



IMPLICATIONS AND LIMITATIONS OF IRELAND'S ABORTION LAW



Melissa M. Estabrook

Introduction:

Human rights advocates have long acknowledged that access to abortion should be a human right. They have specifically characterized punitive laws against abortion as discriminatory and a cause of undue burden to women and their health (Abortion, 2015). However, abortion has remained a contentious topic around the globe, with many countries still refusing to acknowledge it as a right, one being Ireland. Historically, Irish law is restrictive regarding the right to abortion, despite legal actions taken in the past that should have made abortion more accessible. In spite of new laws in Ireland that claim to address this issue, pro-life groups with religious influence continue to oppose laws allowing abortion, and their efforts have rendered these attempts ineffective. Irish abortion law continues to restrict abortion even though it purports to improved access. In this paper, I argue that mounting historical court cases and the tragic death of Savita Halappanavar that sparked worldwide attention resulted in the passing of the Protection of Life During Pregnancy Act of 2013. While the act did improve Irish women's right to life, it did not translate into improved access to abortion and continues to violate these women's rights, such as the right to autonomy and the right to privacy.

I will begin by examining the historical influence of the Catholic Church, and how it has influenced Irish abortion law. I will then dive into the specifics of historical Irish abortion law, discussing the laws and their implications on women and their rights or lack thereof. I will then outline the most current law, the Protection of Life During Pregnancy Act of 2013 to provide a general understanding of what the act accomplishes. Next, I will examine various court cases and significant events that have been pivotal in influencing and shifting the law into what it is today. Lastly, I will explore the specific implications of the act; moreover, how it has helped

women's rights, but also, its numerous limitations. This will culminate in demonstrating how the act is a great step forward, but still has numerous shortcomings that must be addressed.

Background:

The Roman Catholic Church has been an influential religious organization for centuries and has infiltrated many aspects of Irish culture and law. Catholicism has historically been central to Irish national identity. One example of this arises in the 1937 Irish Constitution, which specifically mentions the Catholic church as having a "special position" in the nation (Kozłowska, 2016). In addition, because of the Church's influence, an emphasis was placed in the Constitution regarding women's roles as mothers and child bearers, which arguably still infiltrates Irish identities today (Kozłowska, 2016). The Catholic Church has taken a strong stance on abortion and has been vocal about its pro-life standpoint (Stetson, 2005). Resulting from its deep roots in the nation, the church has and remains influential in passing laws that meet this agenda.

The Catholic Church's influence on Irish abortion law is especially apparent in the Offenses Against the Person Act of 1861. Sections 58 and 59 of this act specifically outline how any woman who attempts or completes an abortion could be sentenced to a life in prison, and any person suspect in aiding in the process of abortion risks a life imprisonment with hard labor (Offenses, 1861). While this act was first introduced when Ireland was under British rule, Ireland chose to retain the strict ban on abortion upon gaining independence in 1922 (Kozłowska, 2016). The Irish government even upheld this act in the face of Britain liberalizing its abortion law through the 1967 Abortion Act (Kozłowska, 2016). Fortunately, Britain's act allows women with the economic means to travel outside of Ireland to obtain abortions, but

disadvantaged women are more vulnerable and at risk of resorting to illegal or unsafe abortions because of their lack of resources to travel. While Ireland's neighboring nations continually lean towards liberalizing laws, Ireland firmly remains in the past and stands by their law, clearly illuminating just how ingrained Catholic ideology is in their society.

In 1981, the conservative Catholic group known as the Society for the Protection of the Unborn Child (SPUC) (later becoming the Pro-Life Amendment Campaign) began lobbying for strict laws on women's reproductive rights in response to the 1979 Irish Supreme Court decision to legalize contraception (Stetson, 2005). It was hoped that by securing a constitutional amendment, any efforts to pass legalizing abortion laws would be prevented. Their efforts culminated in the passing of the 8th Amendment to the Irish Constitution, and the establishment of Article 40.3.3 in 1983 (Stetson, 2005). The Article states as follows: "the State acknowledges the right to life of the unborn, and with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to vindicate that right" (Murray, 2016). This push for legislation was met with backlash by many women's activist groups including the Anti-Amendment Campaign, which argued that this amendment would do nothing to solve unplanned and unwanted pregnancies, would limit exceptions, would prevent any possible future legislation on abortion and would be waste of public funds (Stetson, 2005). Ultimately, the conservative Catholic ideology was upheld, and the SPUC achieved their goal of making it even more difficult to circumvent or alter the law in relation to abortion.

