

# ABORTION

## IN LAW, HISTORY & RELIGION



Published by:

CHILDBIRTH BY CHOICE TRUST,  
344 BLOOR STREET WEST, SUITE 306,  
TORONTO, CANADA M5S 3A7 (416) 961-1507

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Revised, 1995

This booklet is a revised and updated version of an earlier one which was produced by the Kingston Women's Centre

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# INTRODUCTION

**T**he purpose of this booklet is to put the issue of abortion in Canada into its historical and international contexts. By examining the history of abortion and its evolving legal status around the world, we hope to shed light on how we arrived at our current situation and how the status of abortion in Canada fits into the global picture.

This booklet looks at individual countries' laws and practices and the effect of restrictive and non-restrictive abortion and family planning policies on the number of abortions and the health of women and their families. We end by focussing on Canada and include a summary of the range of positions taken on the morality of abortion by our churches and religious groups.

Looking at abortion throughout time and around the globe provides an enlightening perspective on this important issue.

## Abortion Has Always Been With Us

In 1955, the anthropologist George Devereux demonstrated that abortion has been practised in almost all human communities from the earliest times.<sup>1</sup> The patterns of abortion use, in hundreds of societies around the world since before recorded history, have been strikingly similar. Women faced with unwanted pregnancies have turned to abortion, regardless of religious or legal sanction and often at considerable risk.<sup>2</sup> Used to deal with upheavals in personal, family, and community life, abortion has been called "a fundamental aspect of human behaviour".<sup>3</sup>

In primitive tribal societies, abortions were induced by using poisonous herbs, sharp sticks, or by sheer pressure on the abdomen until

**Abortion has been practised in almost all human communities from the earliest times.**

vaginal bleeding occurred. Abortion techniques are described in the oldest known medical texts.<sup>2</sup> The ancient Chinese and Egyptians had their methods and recipes to cause abortion, and Greek and Roman civilizations considered abortion an integral part of maintaining a stable population. Ancient instruments, such as the ones found at Pompeii and Herculaneum, were much like modern surgical instruments. The Greeks and Romans also had various poisons administered in various ways, including through tampons.

Socrates,<sup>4</sup> Plato and Aristotle<sup>2</sup> were all known to suggest abortion. Even Hippocrates, who spoke against abortion because he feared injury to the woman, recommended it on occasion by prescribing violent exercises.<sup>2</sup> Roman morality placed no social stigma on abortion.

Early Christians condemned abortion, but did not view the termination of a pregnancy to be an abortion before “ensoulment”, the definition of when life began in the womb. Up to 400 AD., as the relatively few Christians were widely scattered geographically, the actual practice of abortion among Christians probably varied considerably and was influenced by regional customs and practices.<sup>5</sup>

## **Evolving Position of the Christian Church**

St. Augustine (AD 354-430) said, “There cannot yet be said to be a live soul in a body that lacks sensation”, and held that abortion required penance only for the sexual aspect of the sin.<sup>6</sup> He and other early Christian theologians believed, as had Aristotle centuries before, that “animation”, or the coming alive of the fetus, occurred forty days after conception for a boy and eighty days after conception for a girl. The conclusion that early abortion is not homicide is contained in the first authoritative collection of canon law accepted by the church in 1140.<sup>6</sup> As this collection was used as an instruction manual for priests until the new Code of Canon Law of 1917, its view of abortion has had great influence.<sup>6</sup>

At the beginning of the 13th century, Pope Innocent III wrote that “quickening” —the time when a woman first feels the fetus move within her— was the moment at which abortion became homicide; prior to quickening, abortion was a less serious sin. Pope Gregory XIV agreed, designating quickening as occurring after a period of 116 days (about 17 weeks). His declaration in 1591 that early abortion was not grounds for excommunication continued to be the abortion policy of the Catholic Church until 1869.

The tolerant approach to abortion which had prevailed in the Roman Catholic Church for centuries ended at the end of the nineteenth century.<sup>7</sup> In 1869, Pope Pius IX officially eliminated the Catholic distinction between an animated and a nonanimated fetus and

required excommunication for abortions at any stage of pregnancy.

This change has been seen by some as a means of countering the rising birth control movement, especially in France,<sup>8</sup> with its declining Catholic population. In Italy, during the years 1848 to 1870, the papal states shrank from almost one-third of the country to what is now Vatican City. It has been argued that the Pope's restriction on abortion was motivated by a need to strengthen the Church's spiritual control over its followers in the face of this declining political power.<sup>8</sup>

## Early Legal Opinion

Historically, religious beliefs coloured legal opinion on abortion. From 1307 to 1803, abortion before the fetus moved perceptibly or "quickened" was not punished under English common law, and not regarded by society at large as a moral problem.<sup>9</sup> Because most abortions took place before quickening, punishment was rare.<sup>10</sup> Even if performed after quickening, the offense was usually considered a misdemeanour.<sup>2</sup> This was the case until the nineteenth century; the entry of the state into the regulation of abortion has been relatively recent.<sup>11</sup>

Two prominent legal cases from fourteenth century England illustrate prevailing practices at that time. In both the "Twinslayer's Case" of 1327 and the "Abortionist's Case" of 1348, the judges refused to make causing the death of a fetus a legal offence. The judges were, in this pre-Reformation period, all Roman Catholic.

In 1670, the question of whether or not abortion was murder came before the English judge, Sir Matthew Hale. Hale decided that if a woman died as a result of an abortion then the abortionist was guilty of murder. No mention was made of the fetus.<sup>12</sup>

This tolerant common-law approach ended in 1803 when a criminal abortion law was codified by Lord Ellenborough. The abortion of a "quick" fetus became a capital offence, while abortions performed prior to quickening incurred lesser penalties. An article in the 1832 London Legal Examiner justified the new laws on the grounds of protecting women from the dangerous abortion techniques which were popular at the time:

*"The reason assigned for the punishment of abortion is not that thereby an embryo human being is destroyed, but that it rarely or ever can be effected with drugs without sacrifice of the mother's life."*<sup>12</sup>

**Historically, early abortion was tolerated by the Church, and was not punished under the law.**

In the United States, similar legislative initiatives began in the 1820's and proceeded state by state as the American frontier moved westward. In 1858, the New Jersey Supreme Court, pronouncing upon the state's new abortion law, said:

*"The design of the statute was not to prevent the procuring of abortions, so much as to guard the health and life of the mother against consequences of such attempts."*<sup>12</sup>

During the nineteenth century, legal barriers to abortion were erected throughout the western world. In 1869 the Canadian Parliament enacted a criminal law which prohibited abortion and punished it with a penalty of life imprisonment. This law mirrored the laws of a number of provinces in pre-Confederation Canada; all of these statutes were more or less modelled on the English legislation of Lord Ellenborough.<sup>13</sup>

Pressure for restrictions was not coming from the general public. Physicians were in the forefront of the crusade to criminalize abortion in England,<sup>14</sup> the U.S.<sup>15</sup> and Canada.<sup>16</sup> They were voicing concern for the health of women and the destruction of fetal life. However, "there is substantial evidence that medical men were concerned not only for the welfare of the potential victims of abortion but also to further the process of establishing and consolidating their status as a profession."<sup>17</sup> Women were turning to midwives, herbalists, drug dispensers and sometimes quacks to end their pregnancies, and doctors wanted to gain control over the practice of medicine and elevate the status of their profession.<sup>18</sup>

Race and class were also factors in the passage of the new wave of anti-abortion laws. Abortion was increasingly being used by white, married, Protestant, middle and upper class women to control their family size. "Nativists" (those who were "native-born" to the new country) in Canada, for instance, voiced their concern about what they called the "race suicide" of the Anglo-Saxon population<sup>9</sup> in relation to the burgeoning French-Canadian and "foreign" immigrant populations. Anglo-Saxon women who refused maternity by employing contraception or abortion were condemned as "traitors to the race". Accordingly, the Canadian parliament made contraception illegal in 1892, following the example of the U.S.

Another interpretation of the trend toward more restrictive abortion legislation focuses on nation states' demographic concerns. Powerful social pressures for population increase meant that "the concern was perhaps more for the quantity of human beings than for the quality of human life."<sup>19</sup>

In the words of the authors of Our Bodies, Ourselves:



*“...just at a time when women’s increasing understanding of conception was helping them to avoid pregnancy, certain governments and religious groups desired continued population growth to fill growing industries and new farmable territories.”*<sup>20</sup>

Despite its criminalization, women continued to regard induced miscarriage before the fetus “quickened” as entirely ethical, and were surprised to learn that it was illegal.<sup>21</sup> Women saw themselves as doing what was necessary to bring back their menses, to “put themselves right”. In the words of historians Angus and Arlene Tigar McLaren,

*“Doctors were never to be totally successful in convincing women of the immorality of abortion. For many it was to remain an essential method of fertility control.”*<sup>21</sup>

Women continued to have abortions in roughly the same proportions as they had prior to its criminalization.<sup>5</sup> After it was criminalized, abortion simply went underground and became a clandestine and therefore much more dangerous operation for women to undergo.

During the latter part of the nineteenth century, European views on the restriction of abortion were spread by the colonial powers throughout Africa, Asia and beyond.<sup>2</sup> The strict prohibitions of Spain are reflected in many statutes decreed in South America, for example. Toward the end of the 19th century, China and Japan, at the time under the influence of Western powers, also criminalized abortion for the first time.<sup>2</sup>

American historian James C. Mohr makes the point that from an historical perspective, the nineteenth century’s wave of restrictive abortion laws can be seen as a deviation from the norm, a period of interruption of the historically tolerant attitude towards abortion.<sup>22</sup>

## Twentieth Century

*“From the second half of the 19th century, through World War II, abortion was highly restricted almost everywhere. Liberalization of abortion laws occurred in most of the countries of Eastern and Central Europe in the 1950s and in almost all the remaining developed countries during the 1960s and 1970s. A few developing countries also relaxed their restrictions on abortion during the same period, most notably China and India.”*<sup>23</sup>

**During the 19th century, laws against abortion were put in place throughout the western world.**

A number of factors have been recognized as contributing to this liberalizing trend.<sup>24</sup> Attitudes toward sexuality and procreation were changing, and the reduced influence of religious institutions was a related factor.<sup>24</sup> In some countries, rubella epidemics and thalidomide created awareness of the need for legal abortion. In others, there was concern about population growth. Illegal abortion had long been a serious public health hazard,<sup>25</sup> and eventually women being injured or dying from unnecessarily dangerous abortions became a concern. Arguments were made in favour of the right of poor women to have access to abortion services. More recently, women's right to control their fertility has been recognized.<sup>24</sup>

While the pace of abortion law reform has slowed, the overall movement is still in the direction of liberalization. Recently, however, restrictions have increased in a few countries.<sup>24</sup>

*"As often happens when rapid social change occurs, the movement to legalize abortion has generated resistance and a counter movement. Strenuous efforts are being made to increase restrictions on abortion and to block further liberalization of laws, especially in the United States... [and] the former Communist countries,...but [anti-abortionists] are also highly visible in Canada, England, France, Germany, Italy... and other developed as well as developing countries."*<sup>24</sup>

The degree of liberalization has varied from country to country. Abortion laws are usually grouped according to "indications", or circumstances under which abortions can be performed. The most restrictive laws either completely ban abortions or restrict them to cases where the pregnancy poses a risk to the woman's life. Other laws also consider risks to the physical and mental health of the woman or her fetus. Some also allow abortion for social-medical or economic reasons, as in the case where an additional child will bring undue burdens to an existing family. The broadest category allows abortion on request (usually within the first trimester).

## Abortion Today: Legal and Illegal

At present almost two-thirds of the world's women reside in countries where abortion may be obtained on request or for a broad range of social, economic or personal reasons.<sup>26</sup> Liberalization has been successful; countries which have developed access to safe, legal abortion have typically lowered the rates of pregnancy-related complications and death as well as infanticide, and improved the health of women and their families.<sup>27,28,29</sup>

Abortions are carried out in every country in the world today, regardless of the law.<sup>30</sup> World-wide, it is estimated that 50 million abortions occur every year.<sup>31</sup> More than one-third are illegal abortions occurring mainly in the developing world, and nearly one-half take place outside any health care system.<sup>32</sup>

In those parts of the world where abortion remains prohibited or restricted, clandestine, illegal abortion remains a serious health problem. Much of Muslim Asia, Latin America and Africa fall into this category. These are the same places where safe, affordable means of contraception are the least available.<sup>33</sup> *About 100 million women worldwide have an unmet need for contraception.*<sup>34</sup>

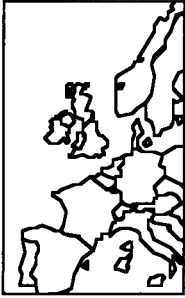
The methods of illegal abortion vary somewhat from culture to culture. African women may seek abortion from midwives or traditional healers, who insert plant roots or twigs into the cervix, hoping to induce uterine contractions. Desperate Zambian women may attempt to self-induce by drinking detergent or gasoline or taking an overdose of aspirin or chloroquine in order to cause violent contractions.<sup>35</sup> In rural Indonesia and Thailand, intensive abdominal massage is the method most often used,<sup>35</sup> while in Latin America, abortions are performed with catheters, hangers, knitting needles, caustic substances, toxic herbal teas or drugs.

