

A functionalist attitude towards “free abortion” with emphasis on the procedure of the European Court of Human Rights

*Seyyed Mohammad Hosseini**

*Saeed Rahae***

DOI: 10.22096/HR.2023.529256.1311

[Received Date: 28/04/2021 Acceptance Date: 29/01/2022]

Abstract

The present article is based on the analysis of the cases of the European Court of Human Rights and an impartial study of the functions and positive and negative effects of free abortion -with minimal restrictions- regardless of the moral, Philosophical or religious basis; to find out which of the two perspectives on the widespread limitation of abortion, or its widespread licensing, can be most beneficial in practice for the family or society as a whole.

This study first shed light on the European Court of Human Rights' approach to abortion, and under two headings, in an analytical and functionalist manner, enumerates the positive and negative effects of abortion on society. Gender-based abortions, abortion and the exploitation of women, tourism and the abortion industry are just a few of the abusive functions of the free abortion in society that have even gradually reduced the European Court of Human Rights' practice to restricting abortion laws; in conflict with the mother's wishes, the life of the fetus, the rights of the potential father, and other factors, the European Court of Human Rights has preferred a balance between all the interests involved rather than the wishes of the mother.

Keywords: European Court of Human Rights; Right to Life of the Fetus; Privacy; Right to life of the Pregnant Woman; Social Function of Abortion.

* Ph.D. Student of International law, Mofid University, Qom, Iran. Email: mh_smh@yahoo.com

** Assistant Professor, Faculty of International Law, Mofid University, Qom, Iran.

Email: srahaee@gmail.com



Bibliography

A) Books & Article

- Aghaynia, Hussein. *Exclusive Criminal Law (Crimes)*. 11th Edition. Tehran: Mizan Publishing, 2013. [In Persian]
- Alizadeh Pasdar, Shiva. *Concised Williams, obstetrics*. Adapted from the original text. Bita [In Persian]
- Berer, Marge. "Abortion Law and Policy around the World: In Search of Decriminalization." *Health and Human Rights Journal* 19, No. 1 (June 2017): 13-27.
- Boonin, David. *A Defense of Abortion*. University of Colorado. Boulder: Cambridge University Press, 2003.
- Coser, Lewis Alfred. *Masters of Sociological Thought: Ideas in Historical and Social Context*. Trans. by Mohsen Solasi. Tehran: Scientific Publication, 2011. [In Persian]
- Das Gupta, Monica. "Is banning sex-selection the best approach for reducing prenatal discrimination?" *Asian Population Studies* 15, No. 3 (September 219): 319-336.
- Fathnejad Kazemi, Azita; Nasibeh Sharifi; Somayeh Khazaeian & Ali Ramadan Khani. "Different Dimensions of Abortion and Related Policies in the World." *Medical Ethics*, No. 39 (2017): 76-89. [In Persian]
- Fisher, Brian E. *Abortion: The Ultimate Exploitation of Women*. USA: Published by Online for Life, 2013.
- Franklin, Adrian. "Sex and Tourism." *Siyahat Gharb Journal*, no. 61 (2008): 23-30. [In Persian]
- Higgins, Anna. *Sex-Selection Abortion: The Real War on Women*. American Reports Series: Charlotte Lozier Institute, 2016.
- Hirvonen, Ewa. "Polish Abortion Tourism." Master's Thesis, Laurea University of Applied Sciences, 2017.
- Hornby, A. S. *Oxford Advanced Learner's Dictionary of Current English*. Sixth Edition. Tehran: Published by diba, 1379.
- Lee, Ellie. *Abortion Law and Politics Today*. Great Britain: Macmillan press LTD, 1998.
- Management of Unintended and Abnormal Pregnancy Comprehensive Abortion Care*. Edited by Maureen Paul, Steve Lichtenberg, Lynn Borgatta, David A. Grimes, Phillip G. Stubblefield, and Mitchell D. Creinin. UK: Wiley-Blackwell, 2009.
- Marky, Bloom. "Tourism and Abortion." *Siyahat Gharb Journal*, no. 65 (2008): 51-53. [In Persian]
- Mirelle Delmas, Marty. "Following the common European criminal law." Trans. by Alihossein Najafi Abrandabadi. *International Law*, no. 21 (1998): 181-212. [In Persian]

