

“Limitations in Abortion Legislation: A Comparative Study” by Orli Lotan

Written by Orli Lotan on behalf of the Knesset (Israeli Parliament) Center for Research and Information, “Limitations in Abortion Legislation: A Comparative Study” (hereafter abbreviated “Legislation”) examines abortion legislation in Israel, the US, Canada, and a number of European countries. The study also acknowledges the medical, moral, ethical, and religious implications of abortion and the impact of such legislation on society in each country. It acknowledges the conflicting viewpoints that exist regarding the issue of abortion, but notes the overall global liberalization of the legal system since the 1950s and the significant drop in maternal, abortion-related illness and death. The following is a description of the study, taken from the original Hebrew version written in November 2007.

The major findings of the article are summarized after a brief introduction. Following this summary, the major points presented in the article are established. The article then details the specific legal circumstances in Israel, the US, Canada, and Europe, though much greater detail is provided about the situation in the US. Finally, a chart summarizing the policies of various European countries is provided.

“Legislation” finds that in most countries, the limitations placed on abortion depend on the stage of gestation, with increasing restriction as the pregnancy progresses. Second, the study discusses the legal requirement in some countries for counseling prior to abortion. This counseling usually involves a waiting period and the presentation of various alternatives as a means of dissuading the woman from having an abortion. Third, abortion among minors and the degree of parental involvement required in various countries are noted. Finally, a discussion of abortion legislation in Israel, the US, Europe, and Canada outlines the different policies. Further noted is the finding that countries with more liberal abortion legislation do not have significantly elevated abortion rates, a statistic perhaps attributable to the rise in contraception usage.

Abortion law in Israel, which comprises the first section of “Legislation,” is largely determined by the Criminal Code of 1977 and its 1978 amendments (which include abortion regulation). Israeli law allows a doctor to perform an abortion only after a Health Bureau-certified committee has deemed it permissible. This committee is made up of two doctors and a social worker, and at least one committee member must be female. For abortion to be permitted, one or more of four conditions must be met:

1. The woman is younger than seventeen (the marital age) or is over the age of forty.
2. The pregnancy is of an extramarital nature, is the result of forbidden intercourse as is outlined in the Criminal Code, or is the product of incest.
3. The offspring may possess a physical or mental defect.
4. The continuation of pregnancy endangers the woman’s life or her physical or mental well-being.

Despite the required review process, a vast majority of cases (98% in 2005) receive permission from the appointed committee. In the event that an abortion must be performed to save a woman’s life, a doctor may bypass the committee, granted that he or she reports the incident to the Knesset Health Bureau within five days of the authorization. In addition, Israeli minors do not require parental involvement in order to obtain an abortion.

A detailed description of abortion law in the US is provided in the next section. This description entails a brief review of abortion rulings, the tenets of present-day legislation, and statistics concerning abortion in the US. The rulings section opens with a discussion of the outcome and implications

of the 1973 case *Roe v. Wade*, which determined that prohibition of abortion infringed on a woman's constitutional right to privacy, and that it was within a woman's right to have an abortion in the first trimester of pregnancy. However, while it is illegal to set laws explicitly prohibiting first-trimester abortion in the US, each state may place limitations on the process as it sees fit. *Roe v. Wade* made abortion services much more accessible, leading to a lowered rate of abortion-related complications. (Economist Steven Levitt even argues that crime rates fall when abortion is legalized.) Yet the ruling also greatly intensified the struggle between pro-life and pro-choice organizations and individuals.

Since the 1973 ruling, a series of laws have been passed abridging the right to abortion in various ways, though the 1992 case *Planned Parenthood of Southeastern Pennsylvania v. Casey* reaffirmed a woman's right to have an abortion before her fetus is considered a viable individual. It also established that the states have an interest and a responsibility to protect the health of mother and child throughout gestation. In 2007, the Supreme Court upheld congressional law by banning partial-birth abortion even when the woman's health is in danger. Though the procedure is very rarely performed, "Legislation" points out that this ruling is indicative of the shifting of court opinion and illustrates (along with the other cases) the involved role of the Supreme Court and its constituent members in the shaping of American life.

"Legislation" then discusses a number of laws in place as of 2007 that abridge abortion in specific states and in specific manners. For instance, the 1976 Hyde Amendment restricts federal abortion funding exclusively to cases where the mother's life is in danger or when the pregnancy is the result of rape or incest. The paper details the conditions under which women might undergo abortion; state limitations on abortion funding, counseling, and a waiting period; further restrictions on abortions in minors; and indirect funding of pro-life organizations. There is also discussion of the presence of further cases reinforcing the decision made in *Roe v. Wade*, as well as certain protections for clinics that offer abortion services. Overall, "Legislation" points out that the prevailing opinion arising from state legislation leans toward the pro-life position by decreasing the accessibility of abortion and increasing the obstacles in its path. Citing the Centers for Disease Control, "Legislation" notes that in 2002, 246 abortions were carried out in the US for every 1,000 live births, and that an average of 16 out of every 1,000 fertile women had an abortion.

Explication now shifts to Canada, where as of 2007, no national legislation limits abortion. This status was established after the Supreme Court of Canada found the law prohibiting abortion (except by special permission by committee) at odds with the Canadian Charter of Rights and Freedoms, and the January 1988 ruling in *R. v. Morgentaler* repealed direct limitations on abortion. Yet while abortion may be legal, accessibility varies between the different provinces. "Legislation" cites figures for 2004: 14.6 abortions per 1,000 fertile women, and 297 abortions per 1,000 live births.

In Europe, the overall trend has been toward liberalization of abortion legislation, though each country sets its own guidelines. In most European countries, abortion in the first trimester is allowed upon the woman's request, though as pregnancy continues past this point, further and more stringent restrictions apply. Ireland is an exception to this trend, having outlawed abortion in all but life-threatening cases. Following this discussion, "Legislation" presents a chart detailing the limitations imposed by fourteen different European countries, as well as statistics concerning frequency of abortion (where available). Eleven of the listed countries permit abortion based on prenatal defects, and eight specify rape (or another sexual crime) as grounds for legal abortion.

This comparative examination of abortion legislation in a number of countries delineates the similarities and differences that exist in legislative and social norms, and gives a broad background to the continuing debate over the correct treatment of life and civil liberties. For instance, the document was referred to in a 2008 legislative review of bioethics written on behalf of the Ono Academic College in Israel that compared abortion authorization in Israel to that in Switzerland.

Sources

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