In many countries, a large proportion of maternal deaths is due to illegal or clandestine abortion: Ethiopia— 54%; Argentina— 35%; Chile— 36%; Zimbabwe— 28%.<sup>36</sup> *The estimated number of women worldwide who die from clandestine abortion ranges from less than 100,000 to as many as 200,000 women a year.*<sup>32</sup> Most clandestine abortions are performed by non-professionals or are self-induced. And for every woman who dies from an illegal abortion, many more suffer serious (and often lifelong) health problems— among them haemorrhaging, infection, abdominal or intestinal perforations, kidney failure, and infertility.<sup>37</sup>

The following is a brief summary of the development of modern abortion legislation around the world. As we will see, there is often a discrepancy between the legal status of abortion in a particular country and the availability of the procedure in practice.

Where abortions are illegal, they are performed using sticks, roots, catheters, coat hangers, knitting needles, caustic liquids, herbs, poisons, drugs, intensive massage, etc.

# WESTERN EUROPE



In all European countries except for three (the Irish Republic, Northern Ireland and Malta), induced abortion is legally available at least for some reasons. Access to safe abortion services in Europe is largely determined by the character of the law, but not completely. Much depends on the way the law is interpreted by the authorities and service providers.<sup>50</sup>

The abortion need in Western Europe is about five to 10 times lower than in Central and Eastern Europe (which include the former Communist bloc countries). This pattern results from more efficient use of contraceptives among married couples. In Central and Eastern Europe, the contraceptives used by both the married and the unmarried are often of poor quality.<sup>50</sup>

## Belgium

Unlike its European neighbours, Belgium did not legalize abortion until 1990. This new law overturns the 1867 law forbidding abortion on any grounds.<sup>38</sup> It now allows a woman, judged by two physicians to be “in a state of distress”, to have her pregnancy terminated during the first 12 weeks (that is, the first trimester) of gestation. After 12 weeks, abortion is permitted in cases of the woman’s health being endangered, and of fetal abnormality.<sup>39</sup>

In 1990 King Baudouin, then the Roman Catholic titular head of state of Belgium, temporarily abdicated for a day in order to avoid having to sign this law, which conflicted with his religious beliefs.<sup>40</sup>

## Denmark

In 1939, a legal abortion became possible in Denmark only to save a woman’s life. This law was liberalized in 1956 to include medical and social grounds. The law was revised in 1970 to allow any woman over the age of 38 and women with four or more living children access to legal abortion.

The law of June 13, 1973 made Denmark the first Western European country to permit abortion on request during the first twelve weeks of pregnancy. While abortion is legally restricted when the pregnancy is past three months, in practice, about 90% of requests for abortions at 13-16 weeks are approved.<sup>41</sup>

In Denmark, contraceptive services are free and universally available, even to teenagers, resulting in a dramatic drop in teen abortion rates. Pregnancy rates among Danish teenagers are now less than half those in the United States.<sup>42</sup>

## Finland

The Finnish abortion law was passed in 1970 and revised in 1978 and 1985. Abortion is available for up to 12 weeks with the approval of two doctors for a range of health and social reasons. After 12 weeks, risk to the woman's physical health or life or to fetal health are legal requirements for abortion.<sup>38</sup>

## France

In Nazi-occupied France, abortion laws were made extremely stringent during 1940/41.<sup>2</sup> The Penal Code was extended by court decrees so that even a non-pregnant woman or one who was unsuccessful in her abortion attempt could be deemed guilty of a criminal offense. A special state court whose judgment could not be appealed was set up and trials were convened. In 1942 the death penalty for abortion was invoked, when, following the example of Nazi Germany, it was declared an act against the state. A laundress, Madame Giraud, was convicted on the charge of having performed 26 illegal abortions and was the last person to be executed under the harsh conditions of Occupied France. Following the liberation of France in 1944, the death penalty was rescinded and the special state court abolished.<sup>2</sup>

It is estimated that, in the early 1970's, as many as half a million French women had clandestine abortions each year. In 1975, French law made abortion available to women until the tenth week of pregnancy on condition that they undergo counselling on alternatives and observe a one-week waiting period.<sup>43</sup> After the tenth week, two physicians must certify that the woman's health is endangered or the fetus is handicapped.<sup>38</sup> French women must sometimes travel to the U.K. to secure an abortion after 10 weeks.

In September 1988, France became the first Western country to allow the sale of the "abortion pill", RU 486. Experiments have shown it to have a 96% success rate if taken with a prostaglandin. RU 486, or mifepristone, now accounts for about 30% of all French abortions.

Since 1950, most developed countries have legalized abortion. It has remained illegal in much of Muslim Asia, Latin America and Africa.

The drug company that developed RU 486 initially withdrew it because of anti-abortion pressure, but the French government ordered it returned to the market. The government stated that public health concerns were more important than any religious objections to this drug.<sup>44</sup> The French Health Minister called RU 486 “the moral property of women”.

## Germany

### Nazi Germany

In Nazi Germany, abortion was strictly prohibited, as “Aryan” women were to reproduce to increase the “master race”. Abortion was declared an act against the state; the death penalty was introduced in 1943.<sup>2</sup>

Under the previous regime, the Weimar Republic, birth control information had been widely disseminated. In 1933, birth control centres were closed and the advertising of contraceptives stopped. Women were encouraged not to work and financial incentives were introduced to encourage childbearing. Joseph Goebbels, propaganda minister for Hitler, made the following claim about women’s proper role:

*“The mission of woman is to be beautiful and to bring children into the world. This is not at all as rude and unmodern as it sounds. The female bird pretties herself for her mate and hatches the eggs for him. In exchange, the mate takes care of gathering the food and stands guard and wards off the enemy.”<sup>45</sup>*

In contrast, Jewish women were forced to have abortions; both abortion and sterilization were used by the state against groups which it considered racially undesirable.

### East and West Germany

In 1976, West Germany passed a law which permitted abortion in the first 12 weeks for reasons of medical necessity, sexual crimes or serious social or emotional distress. It required the approval of a second doctor, mandatory counselling and a three-day wait after counselling.<sup>46</sup> In practice, abortion remained so difficult to obtain in parts of West Germany that many women travelled to the Netherlands for the procedure.<sup>47</sup>

In 1989, gynaecologist Dr. Horst Theissen was sentenced to two-and-a-half years in prison for performing the procedure on women who had not gone through the costly and time-consuming abortion

certification procedure required in the Catholic state of Bavaria. In a separate prosecution, 137 of his patients were also fined or jailed.<sup>48</sup>

In East Germany (then the German Democratic Republic), legislation was enacted in 1972 to permit abortion on request during the first 12 weeks of pregnancy. That law stipulated that “In addition to the existing possibilities of contraception, a woman shall have the right to decide on the interruption of her pregnancy on her own responsibility, so as to be able to control the number, timing and spacing of births.”<sup>49</sup>

## Reunited Germany

Negotiators working on the reunification of East and West Germany in 1990 were required to try to reconcile the differences between the two countries’ laws on abortion. Finally, after a two-year legal debate on the issue, a new German abortion law was approved by the Bundestag (parliament). The 1992 law permitted first trimester abortions on request after mandatory counselling and a three-day waiting period.

However, before the new law could take effect, it was challenged in court by Chancellor Helmut Kohl and other conservative members of parliament, as well as by the State of Bavaria.

In 1993, a confusing judgment by the Federal Constitutional Court found abortions were unlawful, since the constitution protects fetal life from conception. Yet it also found that abortions during the first three months of pregnancy should not be punished, if the woman first submits to counselling aimed at changing her mind. And, said the Court, such abortions are not covered under statutory health insurance and cannot be performed in state hospitals. (Abortions in certain situations, eg. for rape or certain medical reasons, it considered lawful and to be treated differently.)

Evert Ketting of the International Planned Parenthood Federation says the Court’s decision reflects this philosophy: “You may have your abortion, but it is against our morality, and therefore you must pay for it, financially and morally.”<sup>50</sup>

A follow-up law allowing abortions in the first 12 weeks of pregnancy— provided the woman undergoes counselling by a doctor— was narrowly approved by Germany’s parliament in 1995.

**In Nazi Germany, abortion was strictly prohibited for “Aryan” women. In contrast, Jewish women were forced to have abortions.**

## Great Britain

As indicated above, nineteenth century British law prohibited abortion. The law was not modified until the Bourne case of 1938.

Dr. Alec Bourne aborted a 14-year-old girl who had been raped by soldiers. Bourne turned himself over to the authorities so that he would be a test case. He was acquitted. Justice McNaughten told the jury that if Bourne believed that continuation of the pregnancy “would make the woman a physical or a mental wreck”, then he operated for the purpose only of preserving the life of the woman.<sup>51</sup>

In retrospect, it does not seem that the Bourne case went much beyond indicating that abortions could be performed when the woman’s life was at stake. This ambiguous legal precedent was adopted by other Commonwealth nations. The decision left unclear whether mental as well as physical health could be taken into consideration.

The thalidomide disaster of 1962 resulted in almost 1,000 British women bearing babies with limbs missing. Many of these women had been refused abortions. In 1967, an act was finally passed which allowed abortion where two doctors find the continuation of the pregnancy poses a risk to the woman’s life, to her physical and mental health or to any existing children “greater than if the pregnancy were terminated”, and in cases where there was “substantial risk” of the fetus suffering from an anomaly.

The National Health Service has made abortion free of charge, but in practice such free procedures are largely unavailable and most abortions are performed privately and paid for by the women themselves.<sup>52</sup>

In April, 1990, the British House of Commons voted to cut the legal time limit for abortions from 28 to 24 weeks of pregnancy, but it also removed the upper limit of 28 weeks in cases of fetal handicap or “grave permanent injury to the physical and mental health of the pregnant woman”. This was a rejection of attempts by anti-abortion campaigners to reduce the limit to 22 weeks. It was the first change in the abortion law since 1967.<sup>53</sup>

In 1991, RU 486 (the French “abortion pill”) was approved for use in Britain for pregnancies up to 9 weeks’ duration.

## Greece

In 1986, Greece passed a law legalizing abortion during the first 12 weeks of pregnancy on request of the woman. Abortion can be obtained through the 24th week for medical reasons relating to the physical or mental health of the pregnant woman, or the unhealthy development of the fetus.<sup>54</sup> When the pregnancy results from rape,



sexual intercourse with a minor, or incest, abortion is available up to 19 weeks.

It remains illegal to advertise abortion methods or services, although information on abortion may be given in family planning centres.<sup>55</sup>

Prior to 1986, abortions were technically illegal but had been readily available from physicians.<sup>56</sup> Contraception in Greece was legalized only in 1980, and family planning information and education remain extremely limited. As a result, abortion in Greece remains a primary method of birth control, despite the increasing availability of most modern forms of contraception.<sup>57</sup>

## Iceland

A modified abortion law was passed in Iceland in 1935, introducing the concept of medical-social indications for abortion.<sup>2</sup> Iceland liberalized its abortion laws in 1975, stopping just short of authorizing abortion at the request of the pregnant woman, following the Danish and Swedish models.<sup>58</sup>

## Ireland

Abortion is illegal in Ireland under the 1861 Offences Against the Persons Act. Under this act, a woman attempting to abort herself faces life imprisonment and anyone who helps her procure an abortion could face five years in prison.<sup>59</sup> Other than Malta, Ireland is the only European country in which abortion is illegal. In 1983, abortion also became unconstitutional as a result of a referendum on abortion.<sup>60</sup>

In November, 1980, a new family planning act made it very difficult to obtain any form of contraception except through medical prescription. Not only the doctor, but the pharmacist could turn down a patient's request unless convinced that there was a serious medical reason for preventing pregnancy. Intra-uterine devices were labelled abortifacients and banned. Family planning clinics were ruled illegal.<sup>61</sup>

However, in February, 1985 the government won approval for the Family Planning Amendment Bill, which allowed anyone at least 18 years of age

**Abortion is still illegal in Ireland. In 1992, a 14-year-old suicidal rape victim was prevented by the courts from leaving Ireland to obtain an abortion.**

to buy condoms and spermicides. Birth control pills remained available only to married couples on prescription.

Ireland has also denied women information on abortion. In 1987, an anti-abortion group took two counselling centres to court to stop them from advising women where to obtain abortions in England. The Irish Supreme Court ruled against the centres, saying that they "assisted in the destruction of a child."<sup>62</sup> In October of 1992, the European Court of Human Rights voided the Irish court ban on providing information to Irish women seeking abortions abroad.

The abortion debate in Ireland came to a head in 1992 when a 14-year-old suicidal rape victim was prevented by the courts from leaving the country to obtain an abortion. The court's decision caused a public uproar in Ireland (and around the world), and the judgement was overturned. The Supreme Court decided that although the Irish law prohibits abortion without exception, the procedure is permissible when the pregnant woman's life is endangered by physical health conditions or threat of suicide.

