

# A review of abortion in Ireland

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## Introduction

Induced abortion is an international issue that encompasses medical, legal, emotional, personal and psychological domains. In 2003, the total number of induced abortions worldwide was 41.6 million, compared to 46 million in 1995.<sup>1</sup> Most abortions occur in developing countries (35 million) rather than in developed countries (seven million), which is reflective of the relative population distribution. The average annual rate at which women chose to end unwanted pregnancies in 2003 was similar in developed and developing regions, i.e., 26 per 1,000 women aged 15-44 years in the developing world and 29 per 1,000 women aged 15-44 years in developed countries.<sup>1,2</sup> Despite significant differences in legislation on abortion across the globe, the stringency of laws does not seem to affect incidence. The estimated abortion rate in Europe, where abortion is legal in the majority of countries, is 28 per 1,000 women, whereas the rate in Africa, where abortion is illegal in most countries, is roughly 29 per 1,000 women. Western and northern Europe boast the lowest rates of abortion in the world (12 and 17 per 1,000 women, respectively), even though access to induced abortion is unrestricted in most cases.<sup>3</sup>

## Abortion

Abortion is defined as the termination of a pregnancy resulting in or closely followed by the death of the embryo or foetus.<sup>4</sup> Abortion can be spontaneous or induced by either medical or surgical methods. Historically, induced abortion techniques have included

abortifacient herbs, vigorous exercise, energetic jumping and the use of sharpened instruments.<sup>5</sup> Currently, the most effective medical regimen for inducing abortion is the combination of an antiprogesterone, such as mifepristone, and a prostaglandin, such as misoprostol.<sup>6</sup> Due to limited access to mifepristone worldwide, various combinations of medical abortion protocols have been developed using either prostaglandins alone or in combination with methotrexate, a dihydrofolate reductase inhibitor.<sup>6</sup> The most effective and safe surgical abortion method includes electric or manual vacuum aspiration.<sup>7</sup>

The legality, safety and availability of induced abortions are closely tied to one another. Roughly 48% of all induced abortions are unsafe, with the majority of unsafe procedures occurring in developing countries.<sup>1,3</sup> The World Health Organisation defines unsafe abortion as a procedure to terminate unintended pregnancy that is performed by individuals without the necessary skills, or in an environment that does not conform to medical standards, or both.<sup>1</sup> Globally, complications due to unsafe abortion procedures account for approximately 70,000 maternal deaths per year.

## The legal situation worldwide

Laws governing abortion vary widely from one country to another<sup>1,2</sup> (Figure 1). Abortion of any kind is illegal in 32 countries, even in cases where the mother's life is threatened. In 36 countries, one of which is Ireland, abortion is permitted to save the life of the pregnant mother, and in particular cases, such as when

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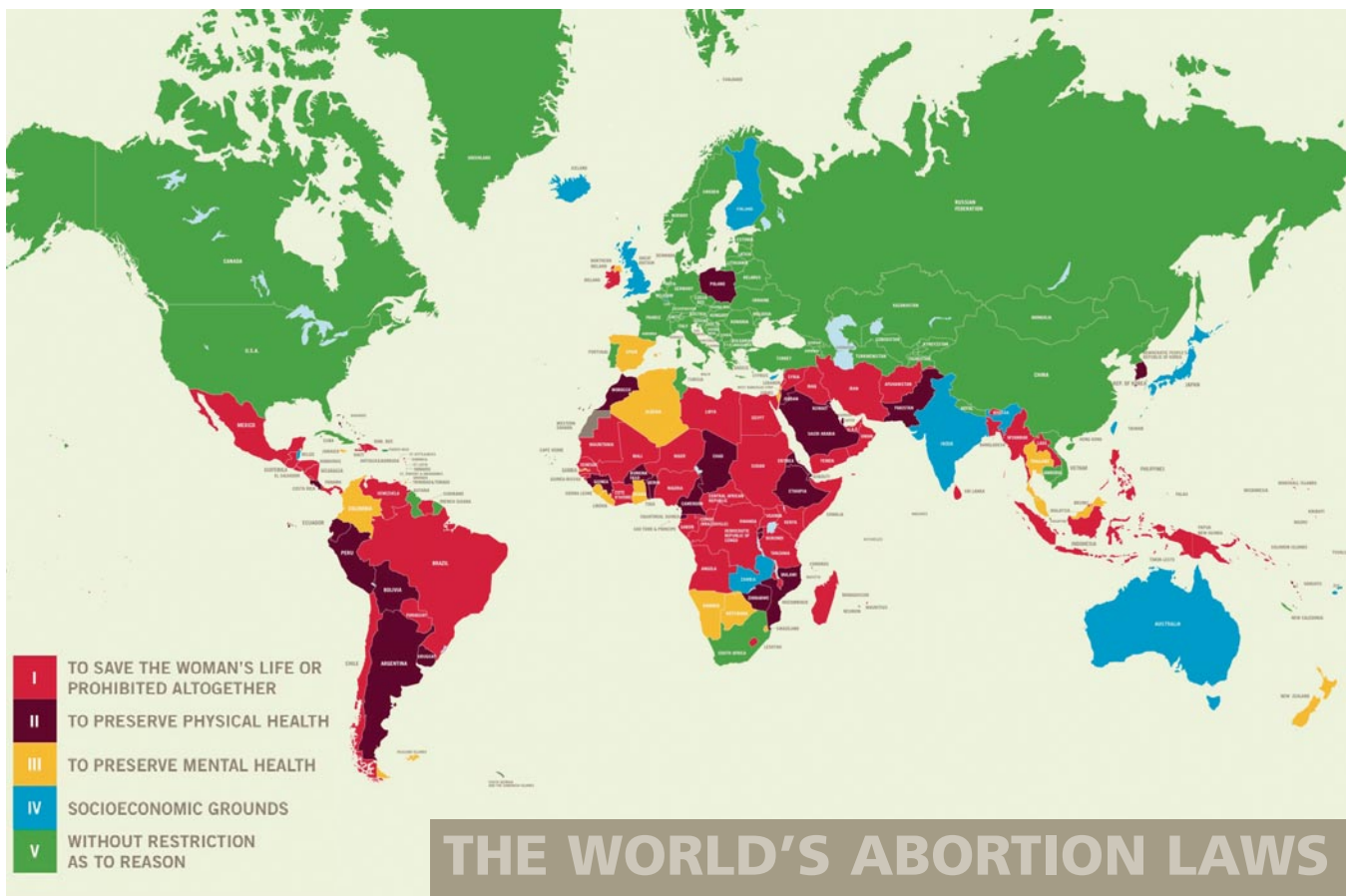


FIGURE 1: The worldwide abortion laws as summarised in a map (2007). Source: *The World's Abortion Laws 2007 Map*. Cited November 20, 2010. Available from: <http://reproductiverights.org/en/document/the-worlds-abortion-laws-map-2007>.

the mother is a victim of rape. Fifty-nine countries have less stringent abortion laws, allowing abortion in order to preserve the physical and/or mental health of the mother. Fourteen of these countries also consider the socioeconomic situation of the mother to be a valid reason for terminating the pregnancy. The remaining 56 countries have liberal abortion laws, which are limited only by the stage of gestation (commonly before 12 weeks) and consent requirements, such as parental consent if the mother is legally a minor or spousal consent if she is married.<sup>1,2</sup>

### Abortion in Ireland

Abortion laws in Ireland have evolved in response to legal proceedings, prominent events, public response and medical ethos. Legislation dates back to 1861, when The Offences Against the Person Act criminalised abortion in the United Kingdom of Great Britain and Ireland.<sup>8</sup> In the United Kingdom, the Abortion Act of 1967 legalised the abortion of foetuses prior to 28 weeks' gestation by registered medical practitioners, and regulated the free provision of such medical practices in the UK through the National Health Service.<sup>9</sup> No such liberalisation of the legislation occurred in Ireland, which led many women from Ireland to travel abroad to seek abortion services, a trend that was dubbed

“abortion tourism” by the local press.<sup>10</sup> Records indicate that in 1968 fewer than 100 Irish women travelled to Britain to obtain an abortion. This number increased over 30 years, and in 1999 over 6,000 women travelled abroad to obtain an abortion.<sup>10,11</sup> However, this may be an underestimation, since many women choose not to disclose their address.<sup>11</sup> The most recent statistics from 2008, published by the UK's Department of Health, indicate that on average about 12 Irish women (4,600 women aged between 15 and 44 per year) travel each day to Britain to access abortion services.<sup>12</sup>

In 1983 an anti-abortion campaign, the Pro-Life Amendment Campaign, argued that the Constitution could be interpreted by the Irish Supreme Court as granting the right to abortion on the grounds of privacy. The campaign cited a precedent in the United States, namely the 1973 case of *Roe vs. Wade*.<sup>13</sup> Following a referendum, the Eighth Amendment, known as the ‘Pro-Life Amendment’, came into existence to deter the legalisation of abortion in the future. The amendment contained three assertions: the unborn's right to life must be protected; the unborn's right to life was equal to that of the mother; and, this right to life would be defended to the greatest degree practicable. From 1986 to 1988, the Irish Society for the Protection of Unborn Children (SPUC)

campaigned against pregnancy counselling centres and student union officers where it felt that these were in violation of foetal rights by providing information and assistance to Irish women seeking to travel abroad for an abortion. The courts ruled in favour of the SPUC and declared the distribution of information regarding abortion to be illegal.<sup>13</sup>

In 1992, a landmark Supreme Court case had a profound influence on abortion legislation in Ireland and brought the Irish abortion debate to international attention. In the 'X case', a 14-year-old rape victim ('Miss X') was prevented by a High Court injunction from travelling to the UK to obtain an abortion. The girl's family claimed that she was at risk of suicide if she was not allowed to obtain an abortion. This decision was appealed to the Supreme Court, which overturned the High Court order, stating that if there was a real and substantial risk to the life of the mother, and this risk could only be averted by termination of the pregnancy, this would be lawful.<sup>13,14</sup> The Court accepted risk of suicide as a real and substantial risk to life, effectively making abortion legal in Ireland under these circumstances.

As a result of the X case, the Government put forward three amendments to the Constitution in a referendum. The first sought to overturn the Supreme Court ruling and was defeated. The other two amendments addressed the issues of freedom to travel outside the country for an abortion, and freedom to obtain or make available information on abortion services outside the State. These two amendments were passed, and established the 'right to travel' and the 'right to information'.<sup>13,15</sup> To date, no legislation has been enacted on foot of the Supreme Court ruling. In 1995, The Regulation of Information (Services Outside the State for the Termination of Pregnancies) Act was passed by the Government to regulate the manner in which information about abortion is available to women in Ireland. For example, it is unlawful for the "person or the employer or principal of the person to advocate or promote the termination of pregnancy to the woman or to any person on her behalf".<sup>16</sup> In 1998, the guide to ethical conduct and behaviour from the Irish Medical Council was published, stating (section 26.5: The Child In Utero) that "the deliberate and intentional destruction of the unborn child is professional misconduct. Should a child *in utero* suffer or lose its life as a side-effect of standard medical treatment of the mother, then this is not unethical".<sup>17</sup> This was changed in 2001 when the Irish Medical Council voted to shift its stance on abortion. Moving away from an outright ban on abortion, the new guidelines stated that the termination of pregnancy was permissible where there is "a real and substantial risk to the life of the mother". The guidelines for assessing the risk were formulated by the Institute of Obstetricians and Gynaecologists.<sup>18</sup> In 2001, a floating Dutch reproductive health clinic, 'Women on Waves', led by Dr Rebecca Gomperts, came to Ireland aboard the ship *Aurora*.<sup>19</sup> The initiative set out to empower Irish women and to encourage them to exercise their right to legal abortion and other reproductive health services. With the invitation of the Dublin Abortion Rights and Cork Women's Right to Choose

Groups, the *Aurora* anchored approximately 12 miles from the Dublin coast outside territorial waters. Although 'Women on Waves' lasted for only five days, they were contacted by more than 300 Irish women, and provided reproductive health information, contraception workshops and information on legal abortions in Europe.<sup>20,21</sup>

The legal issues surrounding abortion came into the public eye once again in 2007 when Miss D, a 17-year-old, decided to seek termination of her pregnancy after an ultrasound scan indicated an anencephalic foetus.<sup>22</sup> The Irish Health Service Executive stated that they would only allow Miss D to travel with a court order. The District Court refused the order, the reason cited being the protection of the life of the unborn child by the Constitution of Ireland and the lack of substantial risk to the life of the mother. However, the High Court Judge, Mr Justice Liam McKechnie, decided that the case was about the right to travel, not the right to an abortion. It was ruled that there were no constitutional grounds to prevent Miss D from travelling abroad to terminate her pregnancy.<sup>22</sup>

In addition to the legal and social aspects of induced abortion in Ireland, one must consider the professional attitudes towards abortion of healthcare professionals.<sup>23</sup> A recent study compared the attitudes of medical students from a university in Belfast, to those from Oslo, Norway. In contrast to Northern Ireland, the 1975 abortion law of Norway is more liberal and allows abortion on request during the first 12 weeks' gestation.<sup>24,25</sup> The main finding of the study indicated a significant difference in opinion between the two groups, with 78% of students from Oslo and only 14.3% of students from Belfast being in favour of abortion. It was concluded that the difference in attitudes between the student bodies reflects the difference in religious, legal and educational experiences of each subject population.<sup>23</sup> Lipp *et al.* also noted that the attitudes of healthcare professionals towards termination of pregnancy were dependent on nationality, experience in termination care, personal experiences, religious beliefs and the reason for termination.<sup>26</sup>

## Present day

For the first time in 15 years, Ireland's law on abortion was challenged recently, this time in the European Court of Human Rights (ECHR) in Strasbourg by three women living in Ireland, known as A, B and C.<sup>27</sup> The three women challenged the ban on the grounds that it forces women to travel abroad to procure abortions, jeopardising their health and well-being in violation of the European Convention on Human Rights. Specifically, it violated the provisions of the right to life; the prohibition of torture; the right to respect for family and private life; and the prohibition of discrimination. The Grand Chamber of the European Court of Human Rights heard *ABC vs. Ireland* in December 2009. This Strasbourg-based court is separate from the European Union and adjudicates on human rights issues among all 47 Member States of the Council of Europe. On December 16, 2010, the ECHR unanimously ruled that Ireland had breached

applicant C's "right to respect for her private life given the failure to implement the existing constitutional right to lawful abortion in Ireland". The court also ruled that there had been no violation of the rights of the other two women in the case, 'A' and 'B'.<sup>28</sup> Ireland is a signatory to the ECHR and therefore the Irish Government is obliged to remedy any breaches of the convention.

Although Irish abortion laws have had incremental changes over the last three decades, Ireland still stands as an outlier among neighbouring countries. The ruling of *ABC vs. Ireland* may force Ireland to join the global trend to liberalise abortion laws.<sup>27</sup>

## Conclusion

The abortion debate, with its wide disparities worldwide, remains a prominent issue for women's reproductive rights in the 21st century. The history of abortion law in Ireland clearly denotes the political, legal and social importance of this issue and its impact on medical practice and professional attitudes. While it is debatable that the Irish Government has not pushed aside the issue of abortion, Ireland's evolving laws on abortion reflect the complexity of this issue. Appropriate legislation on the lawful termination of pregnancy will have to be moulded to respect and serve the people of Ireland.

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