- Moin, Mohammad. *Persian Culture*. Tehran: Amirkabir Publication, 1996. [In Persian]
- Moshiri, Mahshid. *Persian Language Dictionary*. Tehran: Soroush Publishing, 1990. [In Persian]
- Nancy L. Cohen. “How the Sexual Revolution Changed America Forever.” Trans. by Imani Ragheb. Abolfazl. *Siyahat Gharb Journal*. no. 105 (2012): 34-52. [In Persian]
- Puppink. Gregor. “Abortion and the European Convention on Human Rights.” *Irish Journal of Legal Studies* 3, No. 2 (July 2013): 142.
- Rostami, Sahar; Fatima Abdi; Mahboubeh Ahmadi & Abu Ali Dadeer. “A Comparative Study of Abortion Laws in World Countries.” *Quarterly Journal of Medical History*, No. 17 (2018): 79-112. [In Persian]
- Shambiati, Houshang. *Specific Criminal Law on Crimes against Individuals*. 10th Edition. Volume 1. Tehran: Majd-Zhoubin, 2006. [In Persian]
- Tavassoli, Gholamabbas. *Sociological Theories*. Tehran: Samt Publications, 1997. [In Persian]

B) Documents

- Abortion Legislation in Europe, The Law Library of Congress, Global Legal Research Center (January 2015).
- American convention of human rights, Adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November 1969.
- Case of A, B and C v. Ireland; Application no. 25579/05; 16 December 2010.
- Case of Brüggemann and Scheuten v. Germany, no. 6959/75, Commission’s report of 12 July 1977.
- Case of Boso v. Italy, no. 50490/99, Judgment of 5 September 2002.
- Case of the S.J. v. BELGIUM, Application no. 70055/10, March 19, 2015.
- Case of P and S v. Poland; Application no. 57375/08, 30 October 2012.
- Case of R.H. against Norway; Application No. 17004/90; The European Commission of Human Rights sitting in private on 19 May 1992.
- European abortion laws a comparative overview, center for reproductive rights, [//reproductiverights.org/sites/default/files/documents/European%20abortion%20law%20a%20comparative%20review.pdf](http://reproductiverights.org/sites/default/files/documents/European%20abortion%20law%20a%20comparative%20review.pdf).
- European convention of human rights.
- Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine; European Treaty Series- No. 164, Oviedo, 4. IV, 1997.
- General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women) Adopted at the Sixty-eighth session of the Human Rights Committee (March 29, 2000).

Protection of Life During Pregnancy Act 2013, No. 35 of 2013.

Women at work, trends, Executive summary, International Labour Office, Geneva (2016).

C) Websites

Abortion in Ireland, 2020/5/2, <https://www.mariestopes.ie/abortion-care/is-abortion-legal-in-ireland>.

Industry of abortion, 2019/10/12, <https://spuc.org.uk/blog/the-abortion-industry-and-body-parts-what-happens-after>.

Pro-life, 2020/4/22, <https://spuc.org.uk/>.

Sexual revolution, 2020/4/13, https://en.wikipedia.org/wiki/Sexual_revolution.

Abortion rates, 2020/5/1, <https://www.vox.com/2016/5/11/11657174/abortion-rates-falling>.

Pro-life, 2020/4/16, <http://www.whyprolife.com/alice-paul-feminist-pro-life-advocate>.

Vocabulary, 2020/4/1, <https://medical-dictionary.thefreedictionary.com/induced+abortion>.

Statistics, 2020/6/2, <https://www.who.int/news-room/fact-sheets/detail/preventing-unsafe-abortion>.

Sex selective abortion, *Nils Muižnieks*, 2020/6/2, <https://www.coe.int/en/web/commissioner/-/sex-selective-abortions-are-discriminatory-and-should-be-bann-1>.