As a result of this case, a three-part referendum on abortion rights was held in November of 1992, with the Pope campaigning on the anti-abortion side. Nevertheless, Irish voters supported constitutional amendments allowing access to abortion information and the right to travel abroad for the procedure. A third amendment, which would have prevented a suicidal pregnant woman from qualifying for an abortion, was defeated.

It is estimated that annually more than 4,000 Irish women go to Britain for abortions.

## Italy

Prior to 1978, Italy had an estimated illegal abortion rate of up to 800,000 per year.<sup>63</sup> In that year, the government passed a liberal law, despite fierce opposition from the Vatican. The new law replaced a section of the fascist-era penal code, which had outlawed abortion as a "crime against the integrity of the race".

Under this new law, any woman over age 18 may have an abortion for health, social or financial reasons within the first ninety days of the pregnancy, provided she obtains a doctor's certificate, waits for a minimum of 7 days, and undergoes counselling. The legislation allows doctors to register as "conscientious objectors" to abortion on religious, moral or social grounds, and about 70% of doctors have done so.<sup>64</sup>

Abortion after 90 days is permitted if continued pregnancy endangers the life or physical or mental health of the woman or if there are grounds for believing the fetus is deformed.<sup>65</sup>

In May, 1981, the Italian people overwhelmingly rejected a

referendum, supported by the Catholic Church, which would have repealed the liberal abortion law.<sup>66</sup>

Despite the relatively liberal legislation, making use of the law remains difficult, as doctors are scarce and services are disorganized, underfunded and poorly equipped. Women must often wait 30 days to obtain an abortion at a public facility.<sup>64</sup> Not surprisingly, illegal abortions in Italy are still numerous.<sup>38</sup>

## Netherlands

The last Dutch doctor was imprisoned for performing an abortion in 1953.<sup>57</sup> Contraception became available free of charge through the national health insurance scheme in 1972.<sup>57</sup>

Although abortion had been freely available in the Netherlands for years, it was only in April, 1981 that the Dutch Parliament brought the law into line with practice. It passed a bill authorizing a woman, together with her doctor, to decide whether there is an “intolerable situation”. Abortion is allowed in this case up to the 24th week. There is a compulsory waiting period of five days.<sup>65</sup>

In 1986, after years of campaigning by Dutch feminists, the government finally began to pay for the procedure through the state health care system.<sup>67</sup> The Netherlands’ abortion rate is lower than any other country’s,<sup>68</sup> thanks to its comprehensive sex education and family planning programs.<sup>69</sup>

## Norway

Since 1979, Norwegian women have been allowed free abortion upon request during the first 12 weeks of pregnancy.<sup>58</sup> After 12 weeks, abortion must be authorized by a board of 2 doctors, but is allowed for a variety of reasons, including a woman’s being placed “in difficult circumstances”. After 18 weeks the law permits abortion only when there are “particularly important grounds.”<sup>70</sup>

The 1978 abortion laws include the following statement of principle:

*“Society shall ensure as far as is possible that all children enjoy conditions for a secure upbringing. As part of this task, society shall ensure that all persons receive ethical guidance, sex education, information*

**The Netherlands’  
abortion rate is the  
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family planning and sex  
education programs.**

*on matters of communal living, and family planning facilities, in order to create a responsible attitude to such matters so that the number of pregnancy terminations is as low as possible.”*<sup>70</sup>

## Portugal

Portugal is a predominantly Catholic country where the Church has vigorously opposed any attempts to liberalize abortion laws.

In February, 1984, the Portuguese parliament passed a bill allowing limited abortion. The act waives prosecution in cases of fetal deformity, rape, danger to the woman's life, or serious damage to her mental or physical health. The existence of these circumstances must be certified by two physicians, and a three-day waiting period is required.<sup>71</sup> It also legalized sterilization of those aged 25 and over.

Because of the unwillingness of many doctors to provide the service, the majority of abortions are still performed illegally in private clinics.

The first abortion to be carried out under the law was performed on a 15-year-old girl who had been raped by her father. The president of the Portuguese Bishops' Conference was quoted as saying that she "ought to have been helped to accept her pregnancy as a form of martyrdom."<sup>72</sup>

## Spain

Historically, Spanish law followed the Catholic Church's ideology on abortion. Prior to October, 1983, abortion, the sale of contraceptives and access to birth control information were considered crimes. Consequently, many Spanish women were forced to travel to England to obtain abortions and contraceptive devices.

In 1985, after the 1983 abortion law was found unconstitutional, Spain legalized abortion in cases of rape, severe fetal abnormality and serious risk to the woman's mental or physical health.<sup>73</sup>

Due to harassment, few physicians are willing to operate openly, and abortion has been effectively relegated to private clinics, where raids and prosecutions of illegal abortions continue.

In 1994, Spain's government proposed legislation that would permit abortion during the first 12 weeks of pregnancy. The abortion would require a three-day waiting period following counselling on alternatives to abortion.

## Sweden

The first Swedish abortion act was passed in 1938 and amended in 1946 and 1974. Since 1975, women have been able to obtain an abortion free upon request up to the end of the 18th week of pregnancy. After the 18th week of pregnancy, the approval of the National Board of Health and Welfare is necessary.<sup>38</sup>

A physician may be fined or imprisoned up to six months for refusing to comply with a woman's request for a first trimester abortion, or failing to refer her to the National Board of Health.<sup>2</sup>

Sex education has been a compulsory subject in schools in Sweden since 1956, and today Swedish adolescents who are sexually active have a high rate of contraceptive use and a low number of abortions.<sup>74</sup>

Sweden was the third European country authorized to use the "abortion pill", RU 486, and formally began using it in 1992 for pregnancies up to 9 weeks' duration.

Levels of fertility in Sweden have increased from a total fertility rate of 1.6 children per woman in 1978 to 2.17 in 1993. The most common explanation for this "baby boom" is the creation of a 15-month paid parental leave formula which can also be converted into a long-term, part-time arrangement. Other factors which have made parenthood a more attractive proposition include a doubling of the number of day cares in places of work and the availability of leave for parents of ill children. According to the Swedish Ministry of Social Affairs, the policy "is not to do with having more children born but about facilitating their social integration."<sup>75</sup>

## CENTRAL AND EASTERN EUROPE



After the Supreme Soviet liberalized its abortion laws in 1955, all the socialist countries of Central and Eastern Europe (except Albania) passed similar legislation.<sup>2</sup> In the 1970's, concern about low birth rates resulted in new restrictions on abortion in Bulgaria, Czechoslovakia, Hungary and Romania.<sup>2</sup>

One by-product of the collapse

The "abortion pill" RU-486 has been used in France since 1988, in Britain since 1991, and in Sweden since 1992.

of most communist governments in 1990 and 1991 has been the reversal of decades of law, including laws relating to abortion. Newly emerging anti-abortion pressure from the Roman Catholic Church, and governments eager to undo previous Communist policies, have affected the abortion laws in several Eastern European countries. Their attempts to restrict abortion have been strongly opposed, even where successful.<sup>24</sup>

Unlike most Western European countries, the former Communist bloc countries have traditionally relied on abortion as a means of birth control. The luxury of preventing unwanted pregnancies through modern contraception has never been a part of their family planning culture. The majority of women applying for an abortion are older, married, and have already had their children, which makes them different from most abortion patients in Western Europe.

## **Albania**

The former Communist regime in Albania was aiming to increase its population by 50% by the year 2,000. Under this policy, contraception was unavailable and abortion illegal, resulting in a high maternal mortality rate. It is estimated that 55% of maternal mortality was caused by self-induced and criminal abortion.<sup>50</sup>

In 1990 the grounds for a legal abortion were broadened, and in mid-1991, abortion on request was in effect authorized. Few people, including doctors, know of modern methods of contraception. The decision was therefore made in 1992 to train health care providers in family planning, to educate the public, and to launch a family planning service offering all methods of contraception.<sup>76</sup>

Although it will take time for contraceptive methods and services to become easily available, the rapid effects of the change in abortion policy were seen immediately in a reduction in maternal mortality and in the number of criminal or self-induced abortions seen at hospitals. For instance, in the first half of 1992, only 145 such cases were seen at the Maternity Hospital in Tirana, compared to 4,929 cases for the full year 1990.<sup>76</sup>

## **Bulgaria**

In Bulgaria, abortion on request was available from 1956 to 1968. In 1968 and 1973, laws were passed which restricted eligibility for abortion to unmarried women and married women with children. Bulgaria tightened its abortion laws because of declining birth rates.<sup>77</sup>

Effective February 1, 1990, Bulgaria made abortion on request accessible to all women in the first 12 weeks of pregnancy.<sup>39</sup> Religion

in Bulgaria (Eastern Orthodox) does not rigidly oppose women's right to a voluntary induced abortion as strenuously as in some other European countries, especially those where the population is predominantly Roman Catholic.<sup>57</sup>

Abortion is used as a method of family planning in Bulgaria; its abortion rate is one of the highest in Europe.<sup>57</sup> Modern contraceptives remain expensive compared to abortions, and contraceptive knowledge and attitudes are lacking.

## Former Czechoslovakia

Czechoslovakia first liberalized its abortion laws in 1957, permitting abortion not only for health but for social reasons. Effective January, 1987, a new law ended the requirement that the District Abortion Committee approve the abortion, and made first trimester abortions permissible upon the written request of the woman to her gynaecologist. After 12 weeks of gestation, the decision was given to doctors and medical authorities.<sup>38</sup>

When the country divided into two independent states effective January, 1993, substantial fees for abortions were soon instituted in both the Czech and Slovak Republics.<sup>24</sup> In deeply Catholic Slovakia, attempts by anti-abortion factions to legally restrict abortion are ongoing.<sup>24</sup>

Only 28% of women at risk of unplanned pregnancy in the two republics use modern contraceptives.<sup>57</sup> However, the use of contraception is reportedly increasing, at least in the new Czech Republic, where a coinciding decrease in abortions has also been found.<sup>57</sup>

## Hungary

Hungary's abortion laws became more liberal with new rules introduced at the beginning of 1989. These rules relaxed the strong restrictions imposed in 1973 to try to stop the decline in the birth rate. (There was a total ban on abortion in the 1950's for the same reason, before it was legalized again in 1956). Under the 1989 rules, first-trimester abortions were made available for a wide variety of social and economic reasons.<sup>78</sup>

In December of 1991, Hungary's highest court ruled that these liberal abortion regulations were unconstitutional and gave the Hungarian

**The former Communist bloc countries, with few modern contraceptives, have traditionally relied on abortion as a means of birth control.**

parliament until the end of 1992 to change them. Hungary passed a new law "on the protection of fetal life" in December of 1992.

This law declares a general principle that pregnancy can only be interrupted in cases where a risk exists. Pregnancy may be terminated up to the twelfth week in cases of rape, a serious health threat to the woman or the fetus, or when the pregnant woman is in a grave crisis situation.<sup>57</sup> Rape must be confirmed by the initiation of police proceedings, and the existence of a threat to health must be confirmed by two medical specialists.

If she qualifies for an abortion, a woman must undergo counselling and wait three days. After 12 weeks, abortion may be allowed if the fetus is demonstrably seriously impaired or the pregnancy is endangering the life of the woman.

## Poland

Poland legalized abortion in 1956. Abortions became lawful for socio-economic reasons in the first trimester and for medical reasons and sexual crimes in the second trimester.<sup>78</sup>

Due to the chronic shortage of contraceptives and family planning services, abortion has been widespread in Poland. It was provided free of charge in public hospitals, but a large proportion of abortions were performed in private clinics because of the lack of privacy and poor medical standards of state-run facilities.

Restrictions on abortion funding began in the spring of 1990. In May of 1992, a new anti-abortion ethical code for physicians came into force. A new national anti-abortion law was also proposed, and although it was supported by the Solidarity labour movement, the Catholic Church and the upper house of parliament, its consideration was unexpectedly blocked by the lower house in May of 1991.

Eventually, the Polish government, backed by the influential Roman Catholic Church, succeeded in overturning (by only one vote) the liberal abortion law which had been in force since 1956. This 1993 law effectively makes 97% of abortions illegal.

The law has driven abortion underground in Poland. According to reports, it has spurred a tenfold increase in the cost of an abortion, increased travel to Russian and Czech clinics, and increased infanticide and abandonment of newborns.<sup>79</sup> The situation is exacerbated by very limited access to contraception and virtually no sex education. Catholic instruction has been made compulsory in schools.

In January of 1994, the Third Congress of Polish Doctors relaxed its two-year-old anti-abortion guidelines. In the opinion of many doctors, that code had been hurried through due to pressure by Catholics in the



medical profession.<sup>80</sup> A bill to liberalize the state's unpopular and restrictive abortion law was passed by parliament later in 1994, but Polish President Lech Walesa, who is personally anti-abortion, vetoed it.

