in Part II (of rights, duties, freedoms and public health, abortion legislation cannot be able as fundamental guarantees) of Title III (of rights, free- an isolated measure, as it needs to be accompanied doms and personal guarantees), guarantees all citi- by effective reproductive health policies is funda- zens the right to life. It is essentially the right not to mental in the concept and action. Abortion is legal be killed, it can be said that it consists of a right to when it had been performed with the authorization exist, that is, the right to be alive. According to the of the law of the country or nation in which it is civil code of Timor-Leste, in its paragraph 1 of arti- practiced, which meets all the safety conditions for cle 328 on self-defense it describes that the act of the life of the woman, with the authorization of the intended to prevent any current aggression and con- woman, and performed with adequate health equip- trary to the law against the person is considered jus- ment and well-trained professionals. According to tified, provided that it is not possible to do so by the penal code of Timor-Leste, paragraph 4 of arti- normal means and the damage caused by the act is cle 141 emphasizes that when the termination of not manifestly greater than that which may result pregnancy constitutes, according to the state of from the aggression. In paragraph 2 of article 29 of medical knowledge and experience and after all pos- the CRDTL establishes that the State recognizes and sible actions have been carried out to save the life of guarantees the right to life. The constitution as- the pregnant woman, and that of the fetus or em- sumes a duty of protection passes, to a large extent, bryo, the only means to remove danger of death of by the establishment of provisions of criminal law the pregnant woman, provided that it is carried out, that criminalize attempts against life, which is veri- by means of medical certification, by a doctor or fied in articles 138 (homicide, infanticide, termina- other health professional under his direction in a tion of pregnancy, exposure or abandonment, incite- public or officially recognized health establishment, ment or aid to suicided) of the penal code of Timor. and with the consent of the pregnant woman. The Article 29(3) of the annotated constitution of Timor- legalization of abortion usually reduces its practice Leste stresses that the constitution does not solve because it allows to talk openly about the subject the problem of defining the beginning of human and to promote family planning and the use of con- life, that is, there is no express answer on the part of traceptives. Abortion is one of the biggest causes of the constitution to this question.

According to Article 63 of the Civil Code, personality is acquired at the time of birth complete with life. It seems to be inferred from this that it should not be to admit a subjective right to the life of the fetus, as for the issue of abortion it can be withdrawn from the Timorese penal legislation that the right to life, as an objective value, legitimizes the protection of life in formation. In fact, Article 141 of the Penal Code states that abortion, even with the consent of the pregnant woman, is punishable by imprisonment for up to three years (both for the practitioner and for the pregnant woman). Except, however, situations in which the termination of pregnancy is the only means of removing the danger of death for the pregnant woman, a danger to be established under that provision, does not solve the problem of the definition of the beginning of human life. The violation of the principle of human dignity will result from the imposition that the woman carries for nine months a fetus that is known, with certainty, will not survive. Abortion is a matter of public health and health is a universal right as the principle of the Dignity of the Human Person is written in Article 1, Part I (Fundamental Principles) of the CRDTL, comes to be a supreme value of the legal order considered one of the most important principles for encompassing all rights, but also fundamental guarantees contained in the Constitution.

The CRDTL, in its article 1, part I, provides that the Democratic Republic of Timor-Leste is a Democratic State of Law that respects the rights and duties of citizens and that respects the dignity of the human person. This higher Constitutional principle legitimizes around itself all the other fundamental rights and guarantees contained in the CRDTL, the right to

health and life and the right to liberty. It is based on valuing the human person as an end in itself. The principle of the dignity of the human person is born to protect the human being, maintaining and guaranteeing living with dignity and mutual respect for his most important and fundamental rights. Human dignity consists not only in the negative guarantee that the person will not be saved from offenses, but also adds the positive affirmation of the full development of the personality of each individual. Full development 'presupposes, recognition of total self-availability, without interference or external impediments of the possible actions proper to each man. In this case, it is also important to refer to the definition of <Dignity> provided in the dictionary of the Portuguese language, as being {moral quality that instills respect, respectability, awareness of one's own value, position or title of high degree}, are important and fundamental of law in Timor-Leste cited by (Tilman CB & Araújo A. N, 2023).

Article 141 also provides for the verification of the circumstances that make the termination of pregnancy non-punishable, as well as the provision of consent. That they must be certified in a medical certificate, written and signed before the intervention by a doctor other than the one who will perform or direct the procedure. This article above also describes the form that consent should take in this specific intervention. Consent must be given in writing in a document signed by the pregnant woman or at her request, ideally within a period of two days before the date of interruption. In the event that the pregnant woman is a minor or psychically incapable, the decision-making is the burden of her legal representative, ascendants, descendants or, in their absence,

relatives in the collateral line. The right to conscientious objection is also reflected in Article 141 (14). Conscientious objection expressed and communicated, through a written and signed document, to the clinical head of the health establishment where the objector provides service, being assured to doctors and other health professionals regarding any act related to the termination of pregnancy. It is up to the State to adopt organizational and regulatory measures inherent to the proper implementation of the legislation underlying the termination of pregnancy, in particular by ensuring that the exercise of conscientious objection of health professionals does not result in non-compliance with legal deadlines.