Analysis:

Ireland's most current policy regarding abortion law is the Protection of Life During Pregnancy Act of 2013. This was a landslide act that was hotly contested throughout Ireland and exposed the deep divisions that exist in Irish society. Notably, this act does not extend or change any abortion law, but only gives effect to the legislation in place under the Constitution (Murray, 2016). It provides framework regarding how to obtain a legal abortion when the life of the mother is at risk, including a risk of death from suicide. This law does not change the fact that it remains illegal in Ireland to obtain an abortion when the health of the woman is at risk, when the fetus suffers from fatal abnormalities and will be unviable outside the womb, or when the pregnancy results from rape or incest (Stetson, 2005). Notably, the act did repeal Sections 58 and 59 of the Offences Against the Person Act of 1861, removing the threat of a life sentence in prison, and replacing it with a lesser but still significant, fourteen-year imprisonment (Protection, 2013). While Article 40.3.3 had been in place for decades, it was not until this act in 2013 that the government ever outlined explicit rules and regulations for legal abortions to be performed.

Many pivotal court cases led up to the creation of the Protection of Life During Pregnancy Act, including the case *Attorney v. X* (the X case), which called upon the Irish government to interpret Article 40.3.3 for the first time. This case pulled at the heartstrings of many Irish citizens and put abortion once more in the public spotlight. In this case, a 14 year-old-girl became pregnant by a rape from a family friend (Stetson 2005, Murray 2016). The family travelled to Britain to obtain an abortion, and hoped to use fetal DNA evidence in court back in Ireland. The police denied this request, and the courts subsequently issued an injunction forcing the family back to Ireland for 9 months, conveniently the same length of a

full-term pregnancy (Stetson, 2005). This case also brought forth the issue of government restrictions on travel for abortion, which raised public outcry from liberals. With this ruling, X threatened to commit suicide, and the case was subsequently taken to the Supreme Court. The court ultimately allowed X to travel to Britain to obtain an abortion as they felt a risk of suicide constituted a risk to the life of the mother (Stetson 2005, Murray 2016). This caught many of the pro-life groups off guard, and placed them back on the defensive. These groups argued that if suicidality was allowed as a reason for abortion, this would “open the flood gates” to “abortion on demand” as a result of “deceitful behavior” from women (Murray, 2016). This case was significant in that it again brought the issue of abortion to the forefront, and notably resulted in amendments guaranteeing the rights to travel and information, particularly in relation to abortion.

A second key case that contributed to the passing of the Protection of Life During Pregnancy Act of 2013 is the *A, B, and C vs. Ireland* case of 2010 that was brought to the European Court of Human Rights (ECHR). This case involved three women who challenged the Irish abortion law contesting that it violated Article 8 of their rights to private life (Murray, 2016). Individual’s A and B were arguing that abortion availability should be extended to include women suffering from health, social or financial reasons (Murray, 2016). The court overruled their inquiries, and stated that under the ECHR there is no right to abortion (Murray. 2016). In the situation of individual C, she fell under the legal framework of obtaining a legal abortion in Ireland, but found it profoundly difficult to access those services due to a lack of statutory framework in Ireland that would regulate abortion services (Murray, 2016). This exemplified that while Article 40.3.3. was passed, it was never enacted and made into

practicing law. While the ECHR did not find Ireland at fault in the cases of A and B, they did find a breach to individual C's right to private and family life (Murray, 2016). The ECHR concluded that due to Article 40.3.3's lack of legislative implementation, there has been "a striking discordance between the theoretical right to a lawful abortion in Ireland on the ground of a relevant risk to a woman's life and the reality of its practical implementation" (European, 2010). What the court ultimately acknowledged is that while Ireland has Article 40.3.3 as part of its constitution, there was no active legislation, and that therefore violated the rights of individuals. This specific case is noteworthy because it again brought abortion politics to the forefront of Irish policy and law. Unfortunately, it also had a notable downfall and that was the lack of acknowledgement by the ECHR regarding maternal health, and reproductive choice and autonomy. The only result of this case was the requirement of the Irish government to develop clarifying framework to the law, which is exactly what the Protection of Life During Pregnancy Act of 2013 accomplishes.