## Romania

Because of panic over low birth rates, the 1957 statute permitting elective abortions was reversed in 1966 under Romanian dictator Nicolae Ceausescu. Legislation set a prison term of one to five years for illegal abortions, and abortions were permitted only if a woman had already borne five children. In 1986, the law was tightened further to ban abortions for any female under age 45, unless her life was in danger.

Among the new measures were monthly monitoring of pregnant women and investigation of all spontaneous abortions. All forms of artificial birth control were prohibited.

Romania demonstrates Dr. Wendell Watters' contention that nation-states, whatever their ideology, are prepared to take away women's right to abortion when they wish to increase their population.<sup>81</sup>

The horror wrought by this repressive policy was revealed upon the overthrow of Ceausescu in late 1989. *It was discovered that the rate of abortion was actually higher than in any Western European country in which abortion was legal.*<sup>56</sup> Over 10,000 women died from illegal abortions and about 200,000 children were placed in orphanages.<sup>82</sup> The Ceausescu regime had also forcibly returned thousands of unwanted babies to their parents. The wilful neglect of children by the state led to a predictable rise in infant mortality during the Ceausescu era.

On December 26, 1989, one day after defeating Ceausescu, the National Salvation Front repealed the draconian 1966 and 1986 decrees restricting abortion and contraception.<sup>83</sup>

Maternal mortality in Romania has decreased 317% since the abortion law was liberalized.<sup>38</sup> The abortion rate is still high, however, since fears about the "dangers" of contraception still abound in this country. "Abortion has been the only alternative in the last 23 years. It's very difficult to get women to understand that it is healthier and safer to use contraception," said Dr. Borica Koo, head of the Romanian Family Planning Association.<sup>84</sup>

**The Polish government, backed by the Catholic Church, recently overturned the liberal abortion law which had been in force in Poland since 1956.**

## Former Yugoslavia

Abortion has been legal on request during the first 10 weeks in the republics since 1978, and may be granted after 10 weeks with the permission of a committee. With the breakup of the Yugoslav federation and the onset of war in June of 1991, the former Yugoslav abortion law is only technically in force in Bosnia and Herzegovina, as well as in Croatia and Serbia.

Abortion was in the news in 1992 when it came to light that an estimated 20,000-50,000<sup>85</sup> women and girls, mostly Bosnian Muslims, had been systematically raped by Serbian fighters and many held captive for months to prevent abortion. The mass rapes and forced pregnancies were apparently part of the "ethnic cleansing" campaign. Rapes by Croats and Muslim soldiers were also committed, but apparently on a much smaller scale.

Some of the pregnant women released from the 'rape camps' successfully obtained second trimester abortions but others were refused. In the predominantly Catholic state of Croatia, where an anti-abortion campaign by the church and conservative women's groups has been underway, it is now difficult to get an abortion. The Pope provoked an outcry when he appealed to the raped women to bear their violators' children rather than choose abortion.

Because of the war, the general need for contraception and abortion services, especially in central Bosnia and the eastern enclaves, has been staggering. There has been a sharp increase in the abortion rate in this worn-torn region, with more abortions than live births occurring in some areas.<sup>57</sup>

## FORMER SOVIET UNION

Prior to the 1917 Russian Revolution, abortion was forbidden under all circumstances, in line with the teachings of the Orthodox Church.

In 1920, a decree from the Commissariats of Health and Justice permitted free abortions at all Soviet hospitals, and prohibited anyone but a doctor from performing them. This law reflected the belief in female equality held by the revolutionaries, as illustrated by Lenin's statement that no woman should be forced to bear a child against her will.

It was also a response to the grim economic conditions of the time. Shortly thereafter, the Health Commissariat claimed that illegal abortion had been stamped out. Certain American observers who visited the Soviet Union between 1920 and 1936 felt that the government was

not doing enough to promote contraception.

In 1936, however, under Stalin, abortion was forbidden except in the case of hereditary disease or when the pregnancy threatened the life and health of the woman. The Soviet Union was industrializing and needed workers. The effect was a dramatic but short-lived increase in the birth rate, which by 1940 had again fallen below the 1936 figure.<sup>2</sup>

In 1955, two years after the death of Stalin, there was a return to an emphasis on female emancipation in the policy governing abortion. The 1936 prohibitions on abortion were ended.

In 1988, the Soviet Union further eased its abortion law, extending the termination period and permitting a wider range of non-medical reasons. Abortion is available to all women in the first trimester of pregnancy. In the second trimester, abortions can be performed for medical reasons, or for social reasons, like rape or divorce.<sup>86</sup> This change was made to cut down on illegal abortions. Thirty to forty percent of all abortions in the former USSR are illegal.<sup>87</sup>

Many women readily pay for an illegal abortion, often performed after-hours at a state hospital or outpatient clinic, in order to be given enough anaesthetic, to avoid delays and a three-day hospital stay, and to protect their privacy.<sup>88</sup> Outdated abortion techniques, which cause a high number of complications, are used in both government abortions and illegal ones.<sup>89</sup>

Abortion has traditionally been the primary method of birth control in the Soviet Union because of a lack of contraceptive devices and information, and because of the traditional orientation of the Soviet health service system towards termination, not prevention, of pregnancy. Officially, 55% of known pregnancies are terminated by abortion, but the true rate is probably higher.<sup>90</sup> The level of induced abortion is higher in the former USSR than in any other country in the world.<sup>91</sup> It is not uncommon for a Soviet woman to have four or five abortions and a few women to have as many as twenty.<sup>92</sup>

Recently, the attitude of the Russian population toward modern methods of contraception is changing, but availability is still quite limited. The number of abortions carried out annually in Russia has dropped from four million to 3.5 million.<sup>93</sup> In 1994, the Russian ministry of education promised high school sex education classes would soon begin, but

**From 1966-1989, contraception and abortion were banned by the dictator of Romania. Over 10,000 women died from illegal abortions and 200,000 Romanian children were put in orphanages.**

would be taught by chemistry and biology teachers rather than specially trained instructors.<sup>94</sup>

## ASIA AND OCEANIA



### Australia

The laws governing abortion in Australia fall within the legislative responsibility of the eight individual states and territories. All criminal abortion codes were originally based on English law of the mid-19th century. South Australia is the only Australian state where abortion has been formally legalized by an Act of Parliament (1969); there two doctors must agree it is in the interest of the woman's mental and social health.

In the other states, abortion remains a criminal offence, but there have been no prosecutions for years. Common law precedents have allowed practitioners to carry out legal abortions where they decide it is necessary for the health of the pregnant woman.

The reality is that abortions are being performed on a regular basis in Australia, although access to services varies significantly from region to region. In all regions, a limited number of abortions are performed in hospitals, which tend to interpret the law stringently. Free-standing clinics interpret the law broadly. No clinics exist in the two territories. The government Health Insurance Commission funds most abortions through Medicare.

But abortion remains in various criminal codes. The fragility of legal abortion in Australia became quite apparent in April of 1994, when the New South Wales Supreme Court decided that, according to the Crimes Act of 1900, abortion is in fact illegal unless the pregnancy poses a serious medical threat to the woman. This decision could be used to adversely affect access in New South Wales and other states with similar criminal law.<sup>95</sup>

Opinion polls show that a majority of Australians support legal abortion and the payment of medical benefits for the procedure.<sup>96</sup>

## Bangladesh

In Bangladesh, although the law prohibits abortion under most circumstances, “menstrual regulations” (early abortions performed without a pregnancy test) are being done in government and private facilities on women up to 10 or 12 weeks pregnant.<sup>97</sup> (Because pregnancy has not been clinically confirmed, the Bangladeshi government has been able to circumvent its own law.)

However, eighty percent of women do not have access to these safe procedures, and the incidence of clandestine, illegal abortion remains high, especially in the populous rural areas, where the traditional abortionist is used. Maternal deaths from abortion complications there are among the highest in the world.<sup>98</sup> Four out of five Bangladeshi women seeking an abortion are illiterate and have no knowledge of or access to contraception, according to a recent medical survey.<sup>99</sup>

## China

Since 1957, China has had one of the most open abortion policies in the world. Abortion is free upon the request of the woman. In 1979, because of concerns over the country’s high rate of population growth, the Chinese government began implementing its harsh “one-child policy”. The one-child policy mandates that couples have no more than one child in urban areas, while rural families may have up to two children in very limited circumstances.

Beijing’s birth control program has come in for harsh international criticism for forcing pregnant women to have abortions and penalizing couples with more than one child.<sup>100</sup>

A cultural preference for male children, coupled with the one-child policy, has resulted in a growing imbalance between the number of men and women in China today. According to a 1992 preliminary official survey, the sex ratio at birth in China is 118 boys per 100 girls.<sup>101</sup> A new law adopted in 1994 addresses one of the main causes of the sex-imbalance of newborns—the practice of stifling or drowning unwanted daughters after delivery, and reporting them as stillbirths.<sup>102</sup> The new law requires health workers to report the deaths of newborn babies to public health authorities. The testing of pregnant women to identify the sex of the fetus was also strictly forbidden.

The 1994 law’s eugenics provisions aimed at limiting what the

**The former Soviet Union has the highest abortion rate in the world. Russian women often have 4 or 5 abortions.**

government referred to as “inferior” births provoked international condemnation. The controversial provisions require people with a “serious hereditary disease” to give up childbearing, and doctors to instruct pregnant women to abort in cases of serious fetal abnormalities.<sup>101</sup>

## India

The situation in India shows that legalizing abortion does not ensure that it becomes accessible.

Legal abortion was introduced in 1971, when concern about burgeoning population growth became an issue for India.<sup>24</sup> Although abortion is legal, it is estimated that four million Indian women a year<sup>31</sup> still resort to illegal abortions because of social taboos, misconceptions about the law, and the lack of skilled practitioners and medical facilities.

Giving or taking prenatal tests solely to determine the sex of the fetus is being criminalized by the Indian parliament. Female children are still widely considered to be a social and financial liability in a country where the dowry system is still a part of marriage. The prenatal tests have been used to detect female fetuses, which are then aborted. Under Indian law, ending a pregnancy only because a fetus is female has already been outlawed, although the practice is common.<sup>103</sup> Poor women who cannot afford the cost of either prenatal testing or abortion often resort to female infanticide.

## Indonesia

Indonesia is the largest Muslim society—and the fourth most populous country—in the world, spread out over 13,000 islands. An aggressive national family planning program was launched in the early 1970’s, and incidents of coercive birth control practices have been reported. However, community involvement, public education, and integration of family planning with other health services have made Indonesia’s program a success. Nationally, 47% of married couples use contraceptives.<sup>104</sup>

Abortion remains problematic, however. While well-known in traditional Indonesian society, the practice was discouraged by all religious groups, and forbidden by the Dutch colonial authorities in 1918. Prior to 1965, abortion was largely carried out by traditional birth attendants using techniques of massage, herbal drinks, and various objects or liquids inserted into the vagina.

Although abortion was technically illegal under the criminal code, a judicial interpretation in the early 1970’s permitted medical professionals to offer the procedure so long as they were discreet and careful. The numbers

of medical abortions carried out in Indonesia rose dramatically, and there was evidence of matching declines in the incidence of morbidity and mortality caused by dangerous illegal procedures.<sup>105</sup>

Medical and community groups campaigned for a more liberal abortion law to protect legal practitioners and stamp out illegal traditional practices. But when the Health Law of 1992 was passed, it simply made the situation more confusing. The law is ambiguous: for example, it states that a “certain medical procedure” could be performed to save the life of a pregnant woman. The word “abortion” was avoided by legislators in order to avoid political risk. Unfortunately, abortion’s ambiguous legal status has discouraged attempts to improve abortion practices. Women must rely on clandestine abortion methods and untrained practitioners.<sup>105</sup>

Indonesian women continue to suffer the highest maternal mortality rate in the region, and improvement is unlikely until the legal status of abortion is clarified.<sup>106</sup> The total number of abortions in Indonesia are estimated as high as 750,000 to 1,000,000.<sup>105</sup>

## Israel

Until 1977, only those abortions performed on medical grounds were legal, although this restriction was not enforced in practice and abortions were freely obtainable. In 1977, the law was liberalized to allow abortion to avert “grave harm to the woman or her children owing to difficult family or social circumstances”. However, in response to ultra-Orthodox pressure, the law was amended in 1979, and the social indication was rescinded.<sup>107</sup>

The current regulations permit the medical committees in 28 hospitals throughout the country to approve an abortion request if at least one of the following four grounds applies: the woman is under 17 (the legal age of marriage) or over 40; the pregnancy results from a criminal act (rape or incest) or from an out-of-wedlock relationship; there is suspected physical or mental malformation of the fetus; and continuation of the pregnancy may endanger the woman’s health or life.<sup>108</sup>

Private, illegal abortions do exist in Israel; estimates for the 1980’s range between 2,000 and 5,000 cases per year.<sup>108</sup>

## Japan

Japan faced a steeply rising incidence of illegal abortion after World War II. In 1948, it passed a new law allowing abortion in cases

**Under China’s “one child only” population policy, pregnant women have been forced to have abortions.**

of rape, hereditary anomaly, and damage to the woman's health; economic considerations were added in 1949. Abortion has been widely relied on in Japan.

A 1976 amendment lowered the limit on abortion from 28 weeks to 24 weeks of pregnancy. A legislative effort in 1982 to tighten the law was withdrawn after strong protests by women and doctors.<sup>109</sup> The legal time limit for abortion was cut to 22 from 24 weeks of gestation in 1991.<sup>110</sup> Today, up to 80% of Japanese approve of abortion either on certain conditions or unconditionally.<sup>111</sup>

The birth control pill is still not approved for sale in Japan. Condoms are available, but many women complain that they must undergo abortions because their male partners won't cooperate in using them. The lack of reliable contraceptives and substandard sex education in the schools mean a high number of unwanted pregnancies and a reliance on abortion as an effective form of fertility control.<sup>112</sup>

## Malaysia

Recently, a restrictive law was replaced with one modelled on the English statute. It allows abortion if continuing a pregnancy involves more risk to the woman's physical or mental health than terminating it.<sup>24</sup>

## New Zealand

The 1977 New Zealand law allowed abortion only under very particular conditions: rape, extreme stress for the woman or danger to the woman's life. The restrictions imposed by this statute were somewhat relaxed in 1978. The law is so strictly interpreted that only a few centres offer abortion services. Because of this concentration of services, the facilities are overburdened and delays of up to four weeks can result.<sup>113</sup>

## Pakistan

In Pakistan, the abortion law was imposed by the British during colonial rule. Illegal abortions are a serious problem; complications from septic abortions are a leading cause of maternal death.<sup>114</sup>

In 1991, this Islamic country replaced the restrictive British laws with more liberal criminal legislation designed to conform to the principles of Islamic law, as delineated in the Qur'an and other texts.

According to researcher Reed Boland, the new Pakistani legislation retains several features of the old British law. It establishes two stages of pregnancy for punishment purposes and imposes the old penalty



for an abortion performed during the earlier stage—imprisonment of up to three years or a fine or both. But the new law says abortion in the earlier stage of pregnancy is no longer a crime if it is carried out to provide “necessary treatment”. Because the term “necessary treatment” is not defined, the degree of liberalization represented by this change is not entirely clear.<sup>115</sup>

Only 14% of married women of child-bearing age use contraception in Pakistan.<sup>111</sup> Experts say that cultural factors are responsible, as Pakistan has a large rural population and little independence or status for women.<sup>111</sup>

## Philippines

The Philippines is Asia’s only Catholic nation, and the Church’s strong opposition to contraception and abortion has been felt within Philippine society and government. Only 22% of married couples in the Philippines use contraceptives.<sup>116</sup> In 1986, the constitution incorporated provisions giving the right to life “from the moment of conception.”<sup>117</sup>

The result has been a growing reliance on illegal abortion, with the accompanying rise in the medical complication rate.<sup>118</sup> Septic abortion is the tenth most common cause of hospitalization of Filipino women.<sup>119</sup> The abandonment or selling of unwanted babies is another disturbing consequence.

In 1992, the government under Protestant President Fidel Ramos announced it would step up its family planning programmes and promote the use of artificial contraception in order to curb population growth. Catholic organizations have vowed to “fight to the death” against this official family planning campaign,<sup>120</sup> and have organized public protests.

## Vietnam

Abortion is legal on request in Vietnam. There is a lack of access to a variety of modern contraceptive methods, and half of the fertile population do not use any contraceptive method. The government’s strict 1988 “one or two child policy” imposes fines on above-quota births. Abortion is widely used as a method of fertility regulation.<sup>121</sup> Vietnam’s abortion rate—2.5 per woman—is the highest in Asia.<sup>122</sup>

**The birth control pill is still not approved for sale in Japan. Abortion is widely used by Japanese women to control their fertility.**

## MIDDLE EAST



The Arab world includes countries with very high per capita income (such as Kuwait, Saudi Arabia, Bahrain, Libya and the United Arab Emirates), medium-income countries (like Egypt, Morocco, Algeria, Tunisia, Iraq and Jordan), low-income countries (like Yemen and Syria) and some of the poorest countries in the world (like Sudan, Somalia and Mauritania). Islam, though not the only religion practised in the Middle East, is the leading theology and guiding principle in many constitutions. But Islamic doctrines affecting women and reproductive choice have more than one interpretation, and economic, political and social changes influence how Islam is translated into policies.<sup>123</sup>

Arranged marriages and the separation of the sexes are often customary in the typically male-dominant cultures of many Arab countries. Polygamy is permitted by the family codes of many Arab countries, even though there is a school of Islam which outlaws polygamy. The school of Islam which permits the use of contraception is followed in many countries today, although there is another school which forbids its use. But the conservative school of Islam which forbids abortion at any stage of pregnancy is the one which is prevalent in the majority of Arab countries.<sup>124</sup>

In Tunisia and Turkey, however, abortion is legal under another interpretation of Islam. It is clear about the status of the fetus before quickening, likening it to a living plant that does not possess a human life. But in Jordan and Egypt, as in the rest of the Arab countries, abortion is illegal (with a few medical exceptions) under the legacy of French and English civil laws, which have undergone little serious revision.<sup>125</sup>

This has led to the existence of a black market in abortions and there are doctors who will carry out such operations for fees which are beyond the reach of all but women from the upper and middle classes. Poor women are exposed to the dangers of non-medical abortions which are self-induced or done by other women, who are similarly poor and uneducated.<sup>124</sup>

### Iran

Abortion is illegal in Iran except to save the life or physical or mental health of a woman, or in cases of fetal impairment.

In practice, abortion is available—the only obstacle is money. An abortion costs about \$3,000, which is far more than most families make in a year, but is affordable for wealthy families in the larger cities<sup>126</sup> Among those who cannot afford a safe abortion, septic abortion is on the rise.

After the Islamic Revolution in 1979, the government outlawed abortion and sterilization,<sup>123</sup> closed family planning clinics, rejected the use of contraceptives, imposed regulations governing women's appearance in public, and made marriage, children and home the first priority for women.<sup>127</sup> During the eight-year war with Iraq, the government encouraged a high birth rate, but, with the end of the war in 1988, the population explosion has been increasingly seen as a major obstacle to economic reconstruction.<sup>128</sup> The government therefore reversed its pro-natalist policies: it began officially promoting family planning and made free contraceptives available, including sterilization (legal only if the woman has three children and her husband permits it). Financial disincentives for having a fourth child were introduced in 1991.

The government's reversal has had little success with the population, however, probably because women's legal and social status, which has not been improved, does not motivate them to control their fertility.<sup>129</sup> Women are not encouraged to work outside the home because Islam forbids the mixing of the sexes, and having large families has traditionally been a means of financial support for women.

## Tunisia

This country is an exception to the Arab states in that it legalized abortion in 1965 for women with five living children, and amended the law in 1973 to allow abortion on request for all women during the first trimester if performed by a physician in a hospital or clinic.<sup>130</sup> This law has led to a reduction in maternal mortality and morbidity.

The country's birth rate has been reduced in the past twenty years through abolishing polygamy, restricting family allowances to three children per family, importing contraceptives, and establishing a minimum age of marriage of 17 for women and 20 for men.<sup>131</sup>

**Most Arab countries follow the conservative school of Islam which forbids abortion. In Turkey and Tunisia, however, early abortion is legal under another interpretation of Islam.**

## Turkey

In order to reduce the rate of population growth, abortions have been legal on request up to the end of the 10th week of pregnancy since 1983.<sup>130</sup> Married women need their husband's consent. In practice, about 500,000 abortions are performed each year,<sup>132</sup> although the scarcity of the trained gynaecological specialists required by the law limits access, especially in rural Turkey.<sup>133</sup>

Family planning campaigns are increasing the use of modern methods of contraception in this very male-dominated society.

## AFRICA



Only two of Africa's 53 countries—Togo and Tunisia—have legal abortion on request (see Middle East countries, above). Two others, Burundi and Zambia, have legalized abortion for social health reasons. On the rest of the continent, abortion is restricted under outdated colonial laws, but widely (and unsafely) performed outside the law.

The situation tends to be most restrictive in the Francophone countries, because of the imprint of French legislation and certain cultural traditions.<sup>134</sup>

Every day some 10,000 African women undergo unsafe abortion, and many die in the process.<sup>75</sup> Almost 2/3 of Africa's population is under 25 years of age,<sup>135</sup> and in some African countries, as many as half the women seeking treatment for abortion complications are teenagers.<sup>75</sup> Abortion-related deaths are a major cause of maternal mortality in Africa, and the treatment of incomplete and septic abortions is severely taxing the scarce health resources of governments throughout the region.<sup>136</sup>

On average, only an estimated 11% of couples use contraceptive methods in most African countries.<sup>137</sup>

## Kenya

The law in Kenya remains restrictive, allowing abortion only when the woman's life is in danger. Imprisonment for 14 years is mandated for anyone found guilty of aiding a woman to procure an illegal abortion. The price of an abortion is now very high, thereby creating a health hazard for women.

Low contraceptive usage has led to high rates of unintended

pregnancies and illegal abortions. Incomplete abortion accounts for over 50 per cent of all gynaecological admissions and over 25 per cent of all hospital admissions in Kenya.<sup>138</sup>

Some type of female genital mutilation is performed on most Kenyan girls between eight and 13 years of age. This practice carries serious medical risks and drastically impairs the capacity for sexual enjoyment.<sup>139</sup>

## Namibia

Abortion is legal only in cases of rape and incest, fetal deformity, or if the woman's health would be severely impaired. Doctors advise women to look for abortions abroad.<sup>140</sup>

## Nigeria

Abortion in Nigeria is illegal and carries a heavy jail sentence—up to 14 years imprisonment—unless it is performed to save the life of the pregnant woman. Yet an estimated one million abortions are carried out in Nigeria each year, and illegal abortion is responsible for 50% of maternal deaths, particularly in adolescents and young women.<sup>84</sup> Tradition and culture tend to force young women to seek abortions, as there are strong social sanctions against unmarried women with children, and an unmarried pregnant woman without a suitor could be ostracized. Sex and family planning education is badly needed.

The status of women is extremely low in Nigeria. There is very little support in the country for making abortion legal on request.<sup>141</sup> Therefore, although the Nigerian Medical Association wants abortion legalized, change is not expected in the near future. Vocal opposition comes from religious leaders, as well as anti-abortion protestors who claim that family planning in all its forms is un-African, and legalized abortion an American, CIA plot to prevent the development of Africa.<sup>141</sup>

## South Africa

Until 1975, abortion was prohibited in South Africa, except in the case of absolute necessity to preserve the pregnant woman's life. In 1975, the Abortion and Sterilization Act was introduced, and is still in force today. It allows for an

**Every day, 10,000 African women have abortions which are unsafely performed outside the law, and many die in the process.**

abortion where continued pregnancy would seriously endanger the life or health of the woman, or in cases of rape or incest, when the pregnant woman is mentally handicapped, or if there is a serious risk of fetal handicap.

The Act excludes the majority of women seeking an abortion. Furthermore, the required 3-doctor approval procedure is so cumbersome and difficult only about 1,000 legal abortions are performed a year. Seventy per cent of these are for white women.<sup>142, 143</sup>

It is estimated that 200,000 illegal abortions are done each year,<sup>143</sup> usually for poor black women who cannot afford to go abroad for legal operations.<sup>142</sup> Arrests and prosecutions of doctors who perform illegal abortions are common.

Many South African women do not have access to family planning or education about their bodies. Men's virility is still often judged by family size in traditional black African culture, with husbands prohibiting contraception.<sup>74</sup> Many women are so poor that they abandon their babies after birth.<sup>144</sup>

The African National Congress (ANC) had proposed legalizing abortion as part of its post-apartheid national health plan, but instead it referred the existing restrictive law to a parliamentary committee for consideration.

## Zambia

Zambia became the first sub-Saharan African nation to liberalize abortion. Since 1972, abortion has been legal for health and socio-economic reasons through the 12th week of pregnancy. However, a legal abortion must be performed in a hospital, and the woman must have the signatures of three physicians (one of them a specialist). These administrative requirements are virtually impossible to fulfill, due to the almost complete lack of specialists and sanctioned facilities.<sup>145</sup>

Because so few legal abortions are available, illegal abortions far outnumber legal ones, and complications continue to be a major health problem for Zambian women. Zambian women commonly attempt illegal abortions and then go to a hospital for treatment of complications. At one hospital in 1988, 25 incomplete abortions were treated for every abortion performed there legally.<sup>146</sup>

## Zimbabwe

The present law (1977) allows abortion only in official cases of rape or incest (which have been reported to the police immediately), fetal anomaly, or when the woman's life is endangered by the pregnancy.<sup>147</sup> It

is estimated that more than 70,000 illegal abortions take place every year, and abortion is one of the major causes of death among women.<sup>147</sup> Zimbabwe women run a 262 times greater risk of dying of an abortion complication than women in the United Kingdom.<sup>147</sup> In 1993 the Zimbabwe government announced a crack down on backstreet abortion clinics to try to reduce the number of illegal abortions occurring every year.

Traditionally, a woman is under an obligation to bear as many children as a husband wants because of the bridal price he paid for her.<sup>148</sup> “Baby dumping” has become a “solution” to the problem of unwanted pregnancies— a problem which has reached unacceptable levels in Zimbabwe.

## LATIN AMERICA AND THE CARIBBEAN



**I**n Latin America, the Catholic Church is very powerful and women’s status is typically very low.

Latin America and the Caribbean are estimated to have the highest incidence of induced abortion in the developing world, with between 2.7 and 7.4 million performed each year.<sup>149</sup> Abortion is the fourth most commonly used method of fertility control in these countries. Since almost all Latin American and Caribbean countries except Barbados, Belize, and Cuba have restrictive abortion laws, most abortions are clandestine and unsafe.

Complications arising from these procedures are the principal cause of death among women of reproductive age.<sup>149</sup> According to recent estimates, approximately 800,000 Latin American women are admitted to hospital every year for post-abortion complications.<sup>150</sup> These admissions drain scarce and costly health-system resources.

It is interesting to note the long recorded tradition of induced abortion in Latin America. In 1551, the King of Spain was notified that the native Venezuelans practised herbally-induced abortion to prevent their children from being born into slavery.<sup>151</sup>

**Latin America and the Caribbean have very restrictive abortion laws, yet they have the highest incidence of abortion in the developing world.**

## Argentina

In Argentina— where Roman Catholicism is the state religion and the constitution requires a Catholic president— abortion is illegal except in cases of risk to the life of the pregnant woman and the rape of women considered mentally handicapped. Women and physicians face prison terms of one to four years for illegal abortions. In July of 1994, Argentina's President Carlos Menem proposed a constitutional amendment which would completely outlaw abortion, but it was not adopted.

An estimated 450,000 women have illegal abortions in Argentina each year,<sup>152</sup> and botched abortions are the primary cause of maternal death. Doctors fear to become involved because they could lose their right to practice, but affluent women do obtain safer abortions. Unwanted babies are being abandoned or killed.<sup>153</sup>

## Brazil

Since 1940, abortion has been legal in Brazil only on the grounds of rape or incest or to save the life of the woman. Otherwise, abortion is considered a crime, punishable under Brazilian law with sentences ranging from six to 24 years. It is estimated that between 1 million and 4 million abortions are performed in Brazil each year.<sup>154</sup>

Contraception was legalized only in 1988, and sterilization is the most common method used. Pregnant women are commonly fired from their jobs or face discrimination if they are able to continue working. In urban centres like Rio de Janeiro, millions of children and adolescents live on the street.

Abortions are performed in illegal clinics and in back alleys. Many women attempt abortions by themselves, with knitting needles, clothes hangers, the stem of a castor plant,<sup>155</sup> ingesting teas or herbs, or more recently, the drug misoprostol. At least 400,000 women are admitted to hospitals each year to recuperate from abortion attempts, making this the second leading cause of admission to state hospitals.<sup>156</sup> Deaths are common.

The Brazilian feminist movement has long demanded that abortion be legalized. According to 1993 reports, bills to legalize abortion are being discussed in the National Congress.

## Chile

In August of 1989 the outgoing junta under General Augusto Pinochet prohibited the performing of abortion under any circumstances,



including those situations where the woman's life is at stake.<sup>157</sup> Previously, the Health Code had allowed for "therapeutic abortion". Illegal abortion is the first cause of maternal death in Chile,<sup>158</sup> where approximately 200,000 women undergo abortions each year. Thirty thousand women are hospitalized annually for complications.<sup>74</sup> In Chile, girls are expelled from school if they become pregnant.<sup>159</sup>

When new legislation was presented to Congress in 1991, opposition to legal abortion came from across the political spectrum as well as from the influential Roman Catholic Church. Any change to the law is therefore unlikely.<sup>74</sup>

## Columbia

Even though it is illegal, abortion is the leading method of birth prevention in Columbia, with more than a quarter of a million abortions performed annually on adolescents alone, according to the country's health minister.<sup>168</sup> Abortions are technically legal only in cases where the woman's life is in danger. Thousands of Columbian girls and women perish every year from illegal abortions by unqualified people.<sup>169</sup>

However, safe, dependable and affordable services are available in some urban centres like Bogota. There, private birth control and prenatal care clinics are purposely overlooked by the authorities.<sup>170</sup>

## Cuba

In Cuba, elective abortions have been available in government hospitals since the mid-1960's. Women of all ages may obtain abortions on request for up to 10 weeks' gestation; later abortions require approval.<sup>160</sup>

Cuba is unique in that it is the one Latin American country where there is no "right to life" movement. It is also the one Latin American country where the Catholic Church has lost its powerful position.

## Honduras

Abortion in Honduras, one of Central America's most conservative countries, is completely forbidden, with a penalty of up to five years in prison for women convicted of aborting. A provision which would have permitted abortions for reasons of life or health or in cases of rape

**Illegal abortion is the principal cause of death among Latin American women of reproductive age.**

or fetal anomaly was rejected because it was seen as conflicting with constitutional “right to life” provisions.

While some women can procure illegal abortions in Honduras for approximately \$200, many poor women turn to unqualified abortion providers, with dire consequences.<sup>171</sup>

## Mexico

The decriminalization of abortion was first discussed in Mexico in the 1930’s and the present criminal code dates from 1931.<sup>161</sup> This Mexican law restricts legal abortion to instances of rape, fetal deformity, or threat to the woman’s life.

The approval process for legal abortion can take months, and both women and doctors risk jail sentences for illegal abortions. Most abortions in Mexico are clandestine and dangerous, while well-off women have abortions in the best possible conditions.<sup>161</sup> About 1,500 women die each year as a result of between one and two million illegal abortions.<sup>161</sup>

According to polls, eighty-eight percent of the Mexican population now thinks that it is up to the woman to decide on abortion.<sup>161</sup>

## Nicaragua

Despite a political revolution in 1979, the abortion law has not been reformed in this very Catholic country. Abortion is still a crime and a woman can receive a sentence of up to four years for procuring one.

The law— a legacy from the Somoza years— provides for “therapeutic” abortions involving the approval of a medical committee and the woman’s husband or parents. Botched, illegal abortions are a leading cause of maternal death in Nicaragua.<sup>162</sup>

## Peru

Abortion is illegal in Peru unless there is no other way to save the pregnant woman’s life or prevent serious and permanent injury to her health. In 1991, a new penal code decreased the penalty to a maximum of 2 years’ imprisonment (from four) when a woman self-aborts or consents to an abortion.

Approximately one in five pregnancies in this poor Catholic country ends in an illegal abortion, and hospital costs are higher for treating victims of botched abortions than for delivering babies.<sup>163</sup> In one Lima hospital, 30 out of every 60 women who go to the emergency room for treatment do so for injuries resulting from poorly performed abortions.<sup>164</sup>

A national family planning program has been implemented by the government to combat an unusually low rate of contraceptive usage and high adolescent pregnancy rate. In responding to harsh criticism from the Catholic Church, the Peruvian President said, "There's nothing terrible in not wanting more children eating trash in the streets."<sup>165</sup>

## Venezuela

It is estimated that 400,000 abortions are carried out each year in this country, where abortion is illegal. Those who have money can have an abortion under good medical conditions while those without financial means undergo dangerous backstreet abortions. It is estimated that the majority of maternal deaths are due to abortions done under unhygienic conditions.<sup>166</sup> Each year in Venezuela, some 5,000 adolescents under the age of 14 give birth.<sup>167</sup>

## NORTH AMERICA



### United States

Until the mid-19th century, first trimester abortions were legal in the United States under common law. By 1900, abortion was prohibited by law throughout the U.S. unless two or more physicians agreed that the procedure was necessary to preserve the life of the pregnant women.<sup>172</sup>

In the 1960's, complications from illegal abortions accounted for almost 20% of all pregnancy-related admissions to municipal hospitals in New York and California.<sup>173</sup> By the late 1960's, state legislatures began to reconsider the legalization of abortion in response to changes in public opinion and calls from national medical, legal, religious, and social welfare organizations. By 1973, 17 states had liberalized their abortion laws.

In 1973, the U.S. Supreme Court, in Roe v. Wade, recognized abortion as a right under the United States Constitution. Specifically, the Court ruled that during the first trimester of pregnancy the state cannot bar any woman from

**In 1973, the United States Supreme Court recognized abortion as a right under the U.S. constitution.**

obtaining an abortion from a licensed physician. During the second trimester, the state can regulate the abortion procedure only to protect the woman's health.<sup>174</sup> In the third trimester the state may regulate to protect fetal life, but not at the expense of the woman's life or health.

A bill passed in 1978 limited Medicaid funding for poor women's abortions to those performed in health-risk or life-threatening situations or in cases of incest. Immediately thereafter, Medicaid-funded abortions dropped 96% from 250,000 to 2,421 per year.

In June of 1981 Congress eliminated rape and incest as grounds for obtaining federal funds for abortions.

## Reagan-Bush Years: 1980-1992

The Reagan and Bush administrations worked to restrict abortion through a number of avenues. In 1981, anti-abortion politicians tried (unsuccessfully) to introduce a "Human Life Amendment", which would have declared all conceptions to be legal "persons" and prohibited abortions on all grounds.

In an attempt to overturn the Supreme Court's ruling of Roe v. Wade, President Reagan appointed three conservative judges to the U.S. Supreme Court, and George Bush appointed two more, including Clarence Thomas in 1991. Federal "gag" rules, which were introduced by the Department of Health and Human Services in 1988 to prohibit federally-funded family planning clinics from discussing abortion with their patients, even if asked, met with broad public opposition and were challenged in Congress and the courts.

On July 3, 1989, the Supreme Court decided a case from Missouri called Webster v. Reproductive Health Services. The court ruled, 5-4, that states may bar public employees and public hospitals from being used for abortions. States may also require doctors to conduct tests to try to determine whether a fetus can survive outside the womb,<sup>175</sup> although there are no known tests for determining viability. The Court also let stand the preamble to the Missouri law, which declared that life begins at conception. After the Webster ruling, many anti-abortion bills were introduced in state legislatures. Some bills supporting abortion rights were also introduced at the state level. And in 1990, hearings into a federal Freedom of Choice Act (to establish a national standard for protecting women's access to legal abortion) began in both the House and the Senate.<sup>176</sup>

In 1992, the U.S. Supreme Court further weakened the right to abortion when the constitutionality of Pennsylvania's abortion law was challenged. In this important decision, called Planned Parenthood v. Casey, the Supreme Court found that requirements of a mandatory 24-hour delay before an abortion, lectures by doctors

against abortion, consent from parents of minors, and reporting requirements did not constitute an “undue burden” on women seeking to end an unwanted pregnancy. Such provisions were therefore constitutional, the Court held.

In Casey, the Supreme Court fell one vote short of actually overturning the 1973 Roe v. Wade decision (which made abortion a protected, fundamental right).

As for the “abortion pill” RU 486, the Food and Drug Administration issued an import ban against RU 486 in 1989.

An increase in more militant anti-abortion tactics targeting abortion clinic doctors, staff and patients began in earnest in the mid 1980’s and continues today. These tactics include clinic disruptions, blockades, vandalism, bomb threats, death threats, invasions, assaults, arsons, bombings, and kidnappings.<sup>177</sup>

## The Clinton Administration

On his second day in office, U.S. President Bill Clinton ordered the reversal of a number of abortion-related restrictions from the Reagan/Bush Administrations, including the “gag rule” banning abortion counselling at federally financed clinics.

The new Clinton administration also immediately began encouraging the manufacturer of the “abortion pill” RU 486 to make the drug available in the U.S. This encouragement resulted in the May, 1994 agreement by the company, Roussel Uclaf, to donate its patents on RU 486 to the Population Council, a non-profit organization that began testing the pill on 2,000 American women at 12 sites.

President Clinton appointed to key positions people who are unabashedly pro-choice on abortion, including Dr. M. Jocelyn Elders as U.S. Surgeon General and Judge Ruth Bader Ginsburg to the U.S. Supreme Court. The fact that Clinton’s national health-care plan would have covered most abortions drew the opposition of the U.S. Roman Catholic Bishops and the anti-abortion lobby.

President Clinton also quickly overturned the “Mexico City Policy”, a Reagan administration prohibition on aid to international family planning programs that support abortion. At the 1994 UN population conference in Cairo, the U.S. government supported improved access to contraception and safe abortion in the developing world,

**U.S. abortion clinics face harassment, threats, blockades, vandalism, invasions, arsons, bombings, kidnappings and shootings.**

despite the Vatican's condemnation. The Clinton approach also included efforts to bolster the health and survival of children and improve women's education in order to lower fertility rates.

On May 12, 1994, the Freedom of Access to Clinic Entrances Act (FACE) was passed by the U.S. Senate. This law makes the blockading of abortion clinics a federal crime and imposes prison terms and fines on anti-abortion protesters who threaten violence or intimidate clinic workers or patients.

The law was propelled by a spate of unusually violent attacks at clinics in 1993, including several firebombings, the murder of an abortion-provider, Dr. David Gunn, at a clinic in Pensacola, Florida, and the shooting of Kansas physician Dr. George Tiller. In the summer of 1994, a second doctor and his escort were murdered in Pensacola. Anti-abortion activists were convicted in all these attacks on physicians.

On December 30, 1994, a gunman opened fire on staff and patients at two clinics in suburban Boston, killing two women on staff and wounding five other people. The next day, a clinic in Virginia was fired upon, but no one was shot. The police arrested John Salvi, an opponent of abortion, in these incidents.

Stepped up harassment and intimidation of individual doctors has lowered the number of abortion providers and made abortion less available to women in many parts of the country.

## CANADA

In 1869 Parliament enacted a criminal law which prohibited abortion and punished it with life imprisonment. In 1892 came the first statutory prohibition against the sale, distribution and advertisement of contraceptives. These laws were to remain virtually unchanged until 1969.<sup>178</sup>

Contraception and abortion in Canada went underground for the next century, and women's reproductive health suffered greatly as a result. For example, 4,000-6,000 Canadian women died as a result of bungled illegal abortions between 1926 and 1947.<sup>179</sup>

In the 1960's a push to legalize abortion came from the Canadian Medical Association, the Canadian Bar Association, women's groups, some churches, social welfare agencies, the Canadian Labour Congress, and the Humanist Fellowship of Montreal (whose President was Dr. Henry Morgentaler). Estimates of the number of illegal abortions being performed in Canada during this time range from 35,000 to 120,000 annually,<sup>203</sup> a number which is not inconsistent with the number of legal abortions performed today.

In 1969 the criminal law was amended to legalize contraception and certain abortions performed by a qualified physician in an approved hospital. Under section 251 of the Criminal Code, a therapeutic abortion committee of at least three doctors was required to decide whether the continuation of the pregnancy “would or would be likely to endanger the woman’s life or health”. The doctor performing the abortion could not be a member of the committee and the woman did not meet the doctors who sat on the committee. The woman had no right to appeal the decision if her application was rejected.

Hospitals were not compelled by law to set up abortion committees. Roman Catholic hospitals and small hospitals with fewer than four doctors on staff did not have them. Most other hospitals chose not to have committees.

According to the Report of the Committee on the Operation of the Abortion Law (the Badgley Report, 1977), a woman requesting an abortion faced bureaucratic delays which averaged *eight weeks* from the time she first consulted her doctor about a suspected pregnancy to the time her request was granted. The situation discriminated against women who could not afford to travel to a centre which could provide an abortion.

In addition, section 251 did not define “health”. Since therapeutic abortion committees interpreted “health” differently, the reasons for which women obtained abortions varied widely. This arbitrariness in the application of the law prompted the authors of the Badgley Report to state that:

*“the procedure provided in the Criminal Code for obtaining therapeutic abortions is in practice illusory for many Canadian women.”*<sup>180</sup>

In spite of representations by many national groups urging repeal or radical reform of the law, the federal government did not change it. Section 251 remained in place until 1988.

### Dr. Henry Morgentaler and the 1970’s

In August, 1973, the Montreal physician was arrested for performing a technically illegal abortion—that is, one done in his clinic without the approval of a therapeutic abortion committee.

In November of that year, a

From 1869 - 1969,  
abortion in Canada was a  
crime punishable by life  
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Contraception was also  
illegal.

jury acquitted him of the charge. But in an unprecedented action, the Quebec Court of Appeal overturned the jury verdict and found Dr. Morgentaler guilty in April, 1974.

The doctor appealed his case to the Supreme Court of Canada. In March 1975, the court voted 6-3 to uphold the Quebec Court's conviction and Dr. Morgentaler was sentenced to eighteen months in prison.

While serving his sentence, he was tried on a second charge. In June 1975, a jury acquitted him again. The Quebec Court of Appeal upheld that acquittal.

In January, 1976 the Federal Minister of Justice set aside the conviction on the first charge and ordered a new trial. The Minister acted under a new amendment to the Criminal Code. This amendment disallowed the overturning of the jury acquittal by the court of appeal. Dr. Morgentaler, who had suffered a heart attack in jail, was freed after serving ten months of his sentence.

In September of 1976 he was acquitted at the retrial of the original charges, the third time a jury had acquitted him. In late 1976, the Quebec government dropped all further charges against Doctor Morgentaler.<sup>181</sup>

## Canada in the 1980's

In May, 1983, Dr. Morgentaler opened a clinic in Winnipeg. The clinic was raided by police in June and Dr. Morgentaler, Dr. Robert Scott and seven staff members were charged with conspiracy to procure a miscarriage. Subsequently, the Crown decided to proceed against the doctors and head nurse only.

Meanwhile, Dr. Morgentaler had opened another clinic in Toronto. On July 5, 1983, police raided the Toronto clinic, seizing equipment and charging Drs. Morgentaler, Scott and Smoling with conspiracy to procure a miscarriage. A jury acquitted all three doctors after only six hours of deliberation on November 8th, 1984. The Toronto clinic reopened the following month, but soon after Drs. Morgentaler and Scott were again charged with conspiracy to procure a miscarriage.

The Ontario Attorney General Roy McMurtry announced that he would appeal the November jury acquittal. In October, 1985, the Ontario Court of Appeal set aside the jury acquittal and ordered a new trial.

Dr. Morgentaler appealed. Finally, on January 28, 1988 the Supreme Court of Canada struck down the abortion law as contrary to section 7 of the Charter of Rights and Freedoms (guaranteeing "life, liberty and security of the person"). Chief Justice Dickson stated that:



*“Section 251 clearly interferes with a woman’s physical and bodily integrity. Forcing a woman, by threat of criminal sanction, to carry a foetus to term unless she meets certain criteria unrelated to her own priorities and aspirations, is a profound interference with a woman’s body and thus an infringement of security of the person.”* <sup>182</sup>

Anti-abortion activist Joseph Borowski appeared before the Supreme Court in October of 1988, trying to end abortion in Canada by claiming fetuses are protected as persons under the Charter of Rights and Freedoms. On March 10, 1989, the court ruled unanimously that, since section 251 had been struck down by the Morgentaler decision, Borowski’s challenge to it was moot.<sup>183</sup>

“Operation Rescue”, the American anti-abortion strategy of blockading access to abortion clinics, was seen in several Canadian cities during 1988 and 1989. The Vancouver Everywoman’s Clinic and the Toronto Morgentaler Clinic successfully obtained injunctions to keep protesters away from their premises.

Dr. Morgentaler set up a clinic in Halifax in 1989 to provide service for Atlantic women, hundreds of whom travelled to his Montreal clinic each year because they could not obtain an abortion locally. After publicly promising to “keep Dr. Morgentaler out of Nova Scotia”, the provincial government passed legislation outlawing abortions performed in clinics and charged Dr. Morgentaler under the provincial law. Once more, Dr. Morgentaler was back in court fighting for the right to provide abortions in clinics.

The year 1989 was a pivotal one for two Canadian women whose ex-boyfriends tried to use the courts to prevent them from obtaining abortions. Lower courts in Ontario and Quebec granted injunctions against Barbara Dodd and Chantal Daigle respectively. The Ontario injunction was (relatively) quickly set aside for technical reasons, but Chantal Daigle had to appeal her case up to the Supreme Court. By the time the court could convene, Ms. Daigle would have been 22 weeks pregnant. Her lawyer announced in court that Ms. Daigle had been unable to wait any longer and had already obtained her abortion in the U.S.

Nonetheless, and because of the significance of the issue, the court continued to hear her appeal and delivered a unanimous decision overturning the injunction. The Court stated that neither the Quebec Charter of Human Rights and Freedoms, the Quebec Civil Code, nor Canadian common law grants the fetus a right to life. The court said that in Quebec, as in other provinces,

**4,000 - 6,000 Canadian women died from illegal abortions between 1926 and 1947.**

a fetus does not enjoy rights unless it is born alive.<sup>184</sup> The Supreme Court also rejected the argument that a prospective father has an interest in a fetus allowing him to prevent an abortion.

Chantal Daigle's ordeal was highly publicized and prompted a great deal of public outrage. The federal government's response was to introduce legislation to return abortion to the Criminal Code. Bill C-43 declared abortion a crime punishable by up to two years in prison unless a physician determined that the pregnancy threatened the pregnant woman's physical, mental or psychological health.

After almost two years of decriminalized abortion, pro-choice groups opposed Bill C-43 as a step backwards for women's reproductive choice. The Canadian Medical Association warned that under such a law, many doctors would stop performing abortions for fear of malicious prosecution and harassment by third parties such as ex-boyfriends and anti-abortion activists. Anti-abortion groups opposed the legislation because it failed to make all abortions illegal.

## Canada in the 1990's

The House of Commons passed Bill C-43 without amendment on May 29, 1990, by a narrow vote of 140-131. The bill needed Senate approval to become law. Women needing an abortion at that time were confused about its legality, and cases of illegal abortion began to appear for the first time in Canada in almost twenty years. In Ontario, a 16-year-old Kitchener girl sustained physical injury from a botched abortion started in a pool hall,<sup>185</sup> and a Toronto woman died from a self-induced coathanger abortion.<sup>186</sup>

Bill C-43 was defeated by the Senate on January 31, 1991 in a dramatic tie vote. Although Bill C-43 never became law, surveys at the time showed that a significant number of physicians, wary of legal harassment, stopped performing abortions.<sup>187</sup> The legal status of abortion is now the same as other medical procedures, governed by provincial and medical regulations and standards.

Abortion clinics have opened in several major cities in Canada since the Supreme Court's 1988 Morgentaler decision. Nova Scotia's 1989 legislation outlawing abortions performed in clinics was overturned by the Supreme Court of Canada in 1993. Dr. Morgentaler successfully challenged similar anti-clinic legislation in New Brunswick in 1994, when he opened a clinic in Fredericton. The New Brunswick government appealed this decision.

Manitoba and Prince Edward Island still refuse to cover clinic abortions under their provincial health insurance plans, meaning that women there have to pay the full cost out of their own pockets if their

abortion is done at a clinic. Dr. Henry Morgentaler has successfully challenged these provinces' policies in court, but both governments are continuing to fight against coverage.

A firebomb destroyed the Toronto Morgentaler Clinic on May 18, 1992. No one has been charged with the crime. On August 30, 1994, the Ontario government successfully obtained a temporary public injunction against anti-abortion harassment of doctors and patients at certain clinics, doctors' offices and homes in five Ontario cities.

On November 8, 1994, B.C. gynaecologist and abortion provider Dr. Garson Romalis was shot and seriously wounded by a sniper at his home in Vancouver.

The "abortion pill" RU 486 has not been released in Canada, although requests for its testing have been made by the Ontario and B.C. health ministries, the national medical associations, and women's groups. The manufacturer is apparently concerned about anti-abortion opposition.

## RELIGIOUS GROUPS

Whatever the religion, there has existed throughout history a diversity of opinion regarding induced abortion. Today, there is no theological unanimity within the various religions concerning a woman's right to choose abortion. Distinctions among official, semi-official and non-official religious attitudes toward abortion are universal; some flexibility can be found almost everywhere. Women of every faith (even those with strict teachings against abortion) have defied their religions in their reliance on abortion as a necessary means of ending unwanted pregnancies.<sup>188</sup>

Below are the positions of the major churches and spiritual groups, both Christian and non-Christian, found in Canada.

### CHRISTIAN

#### Anglican

There is some division on abortion policy in the Anglican Church of Canada. While the 29th Synod in 1980 rejected abortion "for reasons of convenience or economic or social hardship,"<sup>189</sup> a 1983 report from a subgroup of the Church's Task Force

Today, Canada is exceptional because it does not have an abortion law. Abortion was completely decriminalized in 1988.

on Human Life held that in circumstances such as real economic hardship, abortion may be a moral choice which should not be denied the woman. The fetal 'right to life' is "a diminished right if ...it stands in the way of a woman's health or sanity", the Task Force stated.

In 1989, the Anglican Church took a position that abortion be allowed only in cases where pregnancy endangers the woman's physical or mental health. It stated that abortion "should never be used except for serious therapeutic reasons". It recommended improved economic and social support for pregnant women.<sup>190</sup> Calls for a more liberal position have been resisted by a strong "right-to-life" lobby within the church.<sup>191</sup>

## Baptist

Until 1984, the regional Baptist Convention of Ontario and Quebec accepted abortion when the pregnancy constituted a grave threat to the woman's life or health, when there was risk of a deformed child, and when the pregnancy was the result of rape or incest. This was despite the Canadian Baptist Federation's 1982 resolution opposing abortion for any reason other than to save the woman's life. In 1984, the Ontario and Quebec group tightened its abortion position, and brought it in line with that of the Canadian umbrella organization.<sup>191</sup>

## Evangelical Fellowship

The Evangelical Fellowship of Canada, representing approximately 25 conservative Christian denominations, adopted a strong anti-abortion stand in 1989, calling for a government policy that would make any abortion illegal unless performed to save the woman's life.<sup>191</sup>

## Evangelical Lutheran

The Evangelical Lutheran church, the fourth largest Protestant denomination, is deeply divided on the issue of abortion, making it difficult to determine an official church policy.<sup>192</sup>

At its 1989 convention, the church adopted an interim statement on abortion which repudiates "abortion on demand", upholds the sanctity of life, and sets out means for ministering to women facing unwanted pregnancies. There was no agreement on the special circumstances under which abortion may take place. The year before, however, the Lutheran Church-Canada had rejected abortion as a moral option except to prevent the death of the woman.<sup>191</sup>

## Jehovah's Witnesses

This religion says that in the eyes of the Creator, Jehovah God, it is a sin to make a life that one does not intend to care for, or to have an abortion.<sup>193</sup>

## Presbyterian

The Presbyterian Church in Canada holds that abortion should be lawful only if a pregnancy endangers the woman's life or is likely to impair her physical or mental health in a permanent or prolonged way. It has consistently opposed "abortion on demand", and holds that there is no point after the moment of conception when the fetus does not qualify as human life. Some Presbyterians have called for a tightening of the church's position.<sup>191</sup>

## Roman Catholic

The Roman Catholic church considers contraception "intrinsically evil", and takes perhaps the most rigid stance against abortion. It holds that abortion is never justified, and is grounds for excommunication under church law.

It is interesting to note that historically (before 1869), the Catholic Church held that early in the pregnancy the fetus did not have a soul and such abortions were not serious. In fact, the Church's current position against abortion stems from its moral and traditional practices, and has never been official doctrine or dogma.<sup>6</sup>

Today, the debate continues. Catholics for a Free Choice is a pro-choice Catholic group which believes that it is an individual woman's right to make decisions regarding abortion and contraception in accordance with her own conscience. Polls like the Angus Reid poll conducted in 1993 for *Maclean's* Magazine show that 77% of Catholic Canadians polled believe that abortion should be permitted in certain circumstances, and 36% think it should be permitted whenever a woman decides she wants one.

Today, some religions in Canada consider abortion to be a moral choice. Other religions teach that abortion is wrong.

## United

The 24th General Council of the United Church of Canada stated in January, 1971 that: "abortion is morally justifiable in certain medical, social and economic circumstances," and that "abortion should be a private matter between a woman and her doctor". The United Church therefore called for the removal of abortion from the Criminal Code, except when performed by medically unqualified people and in places not approved for that purpose. Successive General Councils maintained this stand, with some modification.

In 1989, the United Church of Canada publicly urged the federal government not to recriminalize abortion and to use the Canada Health Act to require all provincial governments to provide adequate contraceptive education and services as well as abortion services.<sup>194</sup>

## NON-CHRISTIAN

### Buddhism

Buddhists believe in reincarnation, a view based on the 2,500-year-old Buddhist Tipitaka. Like Hindus, they believe that each of us is born again and again in a life cycle. One's destiny in this life and the next is controlled by karmic law, and one accumulates good and bad karma through one's deeds, words and thoughts.

Life is described in terms of mind and matter, which continuously break up and come together. Buddhists characterize all forms of life (including animals) as "sentient beings" which are made up of the mind and the body elements in a symbiotic relationship. A fertilized egg is considered a sentient being, and abortion is synonymous with killing. In order to dispel any bad karma brought on by having an abortion, certain rituals must be observed by women who have them.

Nevertheless, a position paper of the Buddhist Churches of Canada stresses that the abortion decision is one which the woman herself must make.<sup>195</sup>

### Hinduism

The Hindu view is based in the 4,000-year-old Hindu Vedas. Like the Buddhists, Hindus believe that each of us is born again and again in a life cycle, and that abortion is synonymous with killing and

therefore inconsistent with a belief in non-violence. However, medically therapeutic abortions are tolerated.<sup>195</sup>

## Humanists

Humanists do not consider an embryo/fetus to be a person, but rather, to have the potential of becoming one. They see the abortion decision as a personal, moral choice for the woman and not properly the subject of criminal legislation.<sup>195</sup>

## Islam

The majority of Muslim scholars permit abortion, although they differ on the stage of fetal development beyond which it becomes prohibited.<sup>196</sup>

Scholars agree that abortion at or after the ensoulment stage is prohibited, except to save the woman's life. One group permits abortion up to 120 days after conception. Another prohibits it as early as eighty or even forty days after conception. In either case, many take the view that abortion does not abruptly become prohibited at a certain stage, but becomes increasingly disfavoured as the fetus develops, until it becomes finally prohibited.<sup>196</sup>

On the other hand, a minority of scholars hold a very strict view which prohibits abortion the minute the semen attaches to the uterus, on the theory that it is already on its way to being ensouled. These scholars also view abortions performed at later stages of pregnancy as more serious than those performed at the earlier stages.

## Judaism

Abortion for therapeutic reasons, when the woman's life is clearly in danger, is *mandatory* in Judaism. Her life takes absolute precedence over the potential life of the fetus, which is not regarded as full life until late in the process of birth.

Otherwise, there is no unified Jewish position on abortion. Conservative rabbis do not follow a single view. Most hold that mental distress is sufficient for the woman to obtain an abortion. Neither do the Orthodox authorities agree, and Orthodox women must consult their

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rabbis. Rabbis in Reform Judaism generally take a pro-choice stance toward a woman's decision for abortion.

No one group officially speaks for all of Judaism, but the Central Conference of American Rabbis, as well as the Union of American Hebrew Congregations, which represents the Reform movement, formally support the woman's right to moral and responsible choice.

## **Native Spirituality**

Abortion is regarded as killing, and in the native culture children are often adopted by other members of the community.

## **Sikhism**

Sikhism is a religion born in India in the 15th century. Sikhs are emphatic that the woman's right far outweighs the right of an embryo/fetus, which is not given the status of a human person. Abortion is allowed up to a medically safe point.<sup>195</sup>

## **Unitarian**

Unitarians stress the integrity and worth of individuals. They promote family planning and education for responsible sexuality, and support the right of all women to freely exercise their own conscience in the matter of abortion. The Unitarian Council of Canada urged the federal government not to recriminalize abortion in 1989 and to develop a policy which would ensure access to abortion from coast to coast.



# SUMMARY

Abortion is not a modern aberration, but a practice common to human communities throughout history. Historically, early abortion was tolerated by the Church, and for centuries it was not punished under English common law. Nations which have passed abortion laws have done so for a variety of reasons, such as concern for women's health, the demands of the medical profession, demographic fears, religious beliefs, etc.

Restrictive abortion legislation does not lead to a low abortion rate. The data from Romania when it prohibited abortion, from Italy before its liberalized abortion law, and from Latin America, the Middle East, Africa and other developing countries show that the abortion rate is high in countries in which abortion is illegal. Whether legal or not, every year millions of individual women around the world— of all cultural, religious, and economic backgrounds— seek out abortion when they cannot carry a pregnancy to term.<sup>197</sup> History has proved that laws do not stop abortion.

It is the number of maternal injuries and deaths, not abortions, that is most affected by restrictive legal codes.<sup>198</sup> Abortions performed outside the law have a higher rate of complications and deaths, the majority of which are entirely preventable. Worldwide, more than one third of the estimated 50 million annual abortions are illegal abortions, occurring mainly in the developing world. Researchers estimate that 70,000 to 200,000 women a year around the world die from illegal and unsafe abortions.<sup>32</sup> Doing away with such purposeless human suffering has been one of the main motives behind the movement to liberalize abortion laws the world over.

At present almost two thirds of the world's women live in countries where abortion may be legally obtained for a broad range of social, economic or personal reasons. When abortion is made legal, available and safe, women's reproductive health improves. Abortion-related mortality

**When abortion is made legal, safe and available, the health of women and their families improves.**

is reduced by at least 25% and related illness by far more.<sup>199</sup> Where abortions are safe and affordable, by far the largest percentage of women terminate their pregnancies within the first trimester.<sup>197</sup>

When women can avoid births which are unwanted, mistimed, or too numerous, their children are more likely to survive and be healthy.<sup>200</sup> The incidence of infanticide and child abandonment typically go down when abortion is legalized.

Even in countries where the abortion law seems "liberal", it cannot be assumed that every woman has an equal chance of getting an early, safe abortion if she needs one. Lack of medical facilities or personnel, women's low status in society, cultural taboos, restrictive regulations and financial roadblocks can effectively curtail access to legal abortion and contraception, especially for disadvantaged and young, unmarried women. Changes in laws, while necessary, are not themselves sufficient for widespread access to family planning and safe abortion services.<sup>201</sup>

At the September, 1994 U.N. International Conference on Population and Development (ICPD) in Cairo, representatives from over 180 nations met and developed the ICPD Programme of Action, which had this to say about abortion:

*"All Governments and relevant intergovernmental and non-governmental organizations are urged to strengthen their commitment to women's health, to deal with the health impact of unsafe abortion as a major public health concern and to reduce the recourse to abortion through expanded and improved family planning services."*

It has long been recognized that the number of abortions can be effectively reduced by educating people on human sexuality and family planning, and making safe, appropriate and effective contraception available.<sup>202</sup> Empowering women in society, as well as involving men more in reproductive issues, are also important to reducing the rate of unwanted pregnancy and hence abortion.

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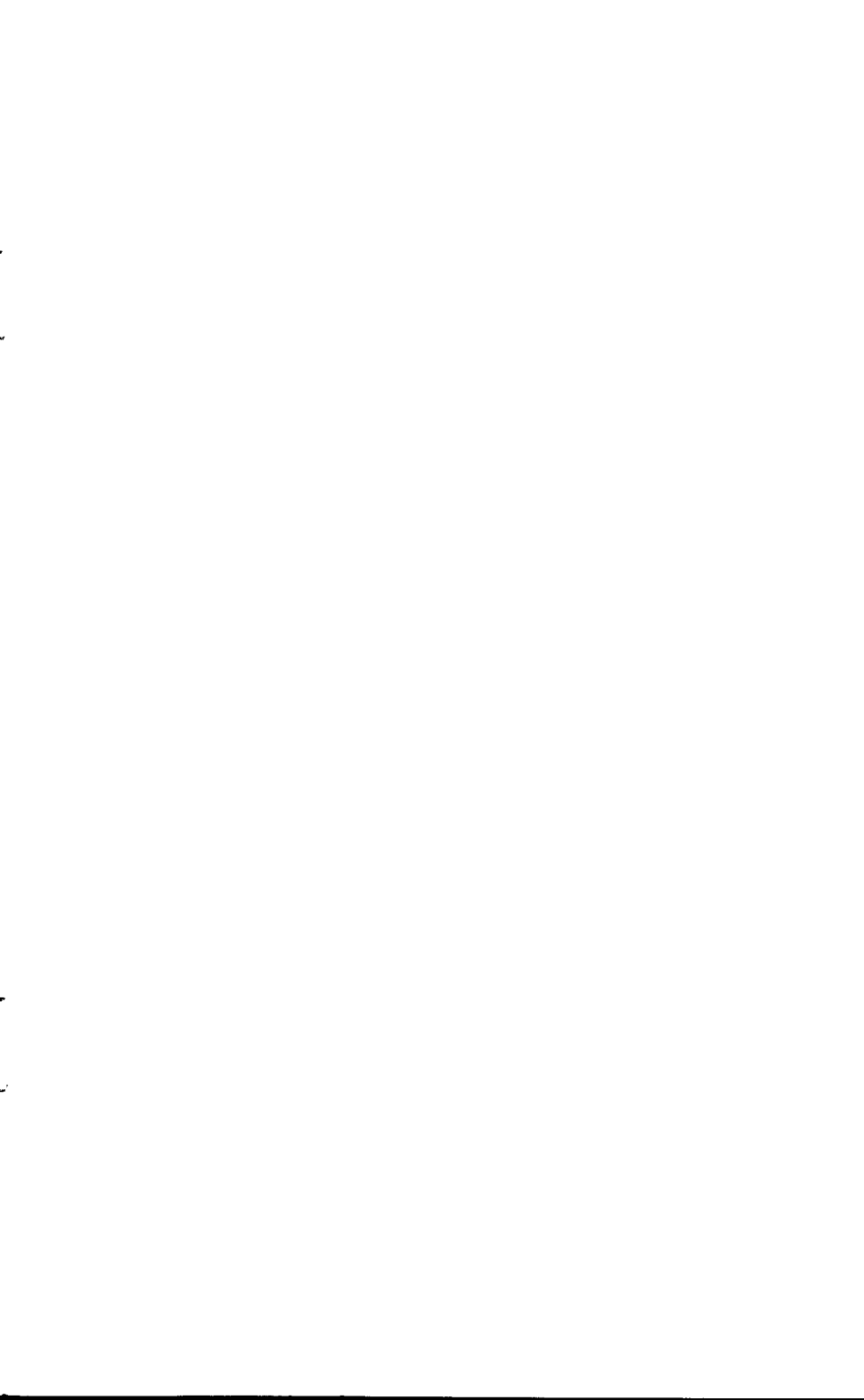












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