With regard to the punishments for those who consent or practice the abortion, depending on the condition of the person who practices the act, whether by the pregnant woman or people who provoke with or their consent of the pregnant woman, the punishment can vary from two to 8 years or three years in prison. Therefore, the criminal law, as a rule, typifies the interruption of pregnancy and only admits it if the interruption results from medical action when necessary, or there is no other means of saving the life of the pregnant woman in a critical situation cited by (Tilman CB Araújo A. N, 2023). The criminalization of abortion must be accompanied by the provision of adequate procedures for the performance of abortion by the State, so that women have access to adequate means and with trained professionals, respecting their fundamental rights to life and health. Freedom of choice is one of the possibilities of the way we think and act. Freedom is the condition of one who is free and has the capacity to act for himself, thus implying the responsibility of

the individual for his own acts. When it comes to the woman's right over her own body and over the desire to be a mother, because the woman has total power over the child and also over her body, cited by (Tilman CB & Araújo A. N, 2023). The State must guarantee women the power of choice as an exercise of their freedom and in such a way that motherhood is the result of desire and not of obligation before the public power.

METHODOLOGY

We use the inductive methodology is based on the consultation of the reference books in the library, and in this elaboration also uses the internet as an auxiliary means. Throughout the research and documentary analysis of knowledge of science and argumentative both legal and literary.

DISCUSSION

Abortion in foreign legislation in the Portuguese legal system. Portugal is a sovereign Republic, based on the dignity of the human person and popular life and committed to building a free, just and solidary society. In Portugal, induced abortion was legalized in 2007, if the woman wanted to do it, but this depends on the reasons. The techniques used to perform the abortion are performed through two ways, by medications up to the 2nd (second) month, that is, 8 (eight) weeks and by surgery between the 2nd (second) or 3rd (third) months, or 12 (twelve) weeks of pregnancy. Abortion can be performed in the National Health Service or in private clinics that are authorized by the state. In the event that a pregnant woman is under 16 years of age, consent is given legally, by ascendant or descendant or lack thereof, by any relatives of the collateral line. If it is

not possible to obtain the consents referred to in the preceding paragraphs and the termination of pregnancy due to an emergency situation, the doctor decides according to conscience resorting, whenever possible, to the opinion of another doctor or others, within the system in home country cited by (Tilman CB & Araújo A. N, 2023).

A woman has the right to have all the information about the conditions and the consequences for her own health. When the abortion is provoked by other people without authorization of the pregnant woman, it is considered a crime and is punished with two (2) years in prison up to three (3) years, if the pregnant woman gives her consent. The current legislation only gives authorization to perform abortion in cases of rape, risk to the health of the mother or malformations of the fetus. Women who resort to abortion for other circumstances are held criminally responsible and are sentenced to prison terms of up to three (3) years of deprivation of liberty. Abortion is free until the first ten (10) weeks of pregnancy and, in case of danger to the health or life of the woman, but first twelve (12) weeks. If there are certain reasons to predict that the fetus will suffer incurably, it is allowed in the first twenty-four (twenty-four) weeks, and when the fetus is unviable, it can be carried out at any time during gestation.

The Catholic Church condemns the performance of abortion in any and all circumstances. Abortion is considered as murder; the penalty is excommunication. According to Durázio Varella "it is easy to prohibit abortion, while we wait for the consensus of all Brazilians regarding the moment when the

soul settles in a cluster of embryonic cells, when those who are dying are the daughters of others. Lawmakers need to abandon immobility and view abortion as a serious public health problem that requires an urgent solution." To the extent that public health services have been sensitized to abortion care in cases already provided for in Brazilian law, the need to deal with cases of fetal anomalies incompatible with life has been presented. Technological advances have made the diagnosis of such anomalies common, which has generated a paradox, since it is possible to detect intrauterine defects incompatible with life, but it is not possible to offer parents the option of alleviating the suffering resulting from this diagnosis, cited by (Tilman CB & Araújo A. N, 2023).

CONCLUSION

Abortion is a means to end pregnancy, in a spontaneous or induced way. It may be legally or illegally in accordance with current legislation. The government of East Timor is a democratic and secular State of Law where there is a separation between the State and the Church. Therefore, in the political decision of the State there should be no interference from the Church. The State, through its competent bodies, shall socialize on the Criminal Code, in particular the article referred to above. The Ministry of Education has the obligation to include the subject on reproductive health in the school curriculum for students of the 3rd cycle of basic education. And the Ministry of Health should do socialization on family planning and use of conceptions for married people, young people and adults. Women's rights to health and freedom of choice are often put on the back burner. This can influence the search for a

clandestine abortion, endangering the health and life of the woman. The issue of abortion has been approached from two perspectives: legal and religious. In the religious sphere, discussions about the life of the fetus override any right of the woman and in the legal sphere, abortion is treated as a criminal matter, except in cases where the criminal law allows it. Both directly influence political decisions that reinforce conservative aspects of Timorese society, it is very important, to understanding on the legal process cited by (Tilman, CB, & Araújo, A. N, 2023).

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