One of the pivotal influences in the passing of the Protection of Life During Pregnancy Act of 2013 was the tragic death of Savita Halappanavar in 2012. This event garnered significant media attention worldwide, and sparked a major public outcry that thrust Ireland's abortion law into the spotlight to be scrutinized by millions around the globe. Savita, a 31-year-old woman originally from India, was denied an abortion when it was discovered she was in the process of a miscarriage, because healthcare workers supposedly had to wait until the fetal heartbeat stopped (Murray, 2016 Berer, 2013). As a result, she developed sepsis and eventually died (Murray, 2016). As investigations took place, one of Savita's nurses commented that an abortion was not performed earlier because Ireland is "a Catholic Country" (Berer, 2013). The

Catholic Church countered this, stating that they have never emphasized the life of the unborn over the life of the mother, and have always taught that treatments to the mother that could result in the loss of the fetus are ethically permissible if every effort is put forth to save both the mother and the unborn child (Statement, 2012). Yet, efforts to save both the life of the mother and child may elicitate different responses from different medical professionals. As a result, women may receive different treatment of care that may be beneficial, but in other instances such as Savita's, may be grave, detrimental and life-threatening. Arguably, this case was the largest push towards altering Ireland's abortion law because of the international scrutiny Ireland experienced. Savita's death prompted not only rallies and protests in Ireland, but around the globe.

As mentioned, these cases were pivotal in the passing of the Protection of Life During Pregnancy Act of 2013. While this act has numerous limitations, which will be addressed later, it has also helped in the development of some rights. It has done this by backing up the previous ruling after the X case, allowing a pregnant woman to receive an abortion when her life is at risk, including from the risk of suicide. Because this ruling had never become law, it left ambiguity to women and medical providers as how to it should be interpreted. The 2013 Act provided clarity on the issue and set rules and regulations in place. As mentioned previously, the act also repealed Sections 58 and 59 of the Offenses Against the Person act of 1861, eliminating the life sentence in prison from receiving or performing an abortion (Protection, 2013). In Section 18 the act outlines how nothing in the act "shall operate to limit the freedom of travel" nor "limit any information relating to services lawfully available in another state" (Protection, 2013). It has also helped to further open the discussion relating to women's

reproductive rights and created more straightforward access to abortion for women whose lives are at risk because of their pregnancies. Overall, while the act has addressed a few rights of women, it still has many limitations that overshadow any good that be drawn from it.

While the Protection of Life During Pregnancy Act addresses a woman's right to travel, receive information and obtain an abortion when her life is at risk, it also places undue burden on the women whom meet the criteria to obtain a legal abortion in Ireland. If there is a risk of death from a physical illness, a woman must consult and be examined by two medical practitioners, one of whom must be an obstetrician and another who must practice in a relevant specialty (Protection, 2013). This burden increases when the risk of life is due to suicide in which a woman must consult and be examined by three practitioners—an obstetrician, a psychiatrist who provides or has provided mental health services to pregnant or postpartum women, and a second psychiatrist of a relevant field (Protection, 2013). The caveat is that if any one of these practitioners feels that the threat is not there, a woman can be denied an abortion (Murray, 2016). These obstacles are in place due to a fear of "abortion on demand" along with negative discourses and narratives surrounding women as hysterical, manipulative, untrustworthy and incapable of making rational decisions (Murray, 2016). Ultimately, this legislation presents many practical difficulties, especially for women seeking an abortion because of suicidal ideation. Not to mention, it could procure a potentially psychologically damaging endeavor for a woman already suffering from mental health disturbances. Many women will remain unaffected, and will continue to have to travel abroad to access abortion services. This act does nothing to help socioeconomically disadvantaged women obtain an abortion, even though they have the least amount of resources to travel

abroad to access abortion services. Even more significant is the notion that women who have pregnancies that put their health but not their life at risk, who carry an unviable fetus, or are pregnant because of incest or rape, are still unable to obtain an abortion in Ireland. This act has done nothing to address increased access to abortion services in Ireland which is exemplified by the 14,158 women who have been forced to obtain abortions in the United Kingdom or Netherlands since the enactment of the act in 2013 (Abortion in Ireland). Though, this number could be much larger, as these are only the women who provided Irish addresses to these clinics, and do not include women obtaining abortion elsewhere (Abortion in Ireland).

The Protection of Life During Pregnancy Act is severely lacking in rights regarding privacy, health, reproduction and bodily autonomy. Section 22 of the act outlines that any offense to “intentionally destroy human life” will be met with a fine or imprisonment up to 14 years (Protection, 2013). Not only does this violate a woman’s right to privacy by bringing her health decisions before a court, it also clearly violates reproductive and bodily autonomy rights. Notably, the ECHR previously did not view abortion as a human right, but contrary to this, the United Nations has taken a standpoint that abortion should be decriminalized and that “access to abortion is a matter of human rights” (Abortion, 2015). Therefore, Ireland is clearly continuing to violate these women’s rights. Moreover, the United Nations and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) has addressed the human right of contraception and family planning. According to Article 16 by CEDAW, women have “the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights” (Article 16, 2003), arguably this would also include the ability to obtain an

abortion for an unwanted pregnancy. Notably, Ireland has ratified the CEDAW convention, thus they are required to fulfill these rights (Status, 2017). Instead of addressing abortion as a right, this act instead focuses on and reaffirms the criminal repercussions, and outlines procedures for the exceptions to the law (Erdman, 2014).

The fight for abortion rights in Ireland is far from over. The case, *Whelan vs Ireland*, was brought to the International Covenant on Civil and Political Rights Human Rights Committee in April of 2014, by a woman arguing that the state had inflicted upon her denial of information, cruel, inhuman and degrading treatment, and violated her rights to equality and non-discrimination on the ground of sex, and provoked arbitrary interference in the right to privacy (United, 2017). The committee ended up ruling in her favor, and required the state to compensate her accordingly. The committee also set forth guidelines they recommend Ireland follow including amending “its law on voluntary termination of pregnancy, including if necessary its Constitution, to ensure compliance with the Covenant, including ensuring effective, timely and accessible procedures for pregnancy termination in Ireland, and take measures to ensure that health-care providers are in a position to supply full information on safe abortion services without being subjected to criminal sanctions” (United, 2017). The committee also acknowledged that “restrictive abortion laws constitute a form of discrimination against women” (United, 2017). Clearly, the passing of the Protection of Life During Pregnancy Act did not fulfill the standards and needs of the women of Ireland.

Conclusion:

The passing of the Protection of Life During Pregnancy Act of 2013 was a pivotal moment in Irish abortion law history. It re-opened the discussion on abortion, and provided an

opportunity to further explore the law and practices of abortion in Ireland. While the act can be considered a step in the right direction, the laws are still far too restrictive and put the health and lives of women at risk (Lancet, 2013). Fortunately, a Citizens' Assembly was established in 2016 to address the issue of abortion further. In 2017, the Assembly published their report, and 64% of the Members recommended that there should be no restrictions on abortion (First, 2017). As a result, Ireland is planning to hold a referendum on abortion in the next year (O'Loughlin, 2017). If it results in more liberalized laws, it could dramatically increase the health and status of women in Ireland.

Only because of numerous court cases and global scrutiny did Ireland implement more updated abortion laws, showing that the Catholic Church and pro-life groups are still influencing Irish policy even today. The Irish government must become much more flexible, and implement more liberal abortion policies to align with international standards on human rights. Until this is completed, Ireland will continue to violate women's human